# Parliamentary Debates

**(HANSARD)**

FORTIETH PARLIAMENT

FIRST SESSION

2020

LEGISLATIVE COUNCIL

Wednesday, 17 June 2020

# Legislative Council

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**THE PRESIDENT (Hon Kate Doust)** took the chair at 1.00 pm, read prayers and acknowledged country.

## STANDING COMMITTEE ON LEGISLATION

*Inquiry into the Agricultural Produce Commission Amendment Bill 2019 —*
*Substitution of Member — Statement by President*

**THE PRESIDENT (Hon Kate Doust)** [1.02 pm]: Members, before we begin I have two pieces of correspondence to share with you. The first, from the Standing Committee on Legislation, states —

> Dear Madam President
>
> **Substitution of Committee Members**
>
> I am writing to you in relation to the Committee's inquiry into the Agricultural Procedure Commission Amendment Bill 2019 referred to the Committee on 11 June 2020.
>
> The Committee met on Monday 15 June 2020 and pursuant to Standing Order 163, resolved to order the substitution of the Hon Nick Goiran MLC with the Hon Dr Steve Thomas MLC, for the duration of the inquiry.
>
> Yours sincerely
>
> **Hon Dr Sally Talbot MLC**
> Chair

## JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

*Inquiry into the Monitoring and Enforcing of Child Safe Standards —*
*Extension of Reporting Date — Statement by President*

**THE PRESIDENT (Hon Kate Doust)** [1.03 pm]: The second piece of correspondence I have is from the Joint Standing Committee on the Commissioner for Children and Young People, which states —

> Dear Madam President
>
> **Inquiry into the Monitoring and Enforcing of Child Safe Standards — Extension of reporting date**
>
> On the 17 June 2020 the Joint Standing Committee on the Commissioner for Children and Young People resolved to extend its inquiry into the Monitoring and Enforcing of Child Safe Standards.
>
> Consequently, the Committee intends to report Parliament the outcomes of this inquiry on the 13 August 2020.
>
> Yours sincerely
>
> **HON DR S.E. TALBOT, MLC**
> **CHAIR**

## ABORIGINAL HERITAGE — ARCHAEOLOGICAL SITE PROTECTION

*Motion*

**HON ROBIN CHAPPLE (Mining and Pastoral)** [1.04 pm]: I move —

> That this Legislative Council debate the failure of the nation and the state of Western Australia to protect some of the world's oldest Aboriginal and archaeological sites and proffer ideas to improve the situation.

I rise to speak today on this motion and, in doing so, I will briefly address the subject matter that has led us to this situation—that is, the destruction of Juukan Gorge. But the debate should be about much more than that. The debate should be about the systemic problems that have led to this situation and should not be about recriminations or, indeed, who is better than anyone else in managing Indigenous affairs. I do not want this debate to be about apportioning blame or about political jousting, but about traditional owners having free and unfettered decision-making in respect of their land.

Before I go any further I really should acknowledge the traditional people whose lands we are talking about. These are the people who cover the area we call the Hamersley Range uplift. These are the Ngarluma, the Yindjibarndi, the Banyjima, the Nyiyaparli, the Gumala, the Ngarlawangga, the Yinhawangka, the eastern Guruma, the Puutu Kunti Kurrama and Pinikura and the Kuruma Marthudunera people. I wish to acknowledge their elders, past, present and emerging.

We were all pretty well shocked when we first saw the press release from the Puutu Kunti Kurrama Pinikura Aboriginal Corporation, released on 25 May, which referred to the destruction of the Juukan Gorge caves, Brock-20 and Brock-21, on 24 May. It is an interesting document, and I will not actually go through it, but one of the fundamentals was that by releasing this document, the PKKP had breached a contract, and I want to turn to that now.

In the lead-up to the destruction, a number of things had happened. There had certainly been quite a bit of communication between the PKKP and Rio Tinto. The PKKP was reassured on 28 October 2019 by Rio Tinto that there were no plans to mine the area. Since the PKKP established its cultural heritage unit in January 2019, it had had ongoing discussions with Rio Tinto but, unfortunately, little had resulted in any communication back. Rio obviously knew all about this; it had copies of the communication.

I found out from a question asked in Parliament that there had been a conversation between the PKKP and the registrar on 19 May, but rather than the department of Aboriginal affairs advising the minister about the issue, it advised Rio Tinto. That is very interesting when we consider that question. I refer to question without notice 541. Part of the answer states —

> At the end of the meeting on 19 May 2020, the advisers to PKKP sought confirmation of their understanding of the section 18 consent issued for the Brockman mine in 2013 …

It further states —

> The department is aware that Rio Tinto has an established agreement with PKKP. Subsequent to the meeting, the department contacted Rio Tinto to ensure that it was aware of the meeting with PKKP advisers.

That is very telling, because by doing that, it alerted Rio Tinto to the fact that there were problems, and that the PKKP had, in fact, breached the agreement.

A number of ethnographic reports were done, including one by Heather Builth in 2013 to the Aboriginal Cultural Material Committee about a proposed section 18 application, which I will come to later. I note that no statement in that report identified that the traditional owners were opposed to it, and there is a reason for that; namely, the contracts signed subsequent to the Indigenous land use agreements prohibit a traditional owner who has signed the agreement from raising any objections. I will come to that shortly. The two sites were desecrated—namely, Brock-21 and Brock-20, which are sites 22298 and 22299. They are on the Aboriginal heritage register and appear in 2013 at the time of the section 18 application. That leads me beyond that issue. I want to park that; that is the scene setter. The issues are around Juukan and Djadjiling Range, which is the BHP site, but it always goes back to the Aboriginal Heritage Act 1972. It came about because of the Weebo case in which some artefacts or stones of high cultural significance were removed from a site and attempted to be sold, I believe, in a shop in Leonora, which created quite a furore. As a result, the Museum's department that had carriage of Aboriginal affairs at that time combined with a number of people to draft the 1972 act. I will quote from a paper by Mike Robinson, who was an early member of the ACMC and was at one stage its registrar. He stated —

> "The Weebo case hastened the drafting of the Aboriginal Heritage Act and the Weebo site itself became an exemplar for the definition of an Aboriginal site. The description of a site contained in section 5 of the act and the values to be taken into account when evaluating a site in section 39, reflected the evidence that emerged about Weebo and why it was of significance to Aboriginal people."

That gives members an idea of how the act came about. Amendments have been made to the act, including those made by administrative decisions.

I turn to an evaluation of the act as it existed some time later by David Ritter, who was originally one of the directors of the Yamatji Land and Sea Council. He went on to do a number of things and is currently, I believe, working in the eastern states. He did an analysis of how it all fails, and the last part of his document states —

> What a critical legal analysis of the *Aboriginal Heritage Act* demonstrates is that the *Aboriginal Heritage Act* does not protect Indigenous interests, rather to the moderate extent it acts to prevent non–Indigenous people from disturbing Aboriginal places and materials that the non–Indigenous community regards as being worthy of such preservation. It is legislation by the non–Indigenous community for the non–Indigenous community that creates a superficial veneer of protection for Aboriginal interests. The result is that the colonising power can continue to do with Aboriginal places and materials exactly as it wants. Far from being an instrument for Indigenous power, the *Aboriginal Heritage Act* is an instrument for the ongoing colonisation and subjugation of Indigenous people that denies the legitimacy and validity of Aboriginal people making political decisions about their own land.

I refer to a document produced by Philip Moore, a fairly eminent anthropologist and archaeologist, which states —

> Aboriginal people in many parts of the state expressed concern that the Act was a way of managing the destruction of their heritage rather than means of protecting it

That is reflected in Seaman 1984.

Over the period that I have been in this place a number of things have changed. The ACMC is literally on a hiding to nowhere. It has a lot of work to do and not enough hours in the day to do it.

I refer to a datasheet that I have in front of me, which states that between January and June 2011, 729 sites were reported. Of those, 317 were assessed by the ACMC, and 254 of those 317 were assessed as sites. By January 2014, some three years later, the number of sites reported went up considerably to 1 085, of which 416 were assessed by the ACMC and only 24 determined as sites. A massive variation of what was considered a site occurred in that period. Hon Peter Collier will know that I was banging on about that at the time, but there were issues way beyond our control. The ACMC deals with lots of site issues, but when it comes to mine sites, I refer to an answer provided by Hon Ben Wyatt to a question I put. I make the point that I have great respect for Hon Ben Wyatt and countenance him as one of my friends. The ACMC considered 463 sites in respect of mining issues between 2010 and the time when I asked the question, which was on 18 March this year. Of those sites, the total number was 463 and none were objected to by the ACMC. The damning statement is contained in part (b), which states —

> This confirms what I have consistently highlighted. The obligations under the Aboriginal Heritage Act 1972 are not an impediment to the effective operations of the mining industry, particularly when mining companies enter into positive consultation with traditional owners.

Therein lies the problem. It is also interesting that the department of Aboriginal affairs is more concerned about the effect that its legislation has on the mining industry than where we go to from here.

My friend Liz Vaughan has authored a number of documents. She has a website called the Aboriginal Heritage Action Alliance on which she has written extensively. She is a dear friend of mine and partner to Francis Woolagoodja. They currently live in the Kimberley but I understand that they are moving to Derby very shortly, which will be quite close to me. The first problem that emanated was the Aboriginal Heritage (Marandoo) Act 1992. It passed through both houses of Parliament in two days. I refer to the comments made by Hon Norman Moore. I think Hon Peter Collier will find it quite interesting that I support the comments of Hon Norman Moore, who said —

> What a disgrace it is that this Parliament is called together for one day in an attempt to address one of the most significant and difficult social problems faced by this community and to pass this legislation, the Aboriginal Heritage (Marandoo) Bill, in an attempt to overcome a significant problem related to the development of a major resource project in Western Australia; that is, one day to try to deal with two major issues affecting the whole of Western Australia.

He was fairly critical of the passage of the legislation, and other issues came out of that. Quite clearly, there were problems about accessing country at Marandoo and threats of legal action. The company had been informed at an earlier stage. The Legislative Council *Hansard* of 6 February 1992 states —

> The company was informed at an early stage of its requirements under the Aboriginal Heritage Act that anthropological and archaeological work would have to be undertaken.

The company provided that information. The *Hansard* continues —

> The ACMC could not make a recommendation to the Minister because the archaeological information provided by Hamersley Iron was either inadequate or incomplete.

The government of the day sought to introduce the Aboriginal Heritage (Marandoo) Bill, which I hope will be rescinded very shortly, to take away oversight of the department of Aboriginal affairs and, indeed, to prescribe, by the nature of the act, that a section 18 consent had been granted over the whole area. There were issues in relation to the 14 caves that were to be investigated and a number of articles had been written about a couple of the caves being destroyed before archaeologists could get in and do the work. That people would still be able to go into the area and deal with those issues had been enshrined in the second reading debate on the bill. A statement attached to the second reading speech, which we would call an explanatory memorandum today, includes an agreement that reads —

> Further, the Government has, in providing consent to the Project under Section 18 of the Aboriginal Heritage Act 1972, ensured that three important Aboriginal sites within the Project area will be exempt from this Bill and will be subject to the provisions of said Act …

I know the traditional owners quite well; they are good friends of mine. Unfortunately, one passed away a couple of days ago—Nyaparu Parker. The word "Nyaparu" is used to dismiss a person's first name for a period of at least six months. I have spoken to these guys and many other people, and they do not know whether these sites still exist, are under a section 18 consent or whatever.

That in itself was a very sorry time for the development. I also want to talk about the Indigenous land use agreements and contracts that Indigenous people have to sign. In this process I put out feelers to a number of Aboriginal corporations and other parties—archaeologists, anthropologists, former workers in the Aboriginal Cultural Material Committee and former staff members of the Aboriginal heritage department—and I got a lot of feedback. I cannot disclose the source of some of that feedback because doing so would indicate that the source was breaching the agreements that they had struck. Feedback from the Pilbara mob is that the Rio Tinto agreement releases it from any

actions, claims, demands or proceedings of any kind under any law, including the Racial Discrimination Act 1975, the Native Title Act 1993, the Aboriginal Heritage Act 1972, the Fair Trading Act 1987, the Trade Practices Act 1974, the Environment Protection and Biodiversity Conservation Act 1999, the Environmental Protection Act 1986, the Mining Act 1987, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the Rights in Water and Irrigation Act 1914, the Land Act 1933 and, finally, the Land Administration Act 1997. Having entered into these agreements, the traditional owners are hamstrung. They also suffer because the contracts that they sign have a nondisclosure clause. That is the very point about what the PKKP Aboriginal Corporation did when it released its media. I do not know whether Rio Tinto has sought to take any action against the PKKP for doing that.

**HON JACQUI BOYDELL (Mining and Pastoral)** [1.25 pm]: I rise to make a contribution to the debate on the motion that Hon Robin Chapple has brought to the attention of members of the Legislative Council today. As the member outlined in his contribution, this motion was probably driven by recent activity in this space and the exceptionally unfortunate incident with Rio Tinto. I am sure that hurt is being felt on both sides of that argument. I have no doubt about that.

I want to put on the record my interpretation of some of the events occurring in this space in relation to the review of the Aboriginal Heritage Act and what exactly a section 18 consent means. It is not only the mining industry that uses section 18 consents; even government departments—for example, Main Roads Western Australia—could potentially use a section 18 consent. I am going to focus on what a section 18 consent is, the steps the mining industry takes to engage with local traditional owners, particularly those in the Mining and Pastoral Region, and the complexities and emotions around this issue. There is no doubt it is an exceptionally emotive and sensitive topic and I want to give due regard to that in the chamber today. I absolutely respect the cultural significance of these sites to Aboriginal people and to Western Australians.

During the previous Liberal–National government, Hon Peter Collier as Minister for Aboriginal Affairs sought to review the Aboriginal Heritage Act. It was a complex process. At the time, Hon Brendon Grylls and I were particularly involved in that process. I recall attending a meeting in Kalgoorlie of traditional owner groups from the goldfields region about the Aboriginal Heritage Act review. The meeting was well attended and there was a lot of emotion in the room. I think that goes to the heart of the issue. When governments start to review legislation like the Aboriginal Heritage Act, we see the sometimes very fraught nature of that debate. I recall it was certainly displayed at that meeting. These are challenges for governments. There is a requirement for legislation on the protection of Aboriginal heritage sites—absolutely—but there has to be a way in which both industry representatives and traditional owners can have their voices heard in that process. To some degree, a section 18 application is how we get to that point under the legislation, but particularly mining companies spend years consulting with traditional owners before a section 18 application is lodged. There would be years of consultation and engagement with traditional owners and a number of surveys conducted over a long time. In my experience, generally, there has been an enormous amount of engagement in this process from local traditional owner groups.

Ultimately, the mining industry has the same principle in mind, which is to protect culturally significant heritage sites because there is no win for anyone, as we have seen in the media in relation to the Rio Tinto story. There was a miscommunication and a misunderstanding and issues arose and not everyone was on the same page. Consultation and communication is the key in the space—there is no doubt about that.

In March 2018, the Minister for Aboriginal Affairs, Hon Ben Wyatt, announced reform to the Aboriginal Heritage Act. He announced a three-phase component to that reform. The act has remained largely unchanged for 45 years. At the time that Hon Peter Collier undertook a review of the act—which I am sure he will speak about—there was a definite feel for a need for change in this space. There is absolutely no doubt about that. We are up to the second phase of the consultation on the current reform process and although it was the government's intention to release the review of the act for public consultation in early 2020, with the issue of the COVID-19 pandemic, phase 3 of that consultation has been deferred. The public will have an opportunity to comment on what has been brought forward through the consultation process so far.

If land users conclude that there is unavoidable impact to a site, the minister's consent may be sought under section 18 of the Aboriginal Heritage Act to give notice to the Aboriginal Cultural Material Committee, as Hon Robin Chapple referred to. The ACMC comprises representatives of traditional owners from various areas around the state, and is established under the Aboriginal Heritage Act to represent Aboriginal people on heritage matters. To clarify for members who may not be as familiar with this space, that is what the ACMC does. The ACMC usually meets on a monthly basis. Once a section 18 is granted, neither the Minister for Aboriginal Affairs nor the ACMC can review or revoke the decision. Since July 2010, 463 section 18 notices for land, which have been described as "mining leases", have been brought before the ACMC. That is what a section 18 notice is and that is what it does under the legislation.

Prior to a resource company getting to the point of lodging a section 18 notice, I will outline to the house some of the steps that the resource industry undertakes, because it does recognise its responsibility in this space. The first step is to navigate a native title agreement, which outlines agreed processes for meetings, notices, communications, heritage identification and protection, environmental stewardship, employment, training and contract opportunities

and, ultimately, cash for compensation. The first step in that heritage process before broadscale explorations of an Aboriginal ethnographic survey is to identify a no-go zone; that is, a zone that is designated to be culturally significant to the traditional owners of that region. At that point, usually archaeological surveys are carried out and traditional owners physically walk the line that the exploration drill and the rigs will drill into. They follow that line looking for that culturally significant material or site so that it can be catalogued and hopefully avoided. That is what traditional owners do in a negotiation with resource companies, and I have seen this repeated many times with different resource companies and different traditional groups.

Once the layout of the mine is agreed to—usually designed to avoid all those culturally significant heritage sites—the only thing on a mine site that cannot be moved to avoid heritage is the actual ore body itself. Everything else is mobile and is often removed at enormous financial cost. Once the final layout of the mine is decided, the company and the traditional owner group need to negotiate about whether a section 18 applies. The entire process from start to finish—before it even gets to the point of lodging a section 18 notice—can take upwards of five, six, seven or 10 years in some instances. Sometimes it can be longer than that; therefore, I am setting out some of the realities that resource companies face, which they absolutely should face. I am not saying that they should not face them, and I think there is a recognition that they believe that they have responsibility to do that as well and that is why we need legislation to ensure that they do that. A massive consultative process is undertaken prior to the section 18 notice getting to the table. At that point, the submission of a section 18 notice is never a surprise to a traditional owner group, certainly one that is dealing with a larger resource company in the Pilbara anyway, because of the process that was undertaken years prior to getting to that point.

That does not mean that the traditional owner group will support the application. I am saying that it is by no means a surprise. At worst, they are at least informed of the nature of the application, why it has been made and they are aware of the exhaustive process prior to getting to that point. I just want to reiterate that lots of resource companies—particularly the larger resource organisations because they have the structure to do it—allocate significant resources to this process and undertake a consultative process with traditional owner groups, and, for the most part, usually that goes fairly well. The resource companies undertake employment of traditional owners to conduct the surveys. They also undertake extensive research to make sure that they engage with the actual traditional owners, which at some points can be a complex situation in itself when the traditional owner groups across the region do not agree, and that does occur. Therefore, extensive research and extensive resources are put towards ensuring that they are all trying to be on the same page if they think they are heading towards a section 18 notice. I will reiterate that that does not mean that all parties agree at that point. At that point, the section 18 notice goes to the ACMC and then a further consultative process is undertaken. Therefore, we are not saying that companies go straight to a section 18 notice, if anyone is under that impression. In my experience, that does not happen in reality.

The government has done some good work so far in reforming the Aboriginal Heritage Act that we find ourselves looking at in 2020, and that should be acknowledged for sure. It has been an extensive consultative process so far. The feedback from the traditional owner community, and probably the mining industry as well when looking at the reform from that consultative process, has largely come in around the section 18 notices, and Hon Robin Chapple indicated this as well. The main feedback is that there needs to be provision for a review of a section 18 decision. I do not think that anyone can dispute that. There has definitely been evidence through the consultation process that the minister is currently undertaking that people want to see a review process for section 18 decisions. The consultation seems to indicate that people want local traditional owner groups to have a better opportunity to consult. All governments want to consult on the decisions that they make. That is good government and they should do that, particularly in this culturally sensitive area. However, I will bring to the table that there has to be some balance in that because an enormous consultative process is already undertaken. When the minister gets to the stage of releasing the draft for public comment, I will be interested to see how he thinks he will address that because the process is fairly extensive as is. From a resources and mining industry perspective, companies make an enormous financial contribution in this space. Before projects get to being shovel ready or companies able to do exploration, sometimes millions of dollars have already been spent in the space by the resources industry as it moves towards the opportunity to mine.

Some of the feedback that I have heard in this space about the latest media coverage of the issue at Brockman mine is that some Aboriginal people feel that their voice has been a little lost in the media conversation. There is a difference between archaeologically important sites and culturally significant sites. A site might be archaeologically important and, from a historical perspective, may need to be preserved, but that does not mean that traditional owners believe that it is of cultural significance. That is the feedback that I have received. I am sure that there are archaeological sites all over the state of Western Australia where there are artefacts and where Aboriginal people have stopped overnight and used it as a meeting point. That does not mean that the site is culturally significant until a survey is conducted, the traditional owners are engaged with, and they believe that it is culturally significant. It may be an archaeologically significant site, but it needs to be culturally significant to the traditional owners. We need to make sure that we remember that in the process. It is for the traditional owners who the government consults with to tell the government what is culturally significant and not the other way around. We need to ensure that we continue to respect the views of traditional owner groups about what they believe are their culturally significant sites.

I refer to the motion. I am not quite sure what the member is asking us to do in the wording of the motion. The motion states that the Legislative Council should "debate" the issue, but by the time we vote on the motion, we will already have debated it, so I was a bit confused about what the member was asking. However, in principle, I absolutely support the idea that the nation of Australia and the state of Western Australia need to continue to improve in this space. We need to make sure that Aboriginal people are part of this conversation and they should lead the conversation. We need an Aboriginal Heritage Act that reflects modern practice. There is no doubt that it is in need of review. I look forward to the bill being finally presented to the house. I thank the member for bringing the issue, at least, to the Legislative Council for us to highlight the significance of the review of the Aboriginal Heritage Act that the government is undertaking.

**HON PETER COLLIER (North Metropolitan — Leader of the Opposition)** [1.45 pm]: I stand, also, to make some comments about this motion. I thank Hon Robin Chapple for bringing it to the house's attention. As I have said on numerous occasions, I have enormous respect for Hon Robin Chapple and his commitment to Aboriginal people. I think that it is probably second to none in this chamber and in the Parliament of Western Australia. Like Hon Jacqui Boydell, I was a little perplexed with the wording of the motion, but I understand its intent and we will certainly support the intent of the exercise—that is, to look at the way in which we can collectively move forward and improve the manner of protecting Aboriginal heritage across Western Australia and the nation. I think that is the intent of the exercise, and we support that intent.

I could talk about a number of things on this issue. It was my great privilege to be the Minister of Aboriginal Affairs for six years and I loved every second of it. I have said this over and again. I grew up with the Wongatha people and I have deep personal regard for Aboriginal people. It was a great privilege to be Aboriginal affairs minister.

Heritage was one of the areas that was always in contention. The Juukan Gorge rock shelters are testament to exactly why it is such a contentious issue. I imagine that the decimation of those sites must have been devastating for the traditional owners. Aboriginal people have a very strong spiritual connection to the earth and to the land. To them, the decimation of sites that were over 40 000 years old must have been excruciating from a spiritual perspective. I acknowledge that. Rio Tinto has, legitimately and correctly, apologised. I understand that in a lot of instances those will be empty words for the traditional owners. I understand that. Ideally, it will not happen again. In the current structure of the Aboriginal Heritage Act, it quite possibly could. It was under my jurisdiction that this section 18 application was approved in 2013. In that same year, 71 other section 18 applications were considered and approved by the Aboriginal Cultural Material Committee. It assessed 1 100 Aboriginal heritage places in that year. The ACMC, which is a small body, assessed 1 100 Aboriginal places. On average, 1 500 heritage information forms are submitted to the ACMC for assessment each year. In itself, that shows that there is a problem. It is a small body. In the act its numbers are not finite. The quorum is five people, but that is it. There is no requirement in the act to have an Aboriginal person on the ACMC—none whatsoever! Evidently, there will be a problem with this piece of legislation in its current form.

The Aboriginal Heritage Act had its genesis in the discovery of some sacred stones out of Laverton in the late 1960s under the Liberal government of Sir David Brand. That was the stimulus for the development of a heritage act. Until that point, it had been carte blanche; people could just go for it. Imagine the number of sacred sites that were decimated prior to that. The John Tonkin Labor government took over in 1971 and passed the Aboriginal Heritage Act in 1972 with unanimous bipartisan support. It could not be argued with and was eminently sensible. As a result, we at least had something to protect Aboriginal heritage sites, but let us not forget that in those days, Aboriginal people largely did not have a voice throughout our nation. It was in 1967—only a few years before—that they were first recognised in the Constitution. That was the first time they were recognised in our nation. I do not mean to be flippant, but that is what I am talking about. Just five years later, in 1972, they did not have a voice. We have moved on as a society. We have come to acknowledge, respect and admire Aboriginal culture and heritage across our nation.

I will talk about what I tried to do in my relatively long time in not only Indigenous Affairs, but also Education, to stimulate an acknowledgement of Aboriginal culture throughout our community. In two years, it will be 50 years since the Aboriginal Heritage Act was passed in 1972. There have been several attempts to amend the act. I can promise members that, at the moment, it is flawed. Trying to deal with it was one of the banes of my tenure. When I took over as Minister for Indigenous Affairs, I instigated a review of the act. Dr John Avery, the director of Indigenous heritage law reform in the federal Department of Sustainability, Environment, Water, Population and Communities was contracted by our government to go out and assess the views of everyone in the community—Aboriginal people, the traditional landowners and the mining industry communities—and come up with a system that protected Aboriginal heritage while at the same time provided an avenue for development. We wanted to see whether the two could coexist. Over that time, John Avery met with more than a hundred discussion groups and stakeholders across the state. We received 172 written and verbal responses to the request for people's views, representing 120 stakeholders from all sectors. As a result, in 2014, we released an exposure draft of the Aboriginal Heritage Amendment Bill 2014 and we extended the consultation process for another two weeks so that we could access as many views as possible. It was not going to be the gospel according to Pete or non-Aboriginal people; we had to make sure that we engaged the Aboriginal community to ensure that their views were sacrosanct. The heritage sites are theirs and we had to make sure that they were protected. As a result, we put forward the bill. We tried to

streamline the process while protecting Aboriginal heritage at the same time. At the moment, one little group—the Aboriginal Cultural Material Committee—has to deal with thousands of applications every year, in some instances. Evidently, it is ineffective and inefficient, and inevitably things will slip through. I would like to think that when we look at the section 18 notices issued over the last 20 years, we will not find that anything else has slipped through and that other sites across the state will be decimated. I will talk about the new bill in a moment.

As I said, we had an enormous amount of consultation. I personally went all over the state with John Avery and met members of the Aboriginal community to access the views of Aboriginal people. The bill enhanced the protection of Aboriginal sites. At the time, there was no real punitive action if a site was decimated. There is still not. Back then, it was just a rap on the knuckles, so the amendments we put forward would have significantly increased the penalties for causing damage to an Aboriginal heritage site. The maximum penalty for bodies corporate that were convicted of a second or subsequent offence was to be increased from $100 000 to $1 million, and the maximum penalty for individuals convicted of a second or subsequent offence was to be increased from $40 000 to $200 000. Terms of imprisonment for individuals would have been retained, and strengthened. Also, courts would have had the ability upon conviction to order site remediation when it was feasible. That was essential. We increased the penalties for the desecration of Aboriginal heritage sites.

One area that caused conjecture was the role of the CEO. I know that Hon Robin Chapple did not approve of the measure at all. I acknowledge that; that is fine. We had to find a common medium. We could not have the ACMC assessing every single application because it simply could not do it. One little group assessing hundreds upon hundreds of applications every year was not working. A vast majority of those applications—90 per cent—would have been deemed not to be heritage sites, yet the ACMC would still have to consider them. The point of the exercise was to provide an avenue to streamline the process whereby the CEO of the then Department of Aboriginal Affairs would have the capacity to either approve or not approve a site as a heritage site, only on the assumption that they were not heritage sites; that is, it would provide applications involving areas where no heritage site existed or no site damage would occur, and that would be handled by the executive of the Department of Aboriginal Affairs. Under the proposed model, the chief executive officer would have had the ability to issue a declaration of whether a site on the land was deemed a heritage site or could have issued a permit that a site would not be destroyed or significantly damaged by activity. Currently, that is the role of the ACMC, and that is why we have problems. We have had a wake-up call with the issue of the Juukan Gorge caves. Inevitably, other sites may have slipped through. We need to be mindful of that, and that is why we must have a more stringent process than currently exists.

Another area of the bill that we introduced regarding the ACMC proposed that the CEO would have the ability to issue a declaration, as I said, when there was no Aboriginal heritage site. If there was an Aboriginal heritage site, that matter would remain with the ACMC. The ACMC would retain its role to assess proposals when damage to a site may or will result, and make recommendations to the Minister for Aboriginal Affairs. That was very important to streamline the process.

Another area that I insisted upon was that the role of honorary wardens—quite frankly, it was piecemeal; they were Aboriginal people—be more clearly defined. Aboriginal people were to be part of the decision-making process all the way through. It is their land. It was not up to me as the then minister or Hon Ben Wyatt as the current minister, or whoever else is minister beyond him. The Aboriginal people must have a more formal say in the determination of the sites. The role of the honorary wardens would have been expanded considerably under the legislative proposals that we put forward. In essence, we would have allowed the government to partner with Aboriginal people and groups to enhance the protection of Aboriginal heritage and recognised the important role of Aboriginal people in protecting their own heritage; that is, the decision was not to be imposed on them by non-Aboriginal people, which is what has been happening for 200 years. The bill would have empowered Aboriginal people to play an active role in heritage management and complemented the active role Aboriginal people play in land management.

We brought that bill forward and it was read into the lower house when some other issues emerged. I promise government members, including Hon Stephen Dawson, that issues will inevitably arise when the draft bill goes out for consultation and comment. It is a complex area but we simply have to get it right. What I tried to do with the Aboriginal Heritage Act was empower Aboriginal people and provide them with much more clarity on the determination of whether a site was an Aboriginal heritage site. That is what I wanted. I made it quite clear. I wanted to increase the penalties and make it more seamless, while at the same time retaining the heritage of Aboriginal sites and also increasing Aboriginal participation and involvement in the process through the Aboriginal wardens. That is what I wanted to do.

I will pick up on Hon Robin Chapple's point about having proper ideas to improve the situation. This issue goes beyond the Aboriginal Heritage Act. It is about having cultural awareness throughout our community of the significance of not only Aboriginal culture, but also Aboriginal heritage across the board. There is much more awareness of Aboriginal heritage within our community today than there was previously. It is not left-wing ideology that is seen as preventing development. Aboriginal heritage is sacrosanct. It is part of our generic culture. One of the oldest living races on this earth, of 40 000 years, needs respect. These people have a deep personal spiritual connection to land and we have to respect that. They are Australia. They are a part of Australia. They are much more Australian than we are or I am.

I tried to empower various advisory groups throughout the community with Aboriginal people, and I did. In 2015, I appointed Ian Trust as chair of the Western Australian Aboriginal Advisory Council. He is a man who has an enormous understanding of Aboriginal people. Also in 2015, I appointed Dr Robert Isaacs as the new chairperson of the Aboriginal Lands Trust. The Aboriginal Advisory Council of Western Australia, a statutory body in the Aboriginal Affairs Planning Authority Act 1972, was redundant for years; it did not exist. Even though it was in the statute, it did not exist or operate. When the former Liberal–National government took office in 2008, we resurrected it and I worked with the Aboriginal Advisory Council constantly. I met with it all the time and kept it vibrant and dynamic. It provided advice to me constantly. Do members know what? Every single person on that advisory council was Aboriginal, as they should be. It was a broad reflection of Aboriginal people. I reinstated that council and we ensured that the Aboriginal Advisory Council advised government on what Aboriginal people want; I did not tell them what was good for them. In addition, the Aboriginal Cultural Material Committee did not have a finite number of members; it just needed a quorum of five. For years, most members of the ACMC were non-Aboriginal. In 2015, I increased membership to 10 members and six out of the 10 were Aboriginal so that there was a majority of Aboriginal people on the ACMC. I had a look at the website yesterday and three of those are —

**Hon Stephen Dawson**: It has six Aboriginal members, two non-Aboriginal members and then some observers.

**Hon PETER COLLIER**: That is what I said. I made it six.

**Hon Stephen Dawson**: Yes, and at the moment that is what it is.

**Hon PETER COLLIER**: That is good. It has not changed. That is how it should be. It should have been that way all the time, but it was not. All I am saying is that I made sure that Aboriginal people told us about heritage sites, and I did not tell them.

As far as education is concerned, growing up in Kalgoorlie in the 1960s and 1970s, Aboriginal kids were taught in a donga at the back of the school. I am serious! The previous government provided discrete, vastly increased funding for Aboriginal students. Every single Aboriginal student in our schools is now recognised and funded, but the best thing we did as a government with education for Aboriginal students was being the very first state in the nation to introduce an Aboriginal cultural standards framework. Aboriginal culture is now embedded in our curriculum. It is compulsory. It is important that all students understand Aboriginal culture, not just Aboriginal students. A lot of Aboriginal students need to understand their culture as well. Is it not great that in Western Australian schools we now have an Aboriginal cultural standards framework? We were the very first state to do that and it was nationally applauded. We did that in 2015. Also, the Partnership Acceptance Learning Sharing program goes to schools and teaches students about Aboriginal culture. When I started, 138 schools had the program and 520 schools had it when I finished. Virtually three-quarters of public schools are now part of the PALS program, which is wonderful. I also introduced the elders in residence program. I got some elders of the Aboriginal community to talk with our schools right across the state to teach and explain Aboriginal culture.

As I said, we tried to do some things with the Aboriginal Heritage Act, but we went well beyond that with the ACMC, the WAAAC and also within our education system. Now, the baton has been passed to the current government. I applaud the government's attempts in initiating a replacement of the Aboriginal Heritage Act, which is probably good. Good luck with it. I promise the government—I cannot speak on behalf of the Liberal party room, because at this stage we have not seen the bill—that if the bill empowers Aboriginal people, provides for a more streamlined process and protects Aboriginal heritage, I can almost guarantee that the government will have our enthusiastic support.

I once again thank Hon Robin Chapple. It is a very worthwhile debate, very pertinent and I like to think that, ultimately, we will all come out of this better in recognising Aboriginal culture and heritage.

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [2.05 pm]: I, too, thank Hon Robin Chapple for bringing this motion before the house. I understand what he is doing in how the motion is written. He has created a debate today based on a motion that is unusually written, but he has succeeded or achieved what I think he set out to do. I acknowledge his passion. I share an electorate with Hon Robin Chapple and thank him for his knowledgeable passion for Aboriginal people, particularly in the north west of the state. I acknowledge my other parliamentary colleague, Hon Jacqui Boydell, who also shares the electorate, and has a deep interest in Aboriginal issues. I also acknowledge Hon Peter Collier as the former Minister for Aboriginal Affairs, and thank him for his contribution. I would say Australian Aboriginal culture goes back not 40 000 years but more likely at least 60 000 years. It is one of the oldest continuing cultures in the world. I think we take it for granted. In his contribution, Hon Peter Collier did not say we take it for granted, but he made the point that they are Australian, they are well and truly intrinsically part of our culture in Australia, and they are certainly a lot more Australian than I will ever be. We have not grasped their culture and have not tried to understand their culture as a nation to the degree that we should have. A great deal more work needs to be done in that space.

Aboriginal heritage is essential to the health and vitality of Aboriginal communities, and it provides an essential link to their past, present and indeed their future. It is why we now acknowledge the traditional owners at meetings and events and acknowledge their past, current and future leadership. That has been a positive acknowledgement and addition to the discourse over the past few years and it is something I do at every opportunity.

The recent destruction of the rock shelters at Juukan Gorge has been devastating for all parties involved and it should have been avoidable. The state government is aware that Rio Tinto has had an agreement in place—Hon Peter Collier mentioned that—with the Puutu Kunti Kurrama and Pinikura native title group for many years that outlines protocols for managing Aboriginal heritage at the Brockman mine. I am told Rio Tinto has consulted with traditional owners about this project and has undertaken a number of archaeological and ethnographic surveys in consultation with PKKP representatives who have been involved in the process on the ground. Objects connected with traditional cultural life have been appropriately salvaged and recorded.

Although the actions of Rio Tinto were not unlawful, the matter really highlights inadequacies in existing legislation and, certainly, the inadequacy of the current legislative protection for Aboriginal cultural heritage. The Minister for Aboriginal Affairs, Ben Wyatt, and indeed the McGowan government want to see the impact on Aboriginal sites limited to the most practical extent possible. As members have alluded to, we have committed to introduce new modernised Aboriginal cultural heritage legislation that reflects best practice in the recognition and protection of Aboriginal cultural heritage. The legislation will provide an Aboriginal voice in the management of Aboriginal cultural heritage and will hopefully lead to better decisions and improved protections.

The existing Aboriginal Heritage Act 1972 has been around, as Hon Peter Collier said, for almost 50 years. It is well outdated. It was written before the Native Title Act 1993 and does not line up with it at all. Although it was progressive for its time, it is now totally outdated and does not deliver for Aboriginal people and requires updating. It does not adequately reflect the relationship between Aboriginal people and their culture, and it needs to. A modern, progressive act would do that. It is not aligned with native title processes or principles, it does not recognise the heritage outcomes resulting from native title agreements that are made between land use proponents and traditional owners, and it has been a source of major conflict between Aboriginal people and land use proponents because of its procedural uncertainty and lack of dispute resolution mechanisms. More importantly, the current act does not allow or provide any right of appeal for Aboriginal people on decisions about their cultural heritage.

The current act has had various reviews, as Hon Peter Collier alluded to, since its introduction, but none of those reviews has resulted in a major overhaul of the act, despite significant changes in the legal, social and environmental circumstances surrounding the preservation and protection of Aboriginal cultural heritage. We, as a government, recognise the need for change that results from genuine and extensive consultation with Aboriginal people and, indeed, other stakeholders. The current legislative review was started by Hon Ben Wyatt about two years ago. Since then, more than 550 people have attended more than 40 workshops held around the state. More than 130 submissions were received on a consultation paper that sought views on the effectiveness, or lack thereof, of the current act, and any gaps in the legislation. It also requested ideas on what modernised legislation should set out to do and how it should operate in the interests of all stakeholders. Following that feedback, a discussion paper was released last year that received a further 70 submissions and engaged more than 100 people in workshops. That just shows the interest out there in this issue. All the consultation to date has informed the new legislation, which is moving through the drafting process at the moment. Hon Ben Wyatt hopes to have that legislation before this house later this year.

The Aboriginal cultural heritage bill will reflect two years of review and consultation. I will give members a sense of what will be included in it. It is proposed that it will update the definition of what constitutes Aboriginal heritage, and include definitions of cultural landscapes and place-based, intangible heritage that reflects a living culture that is central to the wellbeing of Aboriginal people. It will provide for the management of Aboriginal ancestral remains and secret and sacred objects, which are of utmost importance to Aboriginal people. It will establish a new directory for all identified Aboriginal cultural heritage, including that listed on the current register, as well as heritage places. It will seek to empower Aboriginal people—not a statutory body, like the Aboriginal Cultural Material Committee—to be responsible for evaluating the importance and significance of their heritage sites. It will provide for the establishment of local Aboriginal heritage services—new local Aboriginal bodies that will be incorporated—to ensure that relevant Aboriginal people and knowledge holders are consulted. It will enable local Aboriginal heritage services to make agreements on Aboriginal heritage management and land use proposals in specific geographic areas and will support the implementation of existing agreements. It will seek to ensure real and meaningful consultation with Aboriginal people in the identification, management and protection of their heritage. It will also, hopefully, establish a tiered land use approval system. It will encourage proponents to take due diligence to determine whether a proposal will impact on Aboriginal cultural heritage. This system will replace the current section 18 process which, as we know, in effect allows for sites to be destroyed.

Land use proposals with medium to high impact will be required to seek agreement from relevant Aboriginal people and develop a cultural heritage management plan for authorisation to proceed. Unlike section 18 notices, cultural heritage management plans will provide an avenue for taking into consideration new Aboriginal cultural heritage information or discoveries.

Another important element is the intention to introduce stop-work orders to prevent unauthorised impacts on Aboriginal cultural heritage. Stop-work orders may be required when there is an imminent risk of harm to Aboriginal cultural heritage by a person acting without any approval or acting outside an existing approval. There will also be provision for notices and orders to allow for remediation work to be undertaken to restore impacted Aboriginal cultural heritage; although, of course, when you get rid of some of these things, it is very difficult to take it back.

Another element is a proposal to establish an Aboriginal heritage council that is chaired by an Aboriginal person and provides strategic oversight of the Aboriginal heritage system. Members will be selected based on their skills and experience, with preference for the appointment of Aboriginal people. Hon Peter Collier mentioned in his contribution how few Aboriginal people were on the ACMC when he started. We have come a long way, but this new Aboriginal heritage council will actually put things into law to require certain things. It will not be at the whim or passion of a minister who cares about this issue; they will have to do it, and that is a good thing.

The Aboriginal heritage council will promote public awareness, understanding and appreciation of Aboriginal cultural heritage in Western Australia. It will also authorise cultural heritage management plans—this is really important—that can demonstrate informed consent, adequate Aboriginal consultation, and agreed management of impacts on Aboriginal cultural heritage. For a variety of reasons, if agreement cannot be reached—we know, regrettably, that that is not always possible—although not the preferred option, the new bill will provide for a government authorisation process in such cases, whereby proponents will be required to demonstrate that they have made a serious and genuine attempt to engage with local Aboriginal people regarding their cultural heritage.

A key aspect of the state government's determination to modernise the Aboriginal Heritage Act is to ensure that the new regime and new law align with the recognition of native title rights and the operation of the Native Title Act 1993. That act provides native title holders with the right to negotiate with proponents who seek to use their land for developments that will impact on native title rights. As a consequence, over the past 20 years or so, a quiet revolution has been taking place that has transformed the relationship between traditional owners and mining companies, based on agreement making. During this period, at least 38 Indigenous land use agreements relating to mining and more than 2 000 section 31 agreements have been formalised under the Native Title Act between native title parties and mining companies. The system of agreement making is now the primary regime for Aboriginal heritage protection in Western Australia, but, as we have seen recently with the destruction of the rock shelters at Juukan Gorge, there is significant room for improvement in the system of agreement making. We are not saying that the Native Title Act 1993 is flawless; it is not. A native title agreement in Halls Creek took 20 years to resolve; it should not take that long. There is a great deal more work to be done, but certainly this legislation will align with the current Native Title Act and, hopefully, progress a lot further.

The current act provides for the declaration of Aboriginal sites that are of outstanding importance to be protected areas. It vests exclusive use of the land in the Minister for Aboriginal Affairs. Conferring protected area status on an area is a future act under the Native Title Act, which means that statutory native title processes must be complied with before a declaration can be made. This has resulted in no protected area declarations having been made since the early 1990s. The limits that protected areas impose on activities within the designated boundaries make it difficult for Aboriginal people to actively manage and conserve these most significant of areas. Under the new Aboriginal cultural heritage bill, protected areas will no longer be vested with the minister and will not trigger provisions under the Native Title Act. This will enable active management by Aboriginal people and provide opportunities for more places of outstanding importance to be declared protected areas.

I want to briefly touch on the environment portfolio, given that I am talking today. We have been doing some significant work in my portfolio on Aboriginal culture and heritage. In the Department of Water and Environmental Regulation, we have established the Aboriginal Water and Environment Advisory Group, with membership of Aboriginal people from across the state. This group will ensure not only that the department's key water and environmental initiatives provide an opportunity for Aboriginal engagement, but also that the department considers the needs of Aboriginal people. DWER is also working with the Department of Planning, Lands and Heritage. Since 2018, the departments have been consulting on the review of the Aboriginal Heritage Act 1972. The departments are also working together to ensure that Aboriginal heritage is protected and legislative reforms are aligned.

Another place in my electorate is Murujuga on the Dampier Peninsula. This is an example of how we have tried to act to improve the protection of Aboriginal heritage. Hon Robin Chapple knows the area well. As we know, Murujuga has one of the largest collections of rock art or petroglyphs anywhere in the world. This rock art is of immense significance to Aboriginal people and has significant state, national and international heritage value, so we have started the process to get this area World Heritage listed. That is a cumbersome but nonetheless very worthwhile process. I want to acknowledge the leadership of Peter Jeffries and the Murujuga Aboriginal Corporation, who have been working in lock step with us to get this area the international protection that it requires. Included in the Environmental Protection Amendment Bill that we will hopefully debate very shortly in this place are amendments that will allow for regulations to be made to recover costs from industry to implement environmental monitoring programs, again to help protect the unique cultural heritage that exists in Murujuga.

One of the proudest things I have been involved in as Minister for Environment is the design and rollout of our Aboriginal ranger program in Western Australia, which was an election commitment from the last election campaign. That $20 million investment over four years has enabled Aboriginal organisations to, in some cases, actively manage Aboriginal culture on their lands. The scheme itself was designed with Aboriginal people at the table. It was not well-intentioned whitefellas saying, "This is what we think you should have", but saying, "Tell us what should be in this scheme and what it should manage." Obviously, it has been tenure blind, so it does not have to

be on state land. That has enabled Aboriginal cultural projects to be worked on. Thirteen of the projects funded through the Aboriginal ranger program are carrying out activities to enhance the protection of cultural values, and at least 43 Aboriginal sites across the state are now protected, managed and conserved by Aboriginal rangers. That is a significant achievement. About $9 million has been directed into these projects, three of which are in the Pilbara. The Martu, Yindjibarndi and Palyku peoples have been involved in those projects. We are also rolling out our plan for our parks, which is an ambitious expansion of the conservation estate over the next five years. Again, that has created opportunities for Aboriginal people right across the state. Whether it is in the Kimberley or the rangelands in the south west, we are creating and jointly managing new marine and national parks. That, too, is providing significant opportunities for traditional owners to not only identify and protect sites that are important to them, but also work on and actively manage those sites through the ranger program. That has been significant.

To go back, I acknowledge the devastating destruction of ancient rock shelters. Understandably, there has been much grief in the community at the loss of sacred cultural heritage. As we have said, under the current legislation there was nothing unlawful about the actions of Rio Tinto, but what these events have highlighted loudly, I would say, is the inadequacy of legislative protection for Aboriginal cultural heritage. I think all members of this place are committed to affording greater protection to Aboriginal cultural heritage. Aboriginal people and industry will need to work together, have early conversations and reach agreement on the appropriate protection and management of cultural heritage. For years now, major mining companies and developers have made significant decisions on the basis of such agreements with Aboriginal groups, which in turn generate substantial benefits for Aboriginal people and the state. But there also have been issues for years. That is one of the reasons we are reforming the legislative protection for Aboriginal heritage to end section 18 processes and reinforce the need for land users to negotiate directly with traditional owners. The Minister for Aboriginal Affairs is a great believer in self-determination for Aboriginal people, as am I. He supports native title groups using their hard-won rights to make commercial agreements with land users. We have to acknowledge and respect the decisions made by Aboriginal people. If they have come to an agreement and want to get benefits for their community, we should support those decisions. I thank the member for bringing this motion before the house.

**HON DIANE EVERS (South West)** [2.25 pm]: My colleague Hon Robin Chapple raised a lot of issues, and I am really pleased with the debate that has gone on in the room. Given all the progressive ideas that we have been hearing, I am surprised that we are in this situation! As we know, when the Juukan Gorge was destroyed, news of that not only made headlines here, but also spread around the world. This has received international notice. It happened on a long weekend during the COVID-19 crisis. The company was possibly hoping that it would not make such big headlines, but it has. It has really destroyed the social licence that mining companies might have had. It was a big mistake on its part, but it was completely legal. I do not understand what the company means when it says it is sorry. Is it sorry about the way it did it or that it did not tell somebody that it was about to do it, or, whoops, did it make a mistake? How can it be sorry? It was approved, it was legal, it was done, it is over and we cannot get it back. All we can do today, with the things we have been talking about, is to try to hold on to what does remain and make sure that the Aboriginal voice is heard and respected and that Aboriginal people are empowered to say, "No; not here." I love the idea of no-go zones; that makes so much sense. Some people have said to me that Aboriginal people have been across the whole of Australia—they have been everywhere. Over the past 40 000, 50 000, 60 000 or 70 000-plus years, there is probably not a spot in Australia that has not been traversed, made use of or lived on. That is a really long time. As we go forward, we have to make sure that we listen to and empower those voices.

Mining companies are doing what some might say is a service to us by digging up Australia, selling it overseas and giving us a portion of the profits back in royalties. We need that money to provide services. The mining companies are trying to call themselves sustainable. They try to be green in some way. They try to be socially responsible. They know all the right words. Although they might have laid off a few people in their companies at the moment because of the tightening fiscal situation, we have to acknowledge that they are after profit. That is the first point of them being—that there is profit. No matter how much sustainability, greenwashing and social responsibility we hear about, these companies are still there to make a profit. That is why it comes back to the government being the strong one—the one that puts in place regulations to stop this and say that the mining companies cannot do what they are trying to do. We cannot shirk that responsibility. We know that the section 18 approvals come through here. I had never considered that the membership of the Aboriginal Cultural Material Committee would not be all Aboriginal people. That was news to me. It made sense that that was how it would be. I am really pleased to hear that at least the majority of its members are Aboriginal, but that is where their voice has to come from. I know the government aims to support the mines because, of course, the mines give us jobs and people want jobs in construction, mining and all that, and of course we get the royalties, as I said, but this is clearly not working. The destruction of the Juukan Gorge shows very clearly that it is not working. That is the most obvious example—it is the big deal one that everyone has heard about. It is spreading like wildfire and we are all aware of it. But we do not know how much other destruction occurred in the past. This is not the first time and it is not likely to be the last time, but I sure hope that we are on the path to making it the last time that something of this significance is destroyed.

I want to point out that the government is involved in this. It is nice to be on the Standing Committee on Estimates and Financial Operations because we find out about accounts; we even have an agency special purpose account

called the native title holder incentive for mineral exploration and land access account. The purpose of this account is to hold funds to provide a financial incentive to native title holders who are prepared to endorse a government Indigenous land use agreement for the purpose of expediting procedures for the grant of exploration and prospecting licences and low-impact activities in areas where native title rights are recognised. The fund is $7.5 million currently and it gets another $25 000 each year. Not much has been going out of the fund each year, but it is a $7.5 million fund for the purpose of providing a financial incentive to native title holders. I do not understand why the government would be involved in trying to persuade with money native title holders to make decisions that they are not happy with. It just does not make sense. The reference to "low-impact activities" is actually exploration and prospecting. I would hope that does not include blowing up 46 000-year-old archaeological sites. I think we need to check out why we have that special purpose account and maybe change its purpose so that it can be used to support native title holders who are trying to stop a mine coming onto their land and destroying their cultural heritage sites. It is just a thought, but it is an idea that can come up when we have debates like this.

I would like to look at the long-term prospects. I always like to look to the future and what we would like it to be. We know that we need revenue to provide services, but at what cost? What are we prepared to destroy, change or blow up and never have again in order to get those funds? If any of us were asked questions about this gorge before it was blown up, I do not think we would have said, "That's fine." It is 46 000 years of human heritage that shows something of how we all started—how people might have lived and so forth. It is phenomenal to think that anybody would say, "That's fine. There are others. We can find the same sort of thing somewhere else." We have to weigh up the cost. What is the value of these artefacts of human evolution and these cultural sites of the oldest continuous culture on Earth? How can we put a dollar value on that? I do not think we can put a dollar value on it, and that is why it irritates me that we sometimes think that if a mining company gives an Aboriginal corporation enough money, everything is okay and it was a fair price. But we cannot get those things back and we cannot put a price on those sites because no amount of money will change that. If we just throw money at the issue, it will be held in a trust fund for a long time. The board that administers the trust may use it, but it will have very specific directions on how much it can take out and what it can do with it. That is why we have to not only consult with Aboriginal people, but also empower them and put them in a position in which they will get to make decisions on the things that they need, what will work and what can be done. It may not be something that needs money; it may be restoring the landscape through the ranger program. I really appreciate how that program works and I hope it spreads further throughout the state. That is what we have to look at.

If we want to look back in 50 years and still see these sites, how will we get there? How can we not only mine enough to receive the royalties required to run the state as well as we can, but also respect and protect those sites and allow that Aboriginal voice to be heard? As is stated in the motion, there is a problem with the system. I am really pleased to hear that changes will be made to the Aboriginal Heritage Act and the Aboriginal Cultural Material Committee, but we have to reassess the system. We have to reassess our values of what we think is a reasonable price for destruction of this sort. I do not think we can put a price on some of these sites. Something is absolutely wrong in the process that allowed this to happen and we should be reassessing all the approvals that have been given. If even Rio Tinto is now saying, "Sorry; we didn't mean to do that", maybe other miners, too, are realising that there are some activities that are no-go zones and they do not have social licence to continue doing them. The idea that this could happen with the full approval of our government is no longer acceptable. We have to stop thinking that when an Aboriginal corporation signs an agreement, that is it and the Aboriginal corporation cannot speak out against it any longer, even when it becomes aware of something else or something changes. We have to empower Aboriginal people to make these decisions, and we have to respect that and not just continue to put a price on the destruction of that cultural heritage and our environment.

**HON COLIN TINCKNELL (South West)** [2.35 pm]: I will be brief because I know other members would like to speak on this motion. I thank Hon Robin Chapple for bringing this motion to the house. I acknowledge that the honourable member has been very consistent during his time in Parliament about protecting Aboriginal archaeological sites and being a great voice for Aboriginal people in this house. Aboriginal people need a voice in this house and the other house to represent their concerns. The best way to represent someone's concerns is to build a relationship with them. That goes for everyone. I was very happy to hear from the Minister for Environment about the changes that are being made by this government and I also acknowledge the changes that were made by the previous government, with things like the Noongar native title agreement. In many ways, this state has led the way recently. Yes, we have a chequered past, but I acknowledge the great deeds that have been done.

It goes without saying that many companies—mining companies and others—have done very well because they value their relationship with Aboriginal people. I know that from seeing the work of the Association of Mining and Exploration Companies and mining companies. I was the only one in the room who is not a lawyer, and I was there about relationships. When I arrived at some of these places, I would hear that section 18 consents were often asked for. That was because the companies really did not have a relationship with the local Indigenous people where they operated. If they had a relationship, they may have been given the okay to put a road through an area where there is a site of interest or a dry creek bed that has not run for many years but there are ways to make sure that it still runs. There are many things that can be done, and the relationship is important.

As I have mentioned in this place before, since the day I entered Parliament, I have had a relationship and talked with Hon Ben Wyatt about many things. Early on, about three years ago, I talked with him about Aboriginal heritage. I am really happy now to see that the Aboriginal Heritage Act will be updated and hopefully come into this place soon. I would like to see that legislation properly debated because if we get these things wrong, it can have a detrimental effect on the wellbeing of the state, companies and Aboriginal people—all Western Australians. I have no doubt that these Aboriginal sites need to be protected. If all companies, the government, Aboriginal organisations, prescribed bodies corporate and the native title services work in a consultative way, we can get a great outcome. I know that, because Aboriginal people want the best of both worlds: they want to protect their heritage sites, and they want to have jobs and a future for their young people because they did not get those opportunities when they were young. It can happen if we all work together. I wanted to make that small contribution and I thank the member for bringing this important motion to the house.

**HON ALISON XAMON (North Metropolitan)** [2.38 pm]: I rise to make some comments on this motion brought forward by my colleague Hon Robin Chapple who, as has been widely acknowledged in this chamber, has been passionate about bringing Aboriginal heritage issues to this chamber since he was first elected 20 years ago, but was actually active in this space long before that. Aboriginal heritage has received particular prominence in recent times as a direct result of the destruction of the rock shelters at Juukan Gorge. I do not know about other members, but I received correspondence around that issue from a range of people whom I would not ordinarily hear from, who were devastated that this was legally able to occur and who wanted to know how something could go so terribly wrong. I think it was particularly jarring that this happened on National Sorry Day and in the current political environment, in which we are starting to talk more about the rights and needs of First Nation people, not only here, but also globally, in terms of the Black Lives Matter movement, so it has a particular currency that is very distressing for people right now. I note that as a direct result of the destruction of these shelters, Reconciliation Australia withdrew its relationship with Rio Tinto. I think that sends a very clear message to our mining companies; that is, mining companies are able to undertake these activities only in so far as people are unaware of them, and that their social licence to mine is seriously on the line. That is one of the reasons that we have to finally grapple with the complex issues around how to undertake the protection of Aboriginal sacred sites.

I know that there is a general perspective amongst a number of traditional owners that one reason the Aboriginal Heritage Act is the way it is is that mining companies want it that way and simply have too much influence. We can point to a range of provisions in the act that highlight the disparity between traditional owners and mining companies—for example, the fact that mining companies can appeal decisions but traditional owners cannot. One of the key concerns that has been raised with me by traditional owners is that they very often cannot speak out when they are concerned that sites that are sacred to them are potentially at risk, because they have signed contracts, particularly in the Pilbara, that explicitly stop them from being able to speak out.

We know that Aboriginal people want to and need to be able to access mining royalties as well as job opportunities, but that does not mean that they should ever have to sign away their right to complain or raise concerns, particularly considering that very often when they are left to sign those contracts, the work to actually identify where those sites are has not even been completed. As far as I am concerned, that practice should basically not be allowed. We know that prior informed consent means not having it hanging over your head that you are going to be denied what should rightfully be yours anyway if you dare to speak out.

We know that Aboriginal cultural heritage provides a very important link for Aboriginal people to their past, present and future. Our Aboriginal cultural heritage is also really important to a lot of Western Australians and I think it is inherently valued. As has already been said, the Aboriginal Heritage Act has not changed substantially in the 48 years that it has been in operation, having been amended only twice in that time. Over its long history, the act has imposed virtually no impediment to development or mining in WA, and it has long been recognised as being incredibly insufficient in protecting Aboriginal heritage.

The failure to prioritise this very well recognised need for change has led us to the current situation in which we have experienced loss. Unfortunately, we are continuing to lose precious Aboriginal heritage, and we know that other sites are at risk right now. A range of problems have been identified with this act. I note that the minister talked about some of the issues with the act that the government is hoping to canvass in a bill that we will hopefully see before the expiry of this term of government. The act does not provide adequate consultation, there is no acknowledgement of the concept of self-determination and it fails to mandate the consultation of Aboriginal custodians regarding Aboriginal cultural heritage. The enforcement provisions are woefully inadequate, with prosecutions for offences needing to occur within too narrow a time frame. I think the special defence of “lack of knowledge” is particularly problematic because it means that it is a defence for a person to prove that they simply did not know something. Every member would recognise that we cannot have those sorts of provisions within legislation such as this. Concerns about the inadequate penalties that have long been in this legislation have already been raised. Overall, the act offers quite ineffective protections, and is insufficient. There is a significant backlog of sites to be assessed to determine whether they will be considered an Aboriginal site and placed on the register. There is also a lack of transparency, and decisions are not published.

Regarding the Aboriginal Cultural Material Committee, Hon Peter Collier referred to the sheer volume of information that that very small entity is expected to make its way through. I know that that is a genuine concern. A concern has also been raised with me about the poor quality and standard of reports that are often presented to the ACMC, which makes the decision-making of that body difficult. Another concern has been around the ethical and professional capability of the consultants who often provide those reports. A small pool of people have this expertise within WA and they often need to go between working for mining companies and providing these reports. The concern is that they will have a conflict of interest as they will want to make sure that they maintain their long-term job prospects, so that is a challenge that will have to be addressed.

The role and function of the ACMC is to assess sites and make recommendations. The recommendations of the ACMC are not open to third party appeal. As I have said, only the proponents can appeal and there is no ability for a review by Aboriginal people. The lack of public consultation under the act before decisions are taken on applications to destroy sites or heritage values is problematic. The act also contains no provisions for the repatriation of Aboriginal remains. There are a range of other concerns. We need to always remember that Aboriginal people are the most appropriate decision-makers about their own heritage, in accordance with their traditional customs and beliefs. Our legislation needs to recognise this as well. I think it is a serious failing that the current act does not do that.

I remind members that we have broader international obligations around this as well. Free prior informed consent and the right to protect sacred sites are actually enshrined within the United Nations Declaration on the Rights of Indigenous Peoples. Article 25 refers to —

> … the right to maintain and strengthen their distinctive, spiritual relationship with their traditionally owned or otherwise occupied and used lands …

Article 26 reads —

> States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 31 reads —

> … the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions …

It continues —

> In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

These are international expectations of how we will deal with First Nation people and their sites. Frankly, Australia, and Western Australia in particular, is failing.

We need to remember that it is not only about legislation. The act is one thing, but if the culture of the agency and the government does not change, then ultimately it will not be effective. A very high proportion of applications to impact on Aboriginal heritage sites are being approved, and it is considered to be normal for this to occur. I think that needs to change. It should only ever be in exceptional circumstances that approvals are given to destroy or negatively impact on heritage sites. We will never see broader community acceptance of cultural values if our legislation allows for those values to be trumped by every other short-term economic or political consideration. Time and again we read reports and inquiry recommendations that acknowledge the importance of connection to country and to cultural healing in addressing Aboriginal suicide and closing gaps in health, education and justice. I will quote from the government's statement of intent on Aboriginal youth suicide, which states —

> Acknowledging the vital role of culture in ensuring the long-term wellbeing of Aboriginal children and young people …

It is specifically recognised that maintaining a connection to land and culture is a critical part of our First Nation peoples' wellbeing. The government has said that it will develop a statewide cultural framework that focuses on cultural programs that will enhance wellbeing, reinforce cultural identity and build resilience. The government also talks about encouraging reconciliation and understanding by promoting broader Aboriginal culture, yet here we are talking about the destruction of Aboriginal heritage. I think it is appalling that we do not seem to value culture appropriately and we acknowledge it only when it suits us, yet when heritage and culture stand in the way of big business and money, we far too often see clearing and demolition permits being handed out.

I note that the review of the Aboriginal Heritage Act has been ongoing since 2017, following an earlier review in 2014. I understand that drafting is still underway, but there is huge concern that we cannot wait until that bill comes through. I want to relay to the house that it has been conveyed to me that until such time as we have a new and appropriate Aboriginal Heritage Act, traditional owners are seeking a moratorium on all section 18 assessments. They want that halted right now. There is a genuine concern to make sure that those cannot proceed. We need to commit to national standards as a matter of priority and ensure that these processes are captured by any development agenda that is progressed.

Traditional owners have, effectively, lost trust in the process and have lost trust in industry to do the right thing. That is a problem for industry, but it is also a problem for the broader Western Australian community. Most importantly, it is a problem for First Nation people. We have to do a better job on this. This has been hanging around for a very long time. We cannot keep getting distressed every time another valuable site is lost forever. We need to ensure that we have some short-term plans in place to halt the destruction now. Like everybody else, I look forward to finally seeing a new act, but we will also have to look at the culture around how we value Aboriginal sacred sites.

**HON ROBIN CHAPPLE (Mining and Pastoral)** [2.53 pm] — in reply: I want to thank everybody for their contributions today. I like these sorts of debates, because they are not arguments and I think it is very productive for this house. I thank Hon Jacqui Boydell. Her comments about having some legal oversight at a state level are really important. We must never devolve our responsibilities. I thought that was very good. Hon Peter Collier, the Leader of the Opposition, knows that I am one for facts and figures. In 2013, 1 102 sites were in fact assessed by the Aboriginal Cultural Material Committee, so the member was quite correct. Of those, 126 were deemed to be Aboriginal sites and 966 were deemed not to be. I am just following up on what the member said. I thank Hon Stephen Dawson. There are a couple of things that the minister cannot respond to, but I would like to say that when the bill comes, I hope that it will be a green bill so it will be out for some community review. Part of the problem to date has been that nobody has been able to work out —

**Hon Stephen Dawson**: I can't confirm that, but the intention is to do further consultation before it is brought on.

**Hon ROBIN CHAPPLE**: I really enjoyed the point about knowledge holders. That is very fundamental. In this day and age, with a large number of people moving around the country and the interchange between family groups and native title parties, quite often the knowledge holder may not be the person who is the native title claimant. I have come across that several times, both in the Kimberley and in the Pilbara. The idea of knowledge holders is, I think, really substantive. If we devolve responsibility to people and Aboriginal groups in the community, it will be really important to address the existing Indigenous land use agreements and contracts, and the right to negotiate. I will come to that in a minute.

The minister talked about Murujuga, which he knows I am incredibly passionate about. There is a problem with Murujuga; that is, the traditional owners of Murujuga cannot object to any development in the 57 per cent of the land that is open for industrial development. Clause 4.8 of the Burrup and Maitland Industrial Estates Agreement states —

> On and from the Satisfaction Date, the Contracting Parties agree that the Contracting Parties will not, in their capacity as owners of the Burrup Non-Industrial Land, lodge or cause to be lodged any objection to development proposals intended to occur on land within the Industrial Estate.

Unfortunately, they signed off on that, so they are hamstrung. If there is an archaeological face dating back 45 000 or 50 000 years, they cannot object to its destruction. That is really important and I wanted to make that point.

I thank Hon Diane Evers very much indeed. One thing that is a bit of a misnomer is that we have been talking about a cave that is 46 000 years old, but it is actually 42 000 years old. I have read the site reports. The media quite often gets it a little bit wrong!

**Hon Stephen Dawson**: It is a long time nonetheless!

**Hon ROBIN CHAPPLE**: Absolutely! The problem with that cave is that they were going to do a second dig. We know that the caves at the Queens development go back 60 000 years, so there is a really good chance that if they had had the opportunity to do that second dig at Juukan 1 and Juukan 2—or Brock-21 or Brock-20—we might have pushed back the date even further. They were alerted to the impending destruction by the Department of Mines, Industry Regulation and Safety. They alerted Hon Ken Wyatt about the impending destruction at a federal level and, indeed, they alerted the department about the impending destruction. That did not seem to have much effect. Again, I thank Hon Colin Tincknell for his contribution.

I want to move on, but, gosh, I will not have much time, will I? I think I may have to make a member's statement. I want to make the point that the contracts currently prohibit traditional owners from making any negative comment about development on their land.

Question put and passed.

## COMMITTEE REPORTS — CONSIDERATION

*Committee*

The Chair of Committees (Hon Simon O'Brien) in the chair.

*Standing Committee on Uniform Legislation and Statutes Review — 124$^{th}$ Report —*
*"Inquiry into the Form and Content of the Statute Book" — Motion*

Resumed from 10 June on the following motion moved by Hon Alanna Clohesy (Parliamentary Secretary) —

> That the report be noted.

**The CHAIR**: A government response to this report was tabled on 11 February. We are resuming the postponed debate that the report be noted. Hon Nick Goiran.

**Hon NICK GOIRAN**: Mr Chairman, I have been looking forward to considering this report. It was tabled in this place on 19 November last year. Unfortunately, for various reasons, we have not had the opportunity to consider it in detail. I encourage members to be familiar with the government response, which as Mr Chairman drew to our attention, was tabled on 11 February 2020. It makes for very interesting reading, particularly for those who have been following the course of the debate on recent bills when we have considered clause 2, the commencement clause. I will touch on that in a moment.

For the time being, I draw members' attention to the first two recommendations made by the Standing Committee on Uniform Legislation and Statutes Review under the chairmanship of my learned friend, the shadow Attorney General, Hon Michael Mischin. The committee made two recommendations. The first is that the government advise the Legislative Council on its time frame for introducing the proposed omnibus bill to repeal obsolete legislation. The second is that the government introduce its proposed omnibus bill to repeal obsolete legislation at the earliest opportunity, preferably to enable enactment in the fortieth Parliament.

As per usual with this government, instead of responding separately to each recommendation, the government has provided a group response to the two recommendations. The group response is —

> *The Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will contain all of the Acts and provisions of Acts identified in the Committee's report as being obsolete or requiring further investigation that are suitable for inclusion in the Bill.*

I have a couple of observations to make about that. First, this response was provided by the government on 11 February 2020. It is now 17 June 2020 and we have had no further indication from the government on what it proposes to do about these recommendations. We are simply left with a group response that was provided in February this year. The more important point is that the committee of four has recommended that the government advise the Legislative Council of the government's time frame for introducing its proposed omnibus bill repealing obsolete legislation. Plainly, whoever has prepared this response to the Council on this recommendation is unfamiliar with the words "time frame", and has decided instead to provide a group response and no time frame whatsoever. The committee has asked the government to advise it of the time frame and this arrogant government instead has provided a group response and no time frame whatsoever. I look forward to the contribution of other members, particularly those who have served on this committee, who, I would imagine, would be exasperated by the government's response.

Having said that, I move to recommendation 3. The Standing Committee on Uniform Legislation and Statutes Review has recommended that the government give greater priority to Repeal Day bills as part of a strategy to ensure the currency of the statute book. Get this: the government's response in February this year was that the government has a "significant legislative reform agenda". What bollocks that is! I received an email today—other members may also have received it—advising that the Parliamentary Counsel's Office has nothing to do at the moment. It is now pleading to members for private members' bills to give it extra work because this government has no legislative agenda. All it has is a backlog of bills in the Legislative Council that are full of flaws that we have to fix and send to the other place, which could not care less anyway. The government's arrogant response to this hardworking committee—the Standing Committee on Uniform Legislation and Statutes Review, chaired by Hon Michael Mischin—is that the government has a significant legislative reform agenda. Where is it? There is not one. We know it is bollocks.

The government response goes on to say —

> *The Government repeals obsolete legislation when the opportunity arises and if it is deemed appropriate to do so.*

This reminds me very much how earlier this year the government's top priority was to repeal the redundant piece of legislation to do with child marriage in Western Australia. That was its top priority. I have taken some pleasure in reminding constituents who have written to me over the first six months of the year, some of whom have been exasperated by the lack of progress of certain bills, that this fiasco has been created because the Leader of the House and the government have decided to prioritise bills in a particular order. Effectively, we have only four scheduled sitting dates left after today before the winter recess, and the government is now telling us that it would like all and sundry passed, despite the fact that each and every one of those bills that the government would love to pass before the winter recess has flaws and needs amendment. I do not recall there being supplementary notice papers of the size that we have seen in this Parliament. It has been astonishing to see the size of the supplementary notice papers in this fortieth Parliament. That gives us some indication of the number of flaws that we continue to find in the legislation pushed by the government. I remonstrate with the government when it says to the Standing Committee on Uniform Legislation and Statutes Review that somehow the government has a significant legislative reform agenda and that it repeals legislation when the opportunity arises and if it is deemed appropriate to do so.

In its response, the government goes on to say —

> *… the Department of Justice is preparing an omnibus bill repealing obsolete legislation. The Bill will address any obsolete legislation that would be part of a Repeal Day bill.*

I would love to know what is going on with that. That is what the government said in February; we are now in June. In February, the Department of Justice was apparently preparing an omnibus bill to repeal obsolete legislation. Where is it? What is its status? Will any minister decide to give us an update today? Going on past history, I assume that they will not, because, as I said last week, they enjoy Wednesday afternoons. As far as the government is concerned, it is an opportunity to take a holiday for an hour! This is not good enough. These four members of the committee, Hon Michael Mischin, Hon Laurie Graham, Hon Pierre Yang and Hon Robin Scott, have worked hard. They have provided us a report that includes some 11 recommendations. Clearly, the response provided by the government in February was rushed. It is inadequate. It has gaps and holes. The government has an opportunity today to correct the record and provide us with an update. Members will understand if I do not hold my breath.

Recommendation 4 provided by the committee to the government says —

> The Government make greater use of sunset provisions in subsidiary legislation to facilitate the identification and repeal of obsolete legislation.

The response provided by government is —

> *The Government supports the use of sunset provisions in subsidiary legislation, when appropriate. The Government notes that sunset clauses can impose a substantial administrative and drafting burden, as each instrument must be reviewed in advance of its sunset date to give sufficient time to redraft an instrument or take action to preserve it. They are therefore not appropriate in all circumstances.*
>
> *The Government notes the Economic Regulation Authority of Western Australia's recent Inquiry into reform of business licensing in Western Australia, which discusses the additional workload that sunset clauses create and the administrative burden of broader sunset regimes, such the Commonwealth and New South Wales models.*

**The DEPUTY CHAIR (Hon Adele Farina)**: The question is that the report be noted. Hon Nick Goiran.

**Hon NICK GOIRAN**: The government response to recommendation 4 by the committee goes on to say —

> *The Government notes that a 2017 Independent Review into the NSW Regulatory Policy Framework recommended repealing the existing automatic sunsetting mechanism, noting that the process is resource-intensive and ineffective in ensuring regulation remains fit for purpose.*

That is the response provided by the government under the umbrella of saying that it supports the use of sunset provisions in subsidiary legislation. The committee has asked it to make greater use of it, and the government then provided a whole heap of reasons why it finds it too difficult and too burdensome. Meanwhile, nothing happens.

Let us move to recommendation 5, in which the committee said —

> Whenever practicable, commencement provisions should specify the date or dates when provisions of an Act are to come into operation.

This deals with that issue that I outlined earlier regarding clause 2 of most bills. The government response was —

> *The Government continues to support commencement provisions specifying when an Act or particular provisions of an Act are to come into operation, when practicable and appropriate. Commencement by proclamation is used only where it is necessary, such as where subsidiary legislation is required to be drafted before commencement.*

It makes me laugh sometimes to read these government responses. Who has the hide within government to write a line in response to Parliament saying, "Commencement by proclamation is used only where it is necessary"? As though that were true! If that were true, we would not have a situation in which virtually every second bill before Parliament ends up having clause 2 amended. The truth is that it is regularly the opposite, that the commencement by proclamation is often used when it is unnecessary. This kind of government response was tabled in February this year—something that the government is presumably proud of and will say is accurate—yet, as we can see on closer examination, it is inaccurate, incomplete and misleading. The government has an opportunity to correct the record. As I said, with this particular arrogant government, we expect no correction to be made; we expect no response whatsoever. That is how much it thinks of the people of Western Australia and the democratic system in which we operate.

Let us move to recommendation 6, a very interesting recommendation made by this four-person committee, which reads —

> The Government introduce a bill to amend the *Interpretation Act 1984* to provide for the automatic repeal of Acts or the provisions of Acts that are to come into operation by proclamation and that are not proclaimed within 10 years of the Act or provision receiving Royal Assent, in the terms set out in Appendix 9.

In the event the government does not accept recommendation 6, recommendation 7 states —

> The Government implement a mechanism that is the same as, or similar to, the *Statutes Repeal Act* S.C. (Statutes of Canada) 2008, c.20.

This package of committee recommendations at 6 and 7 caused the Minister for Regional Development to almost lose her mind on 21 May this year when we were busy debating the Residential Parks (Long-stay Tenants) Amendment Bill 2018. According to the Minister for Regional Development, my learned friend the shadow Attorney General, Hon Michael Mischin, had the temerity to put up an amendment to clause 2 that says that if the government does not proclaim any provision within a 10-year period, then it gets repealed. That is what Hon Michael Mischin was trying to do on the Residential Parks (Long-stay Tenants) Amendment Bill 2018 on 21 May 2020; the day I marked that the Minister for Regional Development nearly lost her mind over the fact that an excellent amendment was being put up for clause 2. We had quite a spectacle on 21 May, and I would encourage members to re-familiarise themselves with *Hansard* and the dialogue that took place between the Minister for Regional Development and Hon Michael Mischin. Hon Michael Mischin, as evidenced by *Hansard*, did a sterling job, setting out in a very calm fashion why this particular amendment should be supported. Then we had this spectacle by the minister in response, arguing why this should not happen. The only reason Hon Michael Mischin had to move that amendment at clause 2 on the Residential Parks (Long-stay Tenants) Amendment Bill 2018 is that the government has done nothing about this report. The government has had an opportunity to do something. What did the government say in response to this matter? It said —

> *The Government supports in principle a legislative mechanism to manage unproclaimed enactments.*

It supports it in principle, unless Hon Michael Mischin decides to have the temerity to put forward an amendment, then we have a minister nearly losing their mind! The government response goes on to say —

> *The Government does not support the Committee's recommendation to amend the Interpretation Act 1984 to provide for the automatic repeal of unproclaimed Acts or provisions, as set out in Appendix 9.*
>
> *In some circumstances, it is necessary for the commencement of an Act or provision to be delayed. A good example of this is the Commonwealth Powers (De Facto Relationships) Act 2006. The model presented by the Committee does not provide for any flexibility in these circumstances.*
>
> *The Government will consider implementing a more flexible mechanism, such as the Canadian model set out in the Statutes Repeal Act S. C. (Statutes of Canada) 2008, c.20.*

That is how the government left it. While the government has sat there doing nothing on this issue since February, what are we supposed to do as lawmakers, each and every time one of these circumstances arise, as happened with the Residential Parks (Long-stay Tenants) Amendment Bill 2018? We can take the approach that Hon Michael Mischin took, which, I note, the government decided to oppose. The *Hansard* reflects there was a division with 19 ayes and 10 noes.

Hot on the heels of that episode, we then had the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2019. Hon Michael Mischin again moved an amendment to that legislation, doing the same thing—basically saying, "Listen, government, you're saying that these bills are important. You're saying to residential park owners and residents that you're serious about this legislation. You're saying to people who are caught up in the fines system and might even be incarcerated as a result of that that you're serious about this." All we're saying is, if you are serious, agree with us. Agree with what the Standing Committee on Uniform Legislation and Statutes Review had to say and simply put a time limit on it. All we are saying is, "If you're serious about it, do something about it in the next 10 years." No; the government did not like that at all. Ministers nearly lost their minds at the idea that a piece of legislation should have to come into force within a period of 10 years. Ten years! Personally, I think Hon Michael Mischin was being very generous. If it were me, I would not have allowed them 10 years; I would have said five years, maximum. I think that if a government cannot get its act together within the time it takes to go to another election—four years—it is not really serious about that legislation at all. I think he was being very generous in suggesting a 10-year time frame.

[Quorum formed.]

**Hon NICK GOIRAN**: We are considering the 124th report of the Standing Committee on Uniform Legislation and Statutes Review. I would like to continue my remarks on another occasion, but I note there are a number of other important committee reports, so I ask that this matter be deferred until the next occasion.

**Resolved, on motion by Hon Nick Goiran, that consideration of the report be postponed to the next sitting of the Council.**

*Joint Standing Committee on the Commissioner for Children and Young People — Fourth Report — "Annual Report 2018–19" — Motion*

Resumed from 10 June on the following motion moved by Hon Stephen Dawson (Minister for Environment) —

> That the report be noted.

**Hon NICK GOIRAN**: Just briefly, consideration of this report was deferred last week after a brief contribution by me. I had hoped that someone within government would respond to the issues I raised. I note that no-one from government has decided to take the call on this matter, so the record will reflect that accordingly.

**Question put and passed.**

*Standing Committee on Estimates and Financial Operations — Seventy-seventh Report — "2017–18 Budget Cycle — Part 2: Annual Report Hearings" — Motion*

Resumed from 10 June on the following motion moved by Hon Alanna Clohesy (Parliamentary Secretary) —

That the report be noted.

**Hon NICK GOIRAN**: Consistent with the report that was just considered and noted by the chamber—that is, the Joint Standing Committee on the Commissioner for Children and Young People's fourth report, "Annual Report 2018–19"—this report was left in the same state last week. I made a contribution identifying for the government some matters that needed to be responded to. Here we are, a week later, and again, the same as the last report, no member of government has risen to provide an explanation about these matters. They were significant matters to do with perpetrators of child sexual abuse still attending schools with their victims; matters to do with Operation Fledermaus and the government's inconsistent information to the chamber about the number of victims; and, thirdly, matters to do with the situation in which we had the unedifying spectacle of one government department telling us that it had sent three negative notices on working with children checks to another government department, which said that it had received nothing. Those are three significant matters that demand a response from government. Another week has passed and there has been another arrogant response from the government—total silence. The record will reflect that, once again.

**Question put and passed.**

*Select Committee into Elder Abuse — Final Report — "'I Never Thought it Would Happen to Me': When Trust is Broken" — Motion*

Resumed from 10 June on the following motion moved by Hon Nick Goiran —

That the report be noted.

**Hon STEPHEN DAWSON**: I thought I would take the opportunity to rise and make some comments this afternoon and give Hon Nick Goiran a much-earned break from debate. I acknowledge and again thank the members of the Select Committee into Elder Abuse for their fine work and recommendations. Since the government's report was tabled in September last year, the minister tells me that a great deal has been achieved. The Western Australian strategy to respond to the abuse of older people was launched in November 2019, and in the 2019–20 budget, the Department of Communities—the lead agency for elder abuse—was allocated $1.4 million to address elder abuse.

As recommended by the select committee, the following items have been actioned. Western Australian elder abuse helpline funding has been increased to $150 000 and guaranteed until 2023–24; funding has been secured for the Northern Suburbs Community Legal Centre until 2023–24, to deliver the older people's rights service across the metropolitan Perth region; and I am advised that a significant and successful elder abuse financial services roundtable was also held last year. The minister tells me that the government is responding to the recommendations of the select committee with a number of initiatives. These will be announced soon and implemented over the next few months.

For those recommendations that require further consideration, I understand that the Attorney General has provided input into the proposed development of a national register of enduring powers of attorney. Regarding amendments to the Guardianship and Administration Act 1990, work has been delayed due to some other legislative priorities. I am also aware that the Western Australian Registrar of Titles is required to keep and maintain a power of attorney book; I am sure that Landgate undertakes due diligence in safeguards relating to land transfers.

While I am on my feet, I want to acknowledge that Monday was World Elder Abuse Awareness Day. Over the course of this week a number of Perth landmarks will be lit up in purple, which is the symbolic colour of World Elder Abuse Awareness Day. As we have spoken about in this place over the last year and a half, elder abuse is a significant issue in our community, and we all have a responsibility to raise awareness of it and to prevent it. That is what the committee did in its work, and it was a very important conversation to have. In light of the circumstances of the pandemic that we have experienced over the past few months, it is probably right to say that older people may also be at greater risk of elder abuse during this time of COVID-19, due to the impacts of physical isolation—particularly, I have to say, in regional communities. I know that many in the community have struggled over the past few months with isolation, but many older people in particular have stayed home. There is certainly a heightened risk of abuse, or potential abuse, during this time. Last year, the state government launched the elder abuse prevention strategy, which outlines a series of support, education and awareness measures to combat this growing issue. Certainly some groups, such as older Aboriginal people, people with disability and people from culturally and linguistically diverse backgrounds, may be at higher risk of experiencing elder abuse and may be less likely or able to seek help. With World Elder Abuse Awareness Day held this week, it is an important reminder that we all need to pay attention, reach out, support and offer assistance to the more senior members of our community to make sure that they have the support and assistance they need and that they are not being taken advantage of. I acknowledge this week. For those who are interested, the buildings that lit up in purple were Optus Stadium, Yagan Square, the Bell Tower, Elizabeth Quay and Council House. With that, I conclude my remarks.

**Hon NICK GOIRAN**: At the outset, I commend the Deputy Leader of the Government in the Legislative Council for taking the opportunity to provide the chamber with an update. That is exactly the type of thing that should be happening routinely within government. Why is it that we seem to have this culture and attitude that when a committee report is tabled, there is no further government involvement? The Minister for Environment has just demonstrated exactly what should happen and I hope that this type of approach continues in the future. I thank the minister for that useful update. I join with the minister in recognising World Elder Abuse Awareness Day, which was held on Monday this week. I note the announcements made by the government as a result of that day during the course of this week.

I found one aspect of the minister's update curious—that is, the progress being made, or perhaps the progress that has not been made, on amendments to the Guardianship and Administration Act 1990. I remind members of that situation, which can be found in recommendation 24 of the committee's report on page 87. On page 87, it is clear that a section of work has been done by the committee entitled "Better protection for older people who have an Enduring Power of Attorney". The committee discusses the statutory review that was undertaken, as I recall, in 2015. The point is that the Attorney General advised the committee—this is at paragraph 7.64—that a bill to amend the Guardianship and Administration Act was approved by cabinet in December 2017 and that he anticipated that the amendment bill would be introduced in the spring session of Parliament. A member who is not familiar with this time line might wonder, "What is this spring session of Parliament to which the Attorney General refers?" Footnote 268 is a reference to the letter by Hon John Quigley, MLA, Attorney General, dated 26 April 2018. If, on 26 April 2018, the Attorney General wrote to the committee and said that the government intended to bring in a bill in the spring session, he was talking about the September sittings in 2018. That spring session has long gone and since then we have had the autumn sittings of 2019, the spring session of 2019 and we are about to finish the autumn sittings of 2020.

There is no sign of the bill. The minister who provided a response, and I thank him for that because it is helpful, indicated that that is because the government had—this is what I recall; I do not have the draft *Hansard* in front of me—other legislative priorities. I remind members that the Attorney General, Hon John Quigley, the member for Butler, told the committee in April 2018 that a bill had been approved by cabinet in December 2017. What is going on with the McGowan government cabinet that a bill can be approved in December 2017 on an important issue to do with elder abuse but it sits there and it sits there, week after week, month after month and, amazingly and literally, year after year? It was approved in December 2017. There is no sign of it and here we are in June 2020. When does the Attorney General think that he is going to bring to Parliament a bill that was approved by cabinet in December 2017? Is he thinking about bringing it in in December this year to mark the three-year anniversary of it being approved by cabinet? That would be fantastic. He would be so proud of himself and we would see a media release saying how the McGowan government is really tackling elder abuse because it has brought this bill in three years after it was approved. Perhaps this is just another example that the word of the Attorney General of this state means nothing. It is no wonder that there has been quite a bit of recent commentary about him providing misleading information to Parliament. I note that the other place seems to not care about whether he provides misleading information to Parliament; instead, they wrap their arms around him, establish their protection racket and make sure that under no circumstances is he brought to account. Whatever members think about that particular episode—for my part, I associate myself with the view of the President of the Legislative Council—maybe someone can explain to me why it is appropriate for the Attorney General of Western Australia to tell a committee of the Parliament, the Select Committee into Elder Abuse, that it is anticipated that the bill will be introduced in the spring session of Parliament, meaning in 2018, but nothing happens and that is acceptable. Are we as a chamber going to accept the response that there have been other legislative priorities? Members who might be more charitable than me in this area might say that it is appropriate because there have been other legislative priorities because of the COVID-19 pandemic. We all know that, because we had to sit through the circus that was those sittings in April. We know that top priority legislation was pushed through by the government in April, but that was April 2020. What happened in the spring session of 2018? What happened in 2019? What are the priorities of such magnitude that the government has determined that this particular reform will be buried, possibly never to be seen in this fortieth Parliament?

As a committee member, in future inquiries, I wonder how much weight government evidence will have, whether that is a letter or evidence given at a hearing. How much weight will we give that evidence, because we have been told one thing and then the exact opposite happens? When a government official gives advice, whether it is at the table in the chamber or at a committee hearing, are we supposed to give great weight to that evidence? Are we supposed to take them at their word when they say that a bill was approved by cabinet in December 2017? Are we to take that as truth—a reliable and verifiable fact? When the government said that it anticipated doing something in the spring session of Parliament in 2018, should we have taken it at its word or were they just mere words? Are we all just going through the motions? I hope that on the next occasion there is an opportunity for the government to update us on this bill, there will be a proper explanation of what is going on.

**The DEPUTY CHAIR**: The Deputy Leader of the House.

**Hon STEPHEN DAWSON**: Thank you, Madam Deputy Chair. I have called you Acting President a few times, and I apologise for that.

I will take on board Hon Nick Goiran's question. However, whether I will get an answer to provide the honourable member next week remains to be seen.

I want to take the opportunity to advise the chamber of Legal Aid Western Australia's "Elder Abuse Strategy 2020–2021". I am not sure whether members are aware, but last year Legal Aid WA launched a seniors rights and advocacy service. The honourable member might know about it, but I was unaware of it until today. It is a specialist legal service in the civil law division of Legal Aid Western Australia. The service seeks to help people affected by elder abuse and to safeguard the rights of older Western Australians. The seniors rights and advocacy service provides free legal advice and assistance to older people who have experienced elder abuse or who are at risk of experiencing elder abuse. It provides representation in certain guardianship and administration matters in the State Administrative Tribunal. It provides coordination and triage of elder abuse services provided across all practice areas at Legal Aid WA including civil law, family law, regional offices and intake areas. It provides mediation or dispute resolution of suitable matters and referral for pro bono assistance of potential litigation matters. The service provides information sessions and community legal education. It also provides enhanced referral pathways and linkages with a wide range of community and local government agencies.

The types of matters that the service can provide advice and assistance on includes advice about planning for the future—that is, the nature and effect of enduring powers of attorney, enduring powers of guardianship, advance health directives and when someone lacks decision-making capacity, on guardianship and administration. The service can provide advice on granny flats and moving in with the family, family law and issues involving grandchildren, and protection from violence or abuse. I am advised that if honourable members in this place need to refer a constituent, they can send them to the service or their offices can contact Legal Aid WA on 1300 650 579 or info@legalaid.wa.gov.au to get help. If members want to refer an older constituent to Legal Aid WA, an email can be sent to seniorsrights@legalaid.wa.gov.au, which is a more specific service that can answer their questions a lot quicker. It is an important service. I congratulate Legal Aid WA on the creation of the service and for its "Elder Abuse Strategy 2020–2021". I think honourable members would agree that it is significant.

**Hon MATTHEW SWINBOURN**: I come to the lectern to speak on this report very briefly and to acknowledge that it is World Elder Abuse Awareness Day. I think one of the benefits of having a day like this is that it brings to the fore the issue of elder abuse and gives governments an opportunity to rally around it. Obviously, that is not only our government, but also other governments. I am very proud of the Select Committee into Elder Abuse's work and the report. It was a very thorough effort and I am happy to commend the recommendations the inquiry made. I would also like to give a shout-out to those groups that continue to work in this space, such as the Northern Suburbs Community Legal Centre. I think that legal service's important work has been recognised with additional funding. If I recall correctly, the service established an elder abuse hotline—Hon Nick Goiran might be able to confirm this for me—before the national hotline started. It did some really good preliminary work in this area that the committee was able to reflect on in its recommendations and both state and federal governments have picked up on that work. I think one of the big issues for elderly people and seniors is isolation, and having access to a telephone service is a really important way in which they can reach out and ask for help. The committee's first finding is on not only the effect of abuse on older people and how devastating it can be, but also how important it is to be informed by a human rights–based approach that focuses on the inherent dignity and autonomy of older people and that is not too paternalistic or condescending, because that takes away that dignity and autonomy. As I said, I will keep my comments short, but, once again, I commend the report to the chamber and acknowledge World Elder Abuse Awareness Day. I hope that in the not-too-distant future we will not have to have a World Elder Abuse Awareness Day because society will have moved past those terrible practices that make older people victims and put them in the invidious position of being abused. Once again, I commend the report.

**Hon STEPHEN DAWSON**: I just want to acknowledge the purple wreath —

**Hon Alison Xamon**: It is a road.

**Hon STEPHEN DAWSON**: The purple road in the hall on the first floor of Parliament was made by the Northern Suburbs Community Legal Centre. That agency has a long history of doing fantastic work. We have spoken previously about the late Karen Merrin. That agency prepared the purple road. Members have the opportunity to have their photo taken in front of it, which they can post on their social media account to create awareness of World Elder Abuse Awareness Day. I encourage members who have not seen it yet to check it out and take the opportunity to use photos of it so that we can ensure that the community continues to have a conversation about this important issue.

**Hon NICK GOIRAN**: I would like now to give some consideration to the government response to recommendation 25 in the report, which states —

> **The Government investigate the viability and timeframe for creating a Western Australian central register of Enduring Powers of Attorney, with a view to integrating it with any national model that may be agreed to in the future.**

The government's response was provided on 20 November 2018, so, obviously, it predates the verbal update provided by the minister today. The report states that the government does not accept that recommendation and continues —

> As part of handing down the 2018–2019 Federal Budget, the Commonwealth Government announced it would work with states and territories to develop a national online register for enduring powers of attorney. Commonwealth funding for the register is subject to the in-principle agreement of state and territory governments to reform enduring powers. On 8 June 2018, all Australian Attorneys-General agreed to identify possible options for harmonising enduring powers of attorney, in particular financial powers—an important step forward in the development of a national register of enduring powers.
>
> There is considerable complexity and cost involved in establishing a separate Western Australian register and the Government does not agree that it would be a smooth transition to integrate a state register with a national register. Given the large amount of work that is underway to inform the development of a national register, the Government does not agree that work should be pursued in isolation to establish a separate state register for Western Australia.

That is where that matter has been left. We have been provided an interim update by the government today. It would be good to see some momentum behind this initiative. I think the heart of the committee's concern at the time was, unfortunately, if we wait for national schemes, we will be waiting sometimes decades for things to occur, whereas the committee's view was that it would be worthwhile commencing with a Western Australian state-based central register for enduring powers of attorney.

I turn to further matters outlined in recommendation 26 of the report. The Australian Law Reform Commission recommends that newly appointed private guardians and financial administrators should be required to sign an undertaking with respect to their responsibilities and obligations. The committee, which I had the opportunity to chair, agreed with the Australian Law Reform Commission's view, but our view was that this should also apply to attorneys under an enduring power of attorney. Recommendation 26 states —

> The Government amend the *Guardianship and Administration Act 1990* to include a requirement that private guardians, attorneys or administrators be required to sign an undertaking with respect to their statutory responsibilities and obligations.

This is yet another area in which the Guardianship and Administration Act 1990 is in need of some reform, and it is yet another example of why it is disappointing to be here, in June 2020, with no such bill and no such reform before the Parliament, despite the fact that the Attorney General of Western Australia, Hon John Quigley, said that something had been approved by cabinet as far back as December 2017. He said that something would be brought in during the spring session of 2018, and here we are now, two years later, seeing nothing but an excuse provided by the government that there have been legislative priorities.

The government's response to recommendation 26 was provided on 20 November 2018 and said that it agreed with the recommendation in principle. It states —

> As noted by the Committee, the Australian Law Reform Commission (ALRC) report, *Elder Abuse—A National Legal Response*, identified that a key cause of the misuse of enduring powers of attorney was the attorney not understanding the nature of their role or the limits on their authority.
>
> Currently, in Western Australia, the Public Trustee issues a *Private Administrator's Guide* to assist people in understanding and carrying out the role and responsibilities as an administrator. The Office of the Public Advocate publishes both a *Guide to Enduring Power of Guardianship in Western Australia* and a *Guide to Enduring Power of Attorney in Western Australia* which explain the responsibility and obligations of the roles and also outline pertinent questions for a person to consider before accepting the role as enduring guardian or attorney.
>
> In addition, the Office of the Public Advocate provides an advisory service for community members and service providers which can be accessed by telephone, in-person or in writing and is developing a *Private Guardian's Guide* for publication on its website.
>
> The Statutory Review made recommendations for proposed legislative amendments to provide more detail in the Act, explaining the power and authority of an attorney appointed under an enduring power of attorney. The Government supports this recommendation in principle, but notes that it would require legislative amendment to the Act and the development of a standard form obligation which could slow down the progress of the Amendment Bill.

Let us be clear about what we are saying here. The government told us in November 2018 that it agreed with the committee's recommendation in principle, but it is now a bit concerned that if it does anything about it, it might "slow down the progress of the Amendment Bill". That is the amendment bill that the Attorney General said was approved by cabinet in December 2017, that he was going to bring in during the spring session of Parliament in 2018 and that is the bill that we have never seen. Here we are in June 2020. The government did not want to do any work

on that because, and I quote from the government response, it would "slow down the progress of the Amendment Bill". How could we go any slower than what has been happening at the moment? It is like there is some kind of competition within government between a snail and a tortoise to see which one can move more slowly.

**Hon Alannah MacTiernan**: Two hours on the proclamation section.

**Hon NICK GOIRAN**: How we have missed the Minister for Regional Development! Is it not wonderful to see her arrival back in the chamber from urgent parliamentary business? The minister will be delighted to know that what we are discussing is the matter of elder abuse. The minister will be interested to know that —

**Hon Alannah MacTiernan**: I had worked that out.

**Hon NICK GOIRAN**: The minister had worked it out.

**Hon Alannah MacTiernan**: Because it happens every week like clockwork.

**Hon NICK GOIRAN**: While the minister is working it out, could she go and have a chat to the Attorney General and say, "What's happened to that bill that I agreed to in cabinet in December 2017?" According to him, the cabinet that that minister is a member of agreed to it in December 2017. Here we are waiting for the bill.

**Hon Alannah MacTiernan**: Let us get some legislation through.

**Hon NICK GOIRAN**: We want to see the bill! We are waiting for you to bring it in; that is why you keep hearing from me about it every Wednesday, and now I am reading the government's response saying that it does not want to do anything else on it because it might "slow the progress of the Amendment Bill". That is exactly my point, Minister for Regional Development. Thank you for coming back into the chamber from urgent parliamentary business, now that you are so familiar with this particular topic. How ridiculous! In December 2017, you approved the bill and we are waiting for it in June 2020. We are still waiting. But maybe the Minister for Regional Development is quite happy with the progress there has been; she is quite pleased with her government's progress that it is nearly going to be three years before we see anything on this matter to do with elder abuse. The minister is very pleased about that tortoise-like speed that the government is operating on! It is a fantastic performance by this government when it comes to abuse and this particular issue. How disgraceful is it to say to the Parliament, "We are a bit concerned that it could slow down the progress of the amendment bill"? How embarrassing! I hope, especially for the Minister for Regional Development, that we get an opportunity to debate this particular matter again next Wednesday and maybe by then the Minister for Regional Development would have had a quiet word with the Attorney General and said, "Mate, what's going on with that bill that I agreed to in December 2017, because this is getting embarrassing, Wednesday after Wednesday?"

**The DEPUTY CHAIR (Hon Martin Aldridge)**: Hon Nick Goiran.

**Hon NICK GOIRAN**: Thank you, Mr Deputy Chairman.

Maybe the Minister for Regional Development will do this; we will see next Wednesday. I hope that because of this revelation that has been made today, the Leader of the House does not try to push off consideration of committee reports next week. I hope that that does not happen because I want to hear from the Minister for Regional Development. I would like to know what conversation she has had with the Attorney General, because I know that she is passionate about the issue of elder abuse, like all the other members of this chamber. It is no good having a government pushing out media releases, saying everybody should acknowledge World Elder Abuse Awareness Day on Monday and two days later on Wednesday we have revealed to us that the government has had nearly three years to do something but it did not do anything because it was concerned that it might slow down the amendment bill that it has never brought in. We cannot have that two days later after a media release. We cannot have the government beating its chest about elder abuse on Monday, but on Wednesday get the revelation that this matter is exposed and then we never talk about it until the famous spring session of 2020, which will be exactly two years after the Attorney General said that he would bring that bill in! We cannot have that. I would like a response from the government next Wednesday.

I will conclude by saying that, in all sincerity, I thank Hon Stephen Dawson for the seriousness with which he has treated this matter on behalf of his government, unlike some other members who will remain nameless. I thank him for the seriousness with which he has taken this important matter, and I hope that we can have a proper explanation next week about what is happening with the amendment bill. An explanation that there have been other legislative priorities will not cut it in these circumstances, least of all when a committee of the Parliament has recommended something that the Australian Law Reform Commission has recommended. The government said that it agreed with that in principle but it did not want to do anything at that moment because it did not want to slow down progress. There cannot be any slower progress than we have seen in this matter. I hope that we get a proper explanation by next Wednesday. Unless any other member has anything further to say, I ask that this matter be deferred to the next occasion.

**The DEPUTY CHAIR**: Members, that is the end of the consideration of committee reports.

**Consideration of report adjourned, pursuant to standing orders.**

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

**PLANNING AND DEVELOPMENT AMENDMENT BILL 2020**

*Second Reading*

Resumed from 16 June.

**HON TJORN SIBMA (North Metropolitan)** [4.03 pm]: Once again, I find myself in the position of starting up before the bell is likely to go. I will not, as people might expect me to do, provide a recap of last night's contribution. If members are that intensely interested, they can read it in *Hansard*.

**Hon Stephen Dawson**: You can table it, if you want.

**Hon TJORN SIBMA**: There you go! Let nobody say that I am not a merciful person!

I want to give an indication of where I will go next, which is to three facets of this legislation. I will put some questions regarding how this bill might be applied in terms of scope and scale. I will give an overview of the amendments that I have put on issue 4 of supplementary notice paper 192 and explain some of the rationale behind them, although I will go into a great more detail during Committee of the Whole, as members would expect. I will end on the note of how this scheme might be implemented, because I think that there is a considerable degree of conjecture about the government's capacity to operationalise these COVID-19-related powers. In fact, I think it will be some time before the government is ready to take an application and consider a development approval under this new system.

First of all, I will reflect upon a theme of my contribution last night. I will not dwell on it unnecessarily, but I will reflect upon it because I have been given reason to do so due to a contribution made by the Premier during question time today in the other house. He, once again, observed that there is great interest, even at the commonwealth government level, in the passage of this bill. I am once again happy to reaffirm to the Premier and members of the government that this bill will pass. That is not in question. However, it was clear to me that the Premier is not being adequately briefed on the progress of this bill. It seems to me that he has not been advised that the government has endorsed five or six amendments placed on the supplementary notice paper by Hon Dr Steve Thomas or me. It has not so much endorsed them, as appropriated them almost word for word. Members should remember that this bill came to this place with the view put by the Minister for Planning that it was perfectly formed and that any amendment would "gut" the bill. That is obviously not the position that the minister holds today. She has changed her perspective and has, in my view, become far more accommodating and practical about the risks that this bill presents and, in the cold light of day, has realised that perhaps there was a degree of overreach. That is to be welcomed. I hope that somebody is advising the Premier accordingly. Again, I point out that I will not be the only speaker on this bill. Seven non-government parties are in this chamber. Each of them has something to say about it and there is no doubt that they should be listened to.

I will return to where I commenced. There is a degree of conjecture about how this bill might apply and the kinds of applications or project proposals that could possibly be dealt with under this new regimen. When the planning reform media statement went out and the minister gave her second reading speech in the other place, this bill was welcomed by large swathes of the industry. However, it appears to me that industry members have now taken the opportunity to read the fine print of this bill and are concerned that this bill, potentially, will not assist them. I take as my anchor the government's view that this is a COVID-19-related bill, that it was brought in out of necessity, and that the thresholds that have been established are appropriate. Other members might have other views on that. I was concerned that we would be enabling something with a far broader application than envisaged by the government, so I took it upon myself, at the invitation of the minister, to put questions to her staff and to the Western Australian Planning Commission. I have to say that I was provided with a very timely and comprehensive response to the around 55 questions that I put. Those answers will generate further questions, but in the seven minutes that I have before our afternoon adjournment, I want to advise the chamber that I specifically sought information about what kinds of development applications are contemplated by this bill.

I specifically asked whether, under these new special powers, the following could be contemplated or dealt with: local plans, schemes, amendments or rezonings; metropolitan region scheme rezonings, including, for example, the lifting of an urban deferment categorisation or another MRS zoning change; new structure plans; or amendments to an existing structure plan. I was advised that those matters are not under contemplation here. I was further advised that applications for the use or physical development and "construction of land" is what this bill is all about. The adviser went on to say—presumably this originated from the Western Australian Planning Commission, but this is useful information—therefore, other types of planning applications such as subdivisions, structure plans, activity centre plans, local development plans or scheme amendments could not—not—fall under the part 17 system, as these are not "development applications". It is very important to reflect on this government answer that was provided outside Parliament, but nevertheless to a member of Parliament, that specifies precisely what kinds of development applications are being considered.

During the consideration in detail stage in the other place, this question, I believe, was put directly to the minister as it related to subdivision approvals. The question of whether approval for the North Stoneville subdivision could be dealt with under these new powers in this bill was put to the Minister for Planning, and the minister quite categorically said no. The minister said that subdivisions are not contemplated by this bill and that that subdivision in particular would not be dealt with in this way. I ask the Minister for Environment, when he gives his second reading

reply, to reaffirm the principle that subdivisions, specifically, are not under contemplation in this legislation and that the North Stoneville subdivision, which the minister might be aware is quite a controversial local issue, will not be enabled by this bill or the provisions therein. I do not want to talk too much about how the application of these new powers might play out beyond that. I think I can reflect on that during the Committee of the Whole process.

In the few moments still available to me, I draw members' attention to the substantive issues that we have identified in dealing with this bill. The majority of them concentrate around proposed sections 272, 278, 281 and 282. But before we get there, it would be useful to deal at the beginning of this amendment bill with the issue of definitions, "Terms used", because this has created a great degree of interest. There is a lot of activity on the supplementary notice paper that looks to effectively strike out a lot of informative data, or the definitions, of the terms used. I am not necessarily sure what the motivation is behind those amendments, although I think I might know what is happening.

I want to concentrate on the definition of "significant development", as I foreshadowed when I commenced my address last evening. I am still to be advised or informed in a way that is substantiated by any data that the key to economic uplift through amendments to the planning bill will be best achieved by targeting a special class of development that is a value of greater than $30 million or is more than 100 dwellings or, as the case might be, 20 000 square metres of net lettable area. There is no commonly understood and agreed definition of "significant development". For the purposes of this bill, it seems to have manifested out of the ether and has anchored our contemplation to some degree. It is fair to reflect upon the representations that I have received from industry that perhaps that definition does not meet its needs. I am not necessarily convinced that the case is well made either, but it is indicative of the spirit of this bill that the genesis of one of the key terms defined very early on and that is central to the operations of these new powers is a little mysterious. If the minister could in any way shed some light on that, that would be greatly appreciated.

**Hon Stephen Dawson** interjected.

**Hon TJORN SIBMA**: It is the definition of "significant development" on page 6 of the bill.

The term immediately after "significant development" is the term "substantially commenced". I know that it is not a new term; it has common usage in the system under which we operate.

Debate interrupted, pursuant to standing orders.

[Continued on page 3739.]

*Sitting suspended from 4.15 to 4.30 pm*

## QUESTIONS WITHOUT NOTICE

### AUSCYCLING — SPORT AUSTRALIA

**610. Hon PETER COLLIER to the Leader of the House representing the Minister for Sport and Recreation:**

I have my two questions and questions for three other members.

I refer the minister to the move by Sport Australia to develop an AusCycling model for cycling, whereby the sport would be amalgamated at a national level into a single entity and all administration, control and future funding would be centralised in a central office.

(1) Does the minister support the decision by WestCycle not to join this amalgamated body?

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

(3) When the amalgamation is finalised, will this have consequences for Western Australian cyclists regarding national and international team selection and funding?

(4) If yes to (3), what are these consequences?

**Hon SUE ELLERY replied:**

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

(1) Yes. This presents a significant risk to the sport of cycling in Western Australia. The model proposed by Sport Australia and AusCycling is to consolidate the entirety of the sport—cycling, BMX and mountain biking—on the east coast. This will potentially include any funding and assets held by WestCycle and all strategic decision-making.

(2) Not applicable.

(3) Yes.

(4) Western Australian cyclists would need to be an individual member of AusCycling to compete in national competitions. The state government understands that there is still an opportunity for WestCycle to fulfil the role as the WA representative of AusCycling so as not to disrupt Western Australian members, but it has been informed that this proposal has been rejected by AusCycling. Without a Western Australian representative body—WestCycle—all critical decisions on athlete pathways and competitions would be made from interstate, without local consideration.

CITY OF PERTH — INQUIRY — COUNSEL ASSISTING

**611. Hon PETER COLLIER to the Leader of the House representing the Minister for Local Government:**

I refer to the City of Perth inquiry.

(1) On what dates were counsel assisting Messrs Urquhart, Beetham and Ellson appointed?

(2) Were these positions publicly advertised; and, if not, why not?

(3) Who appointed Messrs Urquhart, Beetham and Ellson?

(4) Will the minister detail the selection process used to appoint Messrs Urquhart, Beetham and Ellson; and, if not, why not?

**Hon SUE ELLERY replied:**

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

(1) Mr Urquhart was appointed 29 May 2019, Ms Ellson was appointed 5 June 2019 and Mr Beetham was appointed 12 June 2019.

(2)–(4) No. They were appointed consistent with engagement procedures and policies by the State Solicitor, with approval from the Attorney General.

CORRUPTION AND CRIME COMMISSION — OPERATIONAL ACTIVITIES

**612. Hon PETER COLLIER to the Leader of the House representing the Attorney General:**

I ask this question on behalf of Hon Michael Mischin, who is on urgent parliamentary business.

I refer to the Attorney General's refusal to provide Parliament with specific information sought by my question without notice 591 asked on 16 June 2020, regarding the list of ongoing and emerging operational activities he obtained on 2 April 2020 from the Corruption and Crime Commission.

(1) Did the Attorney General request the list from the commissioner, and what reason did he give for seeking it?

(2) Why will the Attorney General not table any request or give his reason for not doing so?

(3) If the Attorney General did not seek the list, did the commissioner provide it of his own initiative?

(4) Why will the Attorney General not table the correspondence supplying the list, and give his reason for not doing so?

(5) Why will the Attorney General not reveal who else in his office has seen the list?

(6) Apart from his chief of staff and media adviser, has the Attorney General discussed the contents of the list and use to which it might be put with any other member of his office?

**Hon SUE ELLERY replied:**

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

(1)–(6) Please refer to the answer to question without notice 570.

PLANNING REFORM — LOCAL GOVERNMENT (UNIFORM LOCAL PROVISIONS) REGULATIONS

**613. Hon PETER COLLIER to the minister representing the Minister for Planning:**

I ask this question on behalf of Hon Tjorn Sibma, who is on urgent parliamentary business.

I refer to the minister's answer to my question concerning the impact of Local Government (Uniform Local Provisions) Regulations 1996 on the planning system and her attempts to reform those regulations.

(1) What modifications to the regulations have been identified and by whom?

(2) When and on how many occasions have senior officials from the Department of Planning, Lands and Heritage; Main Roads WA; and the Western Australian Planning Commission met to discuss these planning approval obstacles, and has any consensus been reached among officials about the way ahead?

(3) Has the minister advised the Minister for Local Government of this work?

(4) Are any modifications to these regulations anticipated before the end of this year?

**Hon STEPHEN DAWSON replied:**

I thank Hon Tjorn Sibma for some notice of the question.

(1)–(4) Some preliminary work has been undertaken to identify modifications to the Local Government (Uniform Local Provisions) Regulations 1996. Preliminary discussions have been held between senior officers of the Department of Planning, Lands and Heritage; the Western Australian Planning Commission; and Main Roads Western Australia. Any amendments to the regulations would need to be progressed by the Minister for Local Government.

DALGARUP JARRAH FOREST

**614. Hon PETER COLLIER to the Minister for Environment:**

My question without notice of which some is given is asked on behalf of Hon Dr Steve Thomas, who is on urgent parliamentary business.

I refer to the ministerially initiated reassessment of Dalgarup forest block, including comments by the minister that an unusual number of ringbarked trees were discovered in the reassessment.

(1) Was any new or additional area of old-growth forest located in the Department of Biodiversity, Conservation and Attractions' reassessment of Dalgarup block?

(2) How many ringbarked trees were discovered and what species were they?

(3) How many forest operations in Western Australia have been impacted or halted through the ministerial application of a silviculture reference site?

(4) What are the specific characteristics and criteria required for a forestry site to be deemed a silviculture reference site?

(5) Given that silviculture is a recognised method of managing the state's forests for future timber harvest, is this political decision by the government now a precedent of stopping logging in order to create an example of how the state manages forests for logging?

**Hon STEPHEN DAWSON replied:**

I thank Hon Dr Steve Thomas for some notice of the question.

(1)–(5) A key requirement in developing silviculture guidelines to balance the many outcomes desired of native forests is sound knowledge of the impacts that natural disturbances and past silvicultural practices have had on the structure and dynamics of our forests. Since European colonisation, a wide variety of practices have been applied, and in recent decades there has been greater awareness of the need to maintain representative reference areas of these past practices to inform future management. Many patches of forest in the south west demonstrating the effect of varied planting densities, overstorey competition or specific eras of silvicultural prescriptions have been set aside from harvest operations by the Department of Biodiversity, Conservation and Attractions for education, training and monitoring purposes.

The reassessed area in cell 5 of Dalgarup forest block was found to have an unusual forest structure resulting from a combination of topography, natural and human disturbance events. These include periodic regeneration events arising from fires and a harvest event during the 1940s, as well as ringbarking of at least 65 jarrah trees, standing or fallen, dispersed throughout the surveyed 16-hectare cell. Although no additional old-growth forest as recognised in the "Forest management plan 2014–2023" was identified, in this instance, the localised changes in forest structure resulting from successive patterns of competition release, tree growth and mortality, together with the adjacent old-growth forest, provide a valuable continuum containing many examples of jarrah silvicultural principles, warranting retention of the area.

ON-DEMAND TRANSPORT INDUSTRY — RELIEF PACKAGE

**615. Hon JACQUI BOYDELL to the minister representing the Minister for Transport:**

I refer to the $9 million relief package to support the taxi and on-demand transport industry.

(1) How many applications were made for the $2 500 cash payments and what was the total dollar value?

(2) What is the total number and total dollar value of applications in (1) that have been approved and for which grants have been disbursed to successful applicants?

(3) What is the total value of booking services and vehicle authorisation fees waived to date?

(4) What is the anticipated total cost of waiving the total value of booking services and vehicle authorisation fees for a full year?

**Hon STEPHEN DAWSON replied:**

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

The $9 million on-demand transport industry relief package comprises $4.7 million in regional taxi assistance, in addition to the $3.7 million of assistance already provided to regional taxis during reforms; $1.5 million of $2 500 cash payments to over 600 authorised on-demand booking services that also hold an active passenger transport vehicle authorisation; $1.95 million to waive PTV authorisation renewal fees for 12 months; and $1 million to waive on-demand booking service authorisation renewal fees for 12 months. The following answers are to the honourable member's specific questions.

(1) There have been 652 applications received with a dollar value of $1.63 million.

(2) There have been 651 applications approved and disbursed; this totals $1.63 million.

(3) A total of $403 330 in on-demand booking services authorisations and $110 288 in passenger transport vehicle authorisation renewal fees have been waived to date.

(4) The anticipated total cost of waiving renewal fees for a full year is $0.96 million for on-demand booking services and $2.02 million for passenger transport vehicles.

POLICE — GLOCK 22 SELF-LOADING PISTOLS

**616. Hon CHARLES SMITH to the minister representing the Minister for Police:**

I refer to the introduction of the .40 calibre Glock 22 side-arm use-of-force option for Western Australia Police Force frontline officers.

When was the .40 calibre Glock 22 first introduced for frontline police officers and how many fatalities have been linked to use of the Glock 22 as a force option?

**Hon STEPHEN DAWSON replied:**

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

Under the Gallop Labor government, I moved swiftly to roll out the Glock 22 self-loading pistol, SLP .40 calibre, to our police officers, and this took place between 2002 and 2003. Prior to this rollout, there was a 30-year replacement program in place that left police officers using three different kinds of firearms. There have been nine fatalities linked to the use of the Glock 22 by the Western Australia Police Force.

OCEAN REEF MARINA — ROE’S ABALONE TRANSLOCATION

**617. Hon RICK MAZZA to the minister representing the Minister for Fisheries:**

I refer to the translocation project for Roe’s abalone from the development envelope of the Ocean Reef Marina redevelopment.

(1) How many abalone have been translocated so far?

(2) What is the survival rate?

(3) Has an extension of the abalone translocation project been considered for the area immediately north of the Ocean Reef Marina redevelopment?

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

(5) How much money has been allocated to fund the abalone translocation project?

(6) If funding has been allocated, how much has been expended, and can it be replenished for future abalone translocation projects?

**Hon ALANNAH MacTIERNAN replied:**

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

(1) To date, over 68 000 Roe’s abalone have been translocated.

(2) Following each translocation day, checks at the release sites and adjacent beaches have observed low numbers of dead Roe’s abalone. The Department of Primary Industries and Regional Development will undertake ongoing monitoring of translocated stocks, including survivability, how the adult abalone adapt to the new habitat, and if there is an increase in numbers of juvenile abalone in the area.

(3) Following the Environmental Protection Authority assessment, a condition of the project was for the proponent, DevelopmentWA, to identify options for the translocation of abalone from the development envelope. The current translocation project aims to move approximately 100 000 Roe’s abalone from the development envelope to reef platforms between Trigg and Hillarys. This will be the largest abalone translocation project undertaken in Australia.

(4) Not applicable.

(5) DevelopmentWA, the Ocean Reef Marina proponent, has provided $150 000 to the Department of Primary Industries and Regional Development to complete the translocation project. The project is being funded by DevelopmentWA to meet the conditions of the Minister for Environment, following the Environmental Protection Authority assessment.

(6) Based on the completed translocation days, approximately $90 000 has been expended. Expansion of the current project is not being considered at this point in time.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS

**618. Hon COLIN TINCKNELL to the parliamentary secretary representing the Minister for Health:**

Can the minister please provide the specific health advice he has received from the state's Chief Health Officer that recommends he not reopen the WA borders in a staged manner, starting with South Australia and the Northern Territory?

**Hon ALANNA CLOHESY replied:**

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

The Chief Health Officer has advised that the border closures that are currently in place, which include the closure of borders with South Australia and the Northern Territory, should be maintained in order to limit the risk that COVID-19 will be reintroduced into the Western Australian community, and to operate as a significant control of the potential transmission of COVID-19 at a time when the state is easing restrictions and assessing the impact on the potential spread of the virus.

FAMILY AND DOMESTIC VIOLENCE — SERVICE DELIVERY

**619. Hon ALISON XAMON to the minister representing the Minister for Police:**

I refer to the government's failure to increase funding for family and domestic violence counselling, advocacy and support service contracts to adequately take into account increased costs, including the full impact of the equal remuneration order, increased demand and the COVID-19 pandemic.

(1) Was the minister aware that family and domestic violence support staff have been removed from some police stations?

(2) If yes to (1), when was the minister advised?

(3) Will the minister work with the Minister for Child Protection to ensure the continued delivery of these essential frontline services?

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

**Hon STEPHEN DAWSON replied:**

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

(1) No.

(2) Not applicable.

(3) Yes.

(4) Not applicable.

CORONAVIRUS — GOVERNMENT TRAVEL — REGIONAL TRAVEL AGENCIES

**620. Hon COLIN de GRUSSA to the minister representing the Minister for Finance:**

I refer to the ongoing impacts on regional businesses resulting from the COVID-19 pandemic, in particular regionally based travel agencies.

(1) Is it mandatory that all government agencies use the government's contracted service provider, Corporate Travel Management, for the purpose of booking domestic air travel for regional personnel and users of state-funded subsidised travel schemes?

(2) If yes to (1), is the state government prepared to issue an exemption such that state government agencies can use regionally based travel agencies?

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

(4) If no to (1), why are state government personnel still being directed by their respective agencies to use a Queensland-based company in preference to supporting local and regionally based travel agencies during these difficult times?

**Hon STEPHEN DAWSON replied:**

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

(1) Yes. The common-use arrangement is mandatory for all Western Australian public authorities for domestic air travel bookings on regular passenger transport routes. This contract does not cover state-funded subsidies for regional citizens travelling in a private capacity.

(2) Public authorities with branch offices in regional WA can use regionally based travel agencies via a regional purchasing discretion, in accordance with the government's Buy Local policy. In addition, any public authority's accountable authority or delegate may request an exemption from the common-use arrangement from the Department of Finance.

(3)–(4) Not applicable.

CORONAVIRUS — SOCIAL HOUSING ECONOMIC RECOVERY PACKAGE

**621. Hon TIM CLIFFORD to the minister representing the Minister for Housing:**

I refer to the Western Australian housing stimulus announced on 7 June, specifically relating to the refurbishment of 1 500 social housing homes.

Will the refurbishment program include upgrading the energy efficiency of the homes; and, if so —

(a) how many homes will undergo this upgrade;

(b) to what energy efficient standard will the homes be upgraded to; and

(c) what measures will be taken to upgrade the energy efficiency?

**Hon STEPHEN DAWSON replied:**

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

(a)–(c) Yes. All properties undergoing refurbishment will be assessed on a case-by-case basis to determine whether they are suitable for works to improve energy efficiency. Upgrades will be assessed on a value for money basis, considering the underlying design and condition of the dwelling. Works that may be considered include, but are not limited to, improved insulation, energy efficient lighting and appliances, window and door seals, design changes incorporating elements such as external window shading, and upgrading of bathroom and kitchen taps to be in line with the current National Construction Code's water efficiency labelling and standards ratings for water efficiency.

MINING TENEMENTS — ANNUAL RENTS

**622. Hon ROBIN SCOTT to the minister representing the Minister for Mines and Petroleum:**

I refer to the annual rents that the government imposes on mining tenements each financial year.

(1) Has the government increased the annual rents on mining tenements for the 2020–21 financial year; and, if so, by how much has the rent increased?

(2) If not, how will the annual rent for mining tenements change in the financial year 2020–21 compared with the previous financial year?

**Hon ALANNAH MacTIERNAN replied:**

I thank the member for the question. The following answer has been provided to me by the Minister for Mines and Petroleum.

(1) No.

(2) Executive Council has not approved increased rents on mining tenements for 2020–21. However, the usual practice is to increase annual rents in line with the CPI increase of the previous year.

ABORTION — LIVE BIRTHS

**623. Hon NICK GOIRAN to the Leader of the House representing the Attorney General:**

I refer to the statement I made on 19 September 2018 in which I advised the house that I had written to the Coroner's Court of Western Australia reporting the unnatural deaths of 27 Western Australians.

(1) Did the Department of Justice receive recommendations from the Coroner's Court in January 2020 for legislative amendment of the Health (Miscellaneous Provisions) Act 1911?

(2) How many recommendations were received?

(3) What were those recommendations?

**Hon SUE ELLERY replied:**

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

(1) Yes.

(2)–(3) The Coroner's Court recommendation to amend the Health (Miscellaneous Provisions) Act 1911 was prepared for the Attorney General's discussion with the Minister for Health and ultimately the cabinet. These discussions are yet to take place. The Attorney General is not in a position to disclose these recommendations until such discussions with his cabinet colleagues have taken place. The issue needs to be handled with the utmost sensitivity given the trauma suffered by women who have undergone abortions after receiving medical advice.

CORONAVIRUS — SCHOOLS — CAMP GUIDELINES

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

I refer to the answer given to question without notice 581 asked on 11 June 2020 and the significant ongoing concerns of recreation camp operators who are unable to open or take bookings because they are required to operate

under national guidelines relevant to boarding schools rather than to short-term accommodation, which do not take into account Western Australia's current situation because of the COVID-19 pandemic.

(1) Has the Australian Health Protection Principal Committee completed its review of the requirements for boarding facilities, residential colleges and school camps?

(2) If yes to (1), when is the updated advice expected to be publicly released; and, if no, when is the AHPPC expected to consider this matter?

(3) If no to (1), can the minister advise whether the WA Chief Health Officer can immediately update school camp guidelines in the interim to suit Western Australia's situation and thereby provide certainty to camp operators and principals who are seeking to book camps for their students in term 3; and, if not, why not?

**Hon SUE ELLERY replied:**

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

Hon Donna Faragher and I have had discussions behind the Chair about these ongoing issues and trying to resolve the rules that apply to school camps.

(1)–(2) I was advised by the Department of the Premier and Cabinet today that the Australian Health Protection Principal Committee's review is complete. This advice is expected to be published imminently. I had my chief of staff check AHPPC's website this afternoon, but it has still not been published. I am hoping that will be done today. As the member knows, I have asked the Chief Health Officer to request that AHPPC review the requirements for boarding facilities to make any further changes. We continue to discuss this with both the Chief Health Officer and the independent and Catholic education sectors. We are all eager to provide schools and camp providers with updated advice to suit Western Australia's context as soon as we possibly can. Honourable member, we are hoping for an overarching framework within which each jurisdiction can make the rules to meet its particular context. But, as with all decisions made during the pandemic, we need to ensure that everything that we do is in line with the health advice.

(3) Not applicable.

ANIMAL WELFARE — CATTLE DEATHS —
NOONKANBAH STATION AND YANDEYARRA RESERVE

**625. Hon JIM CHOWN to the Minister for Agriculture and Food:**

I refer to the mass cattle deaths on Yandeyarra and Noonkanbah stations during December 2018.

(1) Following the Department of Primary Industries and Regional Development's investigation into the mass cattle deaths on Yandeyarra station and DPIRD's consequent referral of the matter to the State Solicitor's Office, what advice has the State Solicitor's Office provided about whether animal cruelty charges are warranted?

(2) Has the matter of the mass cattle deaths on Noonkanbah station been referred to the State Solicitor's Office for advice on animal cruelty charges; and, if not, why not?

**Hon ALANNAH MacTIERNAN replied:**

I thank the member for the question.

(1)–(2) Obviously, some major issues have occurred in the state that have had to be prioritised. In relation to Yandeyarra, the Department of Primary Industries and Regional Development sent its brief to the State Solicitor's Office in December and has not yet received advice. In the normal course of events, we would have expected to have received that back by March, but, as we know, it became evident in February that as a state we needed to start responding to the COVID-19 crisis. The State Solicitor's resources have been very much diverted towards dealing with the many, many issues that are involved with the provision of our emergency response, the emergency orders and the special COVID-19 legislation that has been put into place. We have been advised that we can expect the report back from the State Solicitor on Yandeyarra in the next eight weeks. We have referred the Noonkanbah matter to the State Solicitor's Office.

CORONAVIRUS — SOCIAL HOUSING ECONOMIC RECOVERY PACKAGE

**626. Hon COLIN HOLT to the minister representing the Minister for Housing:**

I refer to the social housing economic recovery package to build or buy about 250 social housing and off-the-plan dwellings.

(1) Of the 250 new social houses, how many will be in regional WA; and, will the minister please provide a breakdown by region?

(2) Are community housing providers eligible to apply for any of these funds or the previous $150 million housing investment package that was announced in December 2019?

(3) If no to (2), will the minister build flexibility into the criteria to allow for community housing groups to apply?

(4) If no to (2), what plans are in place to provide stimulus to community housing providers?

**Hon STEPHEN DAWSON replied:**

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

(1) Of the approximately 250 new builds and off-the-plan construction-ready purchases across metropolitan and regional areas as part of the social housing economic recovery package announced by the Premier on 7 June 2020, it is intended that approximately 30 per cent of new builds will be in regional Western Australia. Land asset identification and allocation is underway and the final quantum and specific location of the sites by region will be determined over the coming months.

(2) For the social housing economic recovery package, the Department of Communities will work with the community housing sector to identify opportunities for collaboration in delivering new social housing, as well as refurbishing and maintaining existing social housing stock.

The housing and homelessness investment package, which was announced on 3 December 2019, will provide more social and affordable housing for people on low-to-moderate incomes or those who are at risk of homelessness, while also supporting the WA economy and the important housing construction industry. This package does not include opportunities for the community housing sector.

(3)–(4) Not applicable.

DUST MANAGEMENT — AIR QUALITY — PORT HEDLAND

**627. Hon ROBIN CHAPPLE to the parliamentary secretary representing the Minister for Health:**

I refer to the Port Hedland dust issue, the Port Hedland buyback scheme and the Port Hedland Dust Management Taskforce, headed by the Department of Water and Environmental Regulation.

(1) Given the Department of Water and Environmental Regulation has stated that the air quality guideline value is not an enforceable limit, could the minister explain facets of air quality that are enforceable from a public health perspective?

(2) From a health perspective, do current levels of airborne dust pose any risk to lifelong residents who decide to stay in the west end of Port Hedland?

(3) Given that various extant histopathological reports from Port Hedland make reference to macrophage aggregation and distinguishing dark granular inclusions in macrophagic cytoplasm, does the minister concede that airborne particulate metals as a result of industry are a genuine health concern for the residents of Port Hedland?

(4) For the purpose of public health, does the minister concede that the levels of airborne dust in Port Hedland are higher than other settlements in the Pilbara, as a result of various local industries?

**Hon ALANNA CLOHESY replied:**

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

Due to the level of detail required, it is not possible to provide an answer in the time frame given. I give an undertaking to the honourable member to provide an answer on Thursday, 18 June 2020.

CORONAVIRUS — INTRASTATE AND INTERSTATE TRAVEL RESTRICTIONS

**628. Hon MARTIN ALDRIDGE to the parliamentary secretary representing the Minister for Health:**

I refer to Legislative Council question without notice 520 asked on 21 May 2020 and the minister's claim that COVID-19 health advice sought by me was cabinet-in-confidence, and to tabled paper 3957 of 16 June 2020 and the Leader of the House's claim to have tabled "all health and other advice provided to government".

(1) Why was advice that the minister identified in part (2) of his answer to question without notice 520 that was received by government during the week of 23 March 2020, and on 29 March 2020, not tabled by the Leader of the House on behalf of the government?

(2) Do any of the documents tabled by the Leader of the House fall within the minister's definition of cabinet-in-confidence as claimed by him in answer to part (4) of question without notice 520?

(3) Is the State Disaster Council a subcommittee of cabinet; and, if so, from what date has it been a subcommittee of cabinet?

(4) Why has no advice been tabled that predates decisions by the state government to restrict interstate and intrastate travel?

(5) How does the Chief Health Officer determine that intrastate and interstate travel restrictions have been effective and ought to remain in place in the context of multiple measures being in place simultaneously and the fact that the Australian Health Protection Principal Committee has not made any recommendation to restrict interstate travel?

**Hon ALANNA CLOHESY replied:**

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

(1) The advice is cabinet-in-confidence.

(2) No.

(3) Although not a formal subcommittee of cabinet, during the COVID-19 pandemic period, the State Disaster Council meets concurrently as the Security and Emergency Committee of Cabinet, and all its deliberations are then considered by cabinet.

(4) The advice is cabinet-in-confidence.

(5) The only positive cases of COVID-19 reported in Western Australia since 12 April 2020 have been in travellers arriving at the state border, including by air and sea. Adherence to border controls, quarantine, testing and isolation measures put in place under the relevant directions has effectively stopped the spread of COVID-19 in the community.

SOUTHERN FORESTS IRRIGATION SCHEME — WATER LICENSING

**629. Hon DIANE EVERS to the minister representing the Minister for Water:**

I refer to the proposed southern forests irrigation scheme.

(1) What are the proposed water licensing conditions for the scheme—that is, is it a water service provider?

(2) Will the taking of water be permitted by the scheme all year round if it is available or for only a set number of months?

(3) Does this differ from the times that individual farmers in the area are currently permitted to capture water that falls on their farms; and, if yes, why?

**Hon ALANNAH MacTIERNAN replied:**

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

(1) The Department of Water and Environmental Regulation has not received an application for a water licence from the southern forests irrigation scheme. The department cannot assess a water licence application made under the Rights in Water and Irrigation Act 1914 while the proposal for the scheme is still subject to assessment by the Environmental Protection Authority. Any water licence issued to the proposed southern forests irrigation scheme would have terms and conditions relating to the take of water, monitoring and reporting. Irrigation schemes may also require licensing as a water service provider under the Water Services Act 2012.

(2)–(3) Water licence conditions, including the water take period, can be determined only after the Environmental Protection Authority has completed its assessment and a water licence application has been received by the department.

CORONAVIRUS — GOVERNMENT ADVERTISING

**630. Hon PETER COLLIER to the Leader of the House representing the Premier:**

I refer to government advertising in relation to COVID-19.

Will the Premier provide a breakdown of all government advertising expenditure across the following categories: *The West Australian*, WAtoday, Facebook, other social media, radio, community newspapers, television, and other?

**Hon SUE ELLERY replied:**

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

I note that the honourable member's colleague in the other place the Member for Dawesville has repeatedly called for an extensive public information and awareness campaign from the state government on COVID-19. I ask the member to place the question on notice, given the time and resources required to compile the answer.

**STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES — FIFTY-FIFTH REPORT — DEPARTMENT OF THE PREMIER AND CABINET**

*Question without Notice 572 — Answer Advice*

**HON SUE ELLERY (South Metropolitan — Leader of the House)** [5.05 pm]: I undertook to follow up on Hon Simon O'Brien's question without notice 572 asked on 11 June 2020. The Attorney General has advised that the answer is as follows.

(1)–(2) As the state's first law officer, the Attorney General has regular discussions with agencies on a range of matters.

**Hon Simon O'Brien** interjected.

**The PRESIDENT**: Order, member! The Leader of the House has the call.

## SCHOOLS — COMMUNITY VISITORS

*Question without Notice 601 — Answer Advice*

**HON SUE ELLERY (South Metropolitan — Minister for Education and Training)** [5.06 pm]: I have further information for Hon Donna Faragher in relation to question without notice 601 asked on 16 June 2020 that I undertook to provide today. The answer is as follows.

(1) No; the review is underway.

(2) Not applicable.

(3) The review of the "Criminal History Screening for Department of Education Sites Policy" and the review of the "Community Use of School Facilities and Resources in Public Schools" policy are expected to be completed by the beginning of term 4, 2020.

## CORONAVIRUS — CONSTRUCTION WORKFORCE SUPPORT PACKAGE

*Question without Notice 607 — Answer Advice*

**HON SUE ELLERY (South Metropolitan — Minister for Education and Training)** [5.06 pm]: I have an answer for Hon Colin de Grussa in relation to question without notice 607 asked on 16 June 2020 that I undertook to provide today. The answer is as follows.

(1) To date, 16 June 2020, the Construction Training Fund has received 4 667 applications for the one-off $2 000 payment, with a total value of $9 334 000.

(2) To date, 3 517 applications have been approved, with 146 pending payment today, and 6 742 applications have been received by employers, with 3 371 payments made.

(3) There have been 5 287 applications for the monthly payment received, with a total value of $1 607 300.

(4) There have been 702 applications approved, with 497 pending payment today, and $70 850 has been received by employers to date.

## ENVIRONMENT — PFAS — KIMBERLEY
## CORONAVIRUS — FIREARMS LICENSING

*Questions on Notice 2932 and 2940 — Answer Advice*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [5.07 pm]: Pursuant to standing order 108(2), I wish to inform the house that the answer to question on notice 2932 asked by Hon Robin Chapple on 12 May 2020 to me, as Minister for Environment, will be provided on 11 August 2020.

Further, the answer to question on notice 2940 asked by Hon Martin Aldridge on 12 May 2020 to me, as the Minister for Environment representing the Minister for Police; Road Safety, will be provided by 24 June 2020.

## QUESTION ON NOTICE 2939

*Paper Tabled*

A paper relating to an answer to question on notice 2939 was tabled by **Hon Alanna Clohesy (Parliamentary Secretary)**.

## ALBANY HEALTH CAMPUS — ASSAULT

*Question on Notice 2931 — Answer Advice*

**HON ALANNA CLOHESY (East Metropolitan — Parliamentary Secretary)** [5.08 pm]: Pursuant to standing order 108(2), I inform the house that the answer to question on notice 2931 asked by Hon Dr Steve Thomas on 12 May 2020 to me, as parliamentary secretary representing the Minister for Health, will be provided by 25 June 2020.

*Point of Order*

**Hon SIMON O'BRIEN**: If I may, Madam President, I regret doing this, but not so much as to refrain from raising the point of order. The point of order relates to standing order 106 in relation to answers to questions. It has often been said colloquially in this place that members can ask a question and they may not like the answer, but that is the answer they get; there is no standing order to that effect. The standing order is 106, which requires —

> An answer shall be concise —

We have a few of those —

> and relevant.

When I ask specific questions, as do other members here, to try to hold this government to account, we expect an answer. We do not expect to be fobbed off with a refusal to answer.

A member interjected.

**Hon SIMON O'BRIEN**: That is not relevant. The requirement is that an answer shall be relevant. Look up your standing orders and you might come to another point of view!

**The PRESIDENT**: Order!

**Hon SIMON O'BRIEN**: Go and ask your Attorney General; he is the font of all wisdom, is he not?

A member interjected.

**The PRESIDENT**: Members!

**Hon SIMON O'BRIEN**: Or your Premier!

A member interjected.

**The PRESIDENT**: Members! The first thing I will say, and I appreciate that these are difficult circumstances here, is that, member, I appreciate that you are not actually speaking from your seat. Perhaps it might have been easier if somebody had vacated so that you could speak from a non-designated seat, but that is beside the point. I am not going to pick up on that point of order.

**Hon Simon O'Brien**: Well, this is a designated seat.

**The PRESIDENT**: It is a designated seat for the Whip. As you know, member, people ask questions in this place and, as you rightly said, they do not always get the answer they want or expect. I have noted of late that there has been an increase in the number of very detailed and very long questions in this house, and the responses are sometimes lengthy as well in reply. I am not going to pick up on that point of order, but I will note that you have made your comment.

## PLANNING AND DEVELOPMENT AMENDMENT BILL 2020

*Second Reading*

Resumed from an earlier stage of the sitting.

**HON TJORN SIBMA (North Metropolitan)** [5.11 pm]: I will speak to the amendments to the Planning and Development Amendment Bill 2020 that I have on the supplementary notice paper, and provide a brief explanation of the substance of, or motivation for, them, but not in a way that uses the opportunity I will have during Committee of the Whole House. I will identify one point. Members will see an amendment on the supplementary notice paper that seeks to insert, on page 4 of the bill, the Local Government Act 1995 as being among the instruments relevant to the operation of these new powers. After receiving an answer from the Minister for Planning last week, I have sought to understand why five acts are listed on page 4 of the bill. What is it that is so special about these five acts, and what particular encumbrance does the operation or contemplation of these acts have in the course of planning approvals? Although I do not have *Hansard* readily to hand, I was given an answer along the lines of, "Well, effectively, these are the acts that interact most frequently with the determination on development applications." That was an interesting contribution. I will seek to find out from the minister, if it is at all possible during his reply to the second reading debate, whether it is possible to quantify the degree to which these listed instruments actually interact with the orderly consideration of planning approvals, in a way that delays consideration or complicates the making of a positive determination to approve. I ask the question because there was a glaring absence on that list—I knew that something was missing, but I was not quite sure what it was.

In one of the sections of the planning reform document that I referred to last night, specific reference is made to the kinds of encumbrances, complications or impacts that Main Roads Western Australia, through its actions and the interpretation of its instruments or subsidiary legislation, has on the planning approval system. Anecdotally, across every component of the development industry, at variations of scale and variations of sector—I am talking here about those who operate in the broadacre land use assembly and approval space, which is why I earlier asked the minister questions about metropolitan region scheme amendments, up-zonings, subdivisions and the like, through to built-form proposals, which are given some contemplation here—there is a uniformly consistent view that, for whatever reason, Main Roads WA presents an enormous obstacle to economic development, investment, jobs and the like. I am not sure whether Main Roads' conduct is fairly represented in these kinds of representations. One might expect that an argument could be made on both sides of any issue, which is to say that I am not a person who takes untested and sight unseen what I receive from the development industry. I am trying to be fair and charitable—again, that word "charitable"—about the conduct of professional public servants in Main Roads WA, but I cannot walk past the fact that this is a consistent source of agitation and irritation.

One might have thought that if the planning system was being reformed under the guise of COVID-19 and the creation of a new, streamlined approvals system for so-called significant developments, one would at least attempt to talk in specific terms about Main Roads. Indeed, some brave claims were made about what new accommodation or détente might be reached between the Department of Planning, Lands and Heritage and its counterpart agency, the Western Australian Planning Commission, with Main Roads WA. Through the course of other questions put by my colleague Hon Peter Collier—I think there were three questions in all, with the most recent asked in question time today—we sought to understand which instrument was the source of this irritation. I have been advised that

it is the Local Government (Uniform Local Provisions) Regulations 1996. There might be a better way of doing this, and that is why, through my amendment 2/4 on the supplementary notice paper, I seek to insert in clause 4 of the bill the words "the Local Government Act 1995". We will hopefully get to that clause tomorrow.

If this is an identified source of irritation, and if its identification is consistent with anecdotal evidence no doubt provided to the Department of Planning, Lands and Heritage over the course of the last three years, as it has embarked on this glacial yet steady reform process, I would have thought that there might be the risk of, or perhaps the chance of, some positive resolution. I am not sure of the details, but I was advised in an answer that I received yesterday that there were some preliminary discussions among senior officials of the WAPC, Main Roads WA and the Department of Planning, Lands and Heritage to this effect that explored, again, at least in preliminary turns, what modifications might need to be made to these regulations to expedite the approval system and clean it up. Of course, this comes with the complication that the minister advised of—that any formal change to those regulations would require the concurrence of the Minister for Local Government, and therein might lie some of the difficulty. That is not to reflect on that minister, but to indicate that there are a number of stakeholders in this process. Today I asked a follow-up question to the effect of: when did those preliminary discussions take place; what kinds of modifications have been identified; has the Minister for Local Government been involved in discussions so far; and when might we expect some changes to be made to these regulations that, to be fair to the bill, would assist in the reform and streamlining of our development approval system? I received an answer that was grouped together in parts (1) to (4) that basically reiterated the answer that I received yesterday, which was that there was still no clarity about whether there have been any meetings between senior officials or whether there has been any progress in identifying the sources of agitations embedded within those regulations that might be ameliorated in some respect. Of course, the government is in absolutely no position to advise what progress can be made and if any will be made by the end of this year.

Without labouring this point unnecessarily, because it will come up again, I cannot walk past the fact that the Minister for Planning is also, by happy coincidence, the Minister for Transport. If there were one member of cabinet who would have the power, influence, authority and imprimatur to, in a colloquial way—I am not advocating any violence—bang heads together between the planning portfolio and the transport portfolio, one would think it would be the minister who is bringing forth this bill. She urges us to pass this bill at risk of jeopardising the planning reform program and jeopardising job creation, investment, development and all those good things. It has been remarked upon before, and quite recently in this place, about the wisdom of having an agency of transport and planning melded together under the care of a single minister. Potentially, one side of the planning or transport equation would be preferenced over the other, and that is probably true. At the moment, we have two separate agencies, disembodied, but with the oversight and direction of a single minister. It cannot be overlooked that a very simple but more expedient way of improving the development approval system in this state would have been for the minister to turn her mind early on to the agitation that emanates from Main Roads Western Australia. I have been given in confidence some case studies. They require some validation, but it is clear that for some time now there has been a pattern of behaviour from Main Roads Western Australia to the degree that, I have been advised, it often ends up in the State Administrative Tribunal and sometimes Main Roads Western Australia does not feel obliged to follow those directions. If that is true, it is obviously problematic, but it is something that is clearly identifiable as something that could and should merit attention. The fact that it has not been dealt with at all and is not dealt with in this bill at all and that the regulations that might have some scope to deal with this source of agitation, irritation, inefficiency and obstacle making will not be dealt with by the end of this year makes a travesty of these so-called reforms. I look forward to the government's response on that front.

In the short time available—I do not attend to go beyond the dinner adjournment, just to give everybody else a chance. I know that everybody is rubbing their hands together.

**The DEPUTY PRESIDENT**: You have unlimited time, member.

**Hon TJORN SIBMA**: Yes, I know, but I am too generous. We will see how we go.

I have proposed three substantive amendments that concern the operation of the new powers created in proposed sections 272, 281 and 282. My amendment to proposed section 272 would apply when the minister, or Premier under the minister's advice, begins to intervene in this streamlined approvals pathway to the degree that applications that do not conform with the arbitrary thresholds established can be considered appropriate to be dealt with in a streamlined fashion by the Western Australian Planning Commission. When a project does not necessarily need to get to the $30 million mark, the 100-dwelling mark or the 20 000-square-metre net lettable area mark to qualify for this specialised streamlined service. There have to be checks and balances commensurate with the expansion or the introduction of new executive powers. I have nothing against executive power, so long as it is appropriately discharged and is lawful, but we need to have an understanding of when these kinds of interventions are made and then form an educated guess about why they were discharged. I am attempting to ensure that there are checks and balances—that is, checks rather than cheques! I do not need to labour that point anymore because I observed yesterday that, although I will not reflect on any present officeholder, there is an opportunity for mischief to be made and for certain influential people to have a convivial chat or a cosy time with a future Minister for Planning or a future

Premier. Now that we are normalising our lives, albeit slowly, an officeholder may accept largesse of accommodation or a nice box at the footy where certain matters might be discussed off the record and, lo and behold, two weeks later special directions are issued to the WAPC. We can afford to be a lot of things; we can afford to be charitable, but we cannot afford to be naive, because to be naive on this front would be in abrogation of, or to effectively surrender, our obligations.

All I have sought to do is reflect amendments that were put in the other place and were rejected out of hand. They are word for word the same, so there is no surprise. On issue 4 of the supplementary notice paper as it stands, I note that I have been flattered by the government's imitation of those governance, transparency and accountability amendments. They are very simple and will not cause the government any real encumbrance in the execution of its executive authority. They are the same save for one change, which is quite interesting, in which the names of the officeholder have been swapped out. I will get to that at the appropriate time, suffice to say that if an individual specified officeholder has a certain power, they are responsible for the decisions and actions they undertake, not the subordinate minister, even though that person has acted on that subordinate minister's advice. This is the nub of the Liberal Party's approach to the bill. I say again that this is not our legislation; we are not its author. The best that we can do is de-risk the document in a way that is consistent with the orderly operation of the planning framework and the planning system, in recognition of this system's faults and shortcomings, because it is far from a perfect system. If it were, the minister would not have embarked on this process of reform to begin with. If we do nothing else but safeguard and limit insofar as is possible and reasonable, corruption or the establishment of untoward and unseemly practices in the planning portfolio, we should avail ourselves of that opportunity. That is why we were motivated to put the amendments on the supplementary notice paper in the first place. Frankly, it is not our job—this reflects on the amendments that other members will move, and for good reasons—to open the gates and give the bill broader application to a broader class of propositions than were contemplated by the government and potentially create more risk for decision-makers to whom certain directions can be issued. I will not say they can be leaned upon, but certainly they can be given pretty clear guidance about making a decision to resolve a conflict. Whether that can manifest in being quite explicit about the content and substance of that decision is yet to be explored.

I have amendments on the supplementary notice paper to potentially limit the damage of this bill, one of which I will move that concerns limiting, effectively, the time taken to undertake a substantial commencement of a project. I have proposed to reduce the time from 48 months—four years, obviously—to 24 months, or two years. Why have I done that? I have done that because that was the pre-COVID-19 condition. It is a standard clause of condition. If approval is given, the developer has 24 months to get on with it. There is always some discretion but, effectively, that is the line drawn in the sand. Before this bill comes into effect, the director general of the Department of Planning, Lands and Heritage would have issued a guiding note—I believe that it is substantiated in the regulations—alerting development assessment panels to their ability to extend the period of substantial commencement to 48 months in light of the uncertainties around COVID-19. Just about anything can be excused by the uncertainties of COVID-19. That is okay, but it is clearly the government's intention to establish a streamlined approvals system to facilitate shovel-ready projects, not speculative ventures or shaky financial instruments, but shovel-ready, built-form projects that are ready to go. Axiomatically, it follows that if there is a sense of urgency and the streamlined system is designed to deal only with sound, proper projects that will not fall over, why do we need to give them 48 months to get on and build the thing? The two things do not hang together. Later on I will ask whether, at any stage over the past three years, decision-makers have conducted an audit on whether the projects they have approved have complied with that substantial commencement condition, because I doubt that anyone checks. What does "substantial commencement" mean? We can get into that, hopefully, tomorrow. It has to mean a lot more than bulldozing a site, levelling it off and perhaps leaving a few bags on premix concrete hanging around. I do not know what "substantial commencement" means and over the last three or four weeks no-one has been able to tell me what it means. I thought it would be a simple, definable action, but apparently it is not.

Members should be alert to another dimension to this that I will move an amendment to address. There is a contradiction in the bill. The bill has been sold to us all as a means for a limited 18-month recovery period to facilitate shovel-ready, well-financed non-speculative, built-form developments that provide investment growth, jobs and all that good stuff. But because of the way the bill is constructed, it will be possible to lodge a development application on the final day of the 18-month period and the Western Australian Planning Commission will have unlimited time to make a determination on that application. Potentially, it could gift a developer a four-month substantial commencement clause. It is either one thing or another. Either we are dealing with time-limited powers to deal with a specific, urgent economic issue, or we are doing something else. My charitable assumption was that this streamlined approvals system, established within the WAPC and, presumably, including all of its 16 or 17 constituent members, would be the body that would transfer these new streamlined powers to the creation of a specialised, special matters DAP. I thought that would have been easy. That is a transition piece. But it appears to me that applications will drop off a chasm, fall into a void and exist in another dimension. That is problematic to me because we have powers that cannot possibly be lawfully executed by the WAPC when it has already written in its own termination clause. It could be done if an application were transferred to a lawfully constructed special matters DAP. I could live with that, but what will happen in that period has never been countenanced or explained.

The minister has been very good. I will give her credit. There has been communication between us about what I might be interested in and what the government can do and the like. That is the way the bill should be dealt with. We are all adults. The minister has also advised me that soon everybody will be presented with a master list, I suppose, of the kinds of amendments being mooted by all contributing members and the government's responses and the reasons that the government might accept or reject those amendments. That would be a really useful document. I was about to say something unparliamentary—a crimson colour—about its usefulness. It is very useful. The argument would have to be put to explain why the limitation for a substantial commencement set at 24 months and a strict deadline that the WAPC cannot make determinations under this new system beyond the 18-month period would undermine the integrity or effectiveness of the changes to be brought about by this bill. This is either an urgent bill dealing with a narrow set of preferred developments or it is not and is something else entirely.

I might pleasantly surprise members by summing up—it is good to keep people on their toes—except for this bit. I understand that a number of members may receive representations from a number of groups that feel excluded by this bill. Let us be practical; we have to draw a line somewhere. But that gives an indication that perhaps some groups were not consulted on this bill at all, because at least from the developers' side it was prematurely met with initial acclaim. I have advised them to not rush to pat the government on the back for legislation that they have not seen as it limits the leverage that they may have in any future negotiation. I think people have now learned that lesson. For development applications that do not meet the thresholds, there is a discretionary capacity available under the guise of an as yet unexplained qualifier of it being a state or regionally significant development. Bear in mind, we have absolutely no objective framework available to us at the moment to work with us to guide how that determination could possibly be made. This is not beyond the skill or capacity of other Australian jurisdictions. South Australia and New South Wales have a framework. I imagine that other Australian jurisdictions have similar frameworks to deal with bespoke or unique significant developments that do not really match a particular portfolio treatment, for example. But the bureaucracy in those jurisdictions has worked on these frameworks. These kinds of frameworks have been developed in jurisdictions where the Minister for Planning has far more powers than our own. Since the minister is asking us to give her more power, it is incumbent on the government to dedicate itself to the task of drafting a framework that is objective, understood and, frankly, gets it out of trouble. There can be no accusations of dodginess if the government can at least point to the fact that it applied its thinking against this objective framework and developed it in consultation with affected stakeholders, be they in local government, the tourism industry, the agricultural industry or the fishing industry, let alone all building-related industries.

Reading this bill, it would appear that this work has been kicked off into the future. It is intimated that something might be done, but it can only be done if work commences on the regulations to give it effect. It is a lot simpler than that. That sounds like a hard task when I put it to members that way. At present, no application form has been prepared for an applicant to be treated under this system. Some fundamental administrative disciplines and hygienes have to be constructed to give effect to what is intended by this bill. I find that problematic. It certainly undermines any claims made about the dire urgency placed upon this chamber to pass this legislation. I put it very simply: can the government deliver what it is saying it can deliver now; and, if not, when can it do it? If it is contingent, as I expect, on making changes to at least two sets of planning regulations, then tell us all what those changes are, with whom it will consult, and by when it thinks it will have those regulations ready. I would then assume that portions of those regulations, if not the whole document, will be disallowable. It might give members some comfort that these gross abuses or great chasms, by which things that should not be moved through can be moved through, might be foreclosed. We require clarity on regulations, because the bit that relates to the COVID-19 pandemic comes into effect the day after royal assent, which I assume will be very early July. If it will take the government three, four, five or six months to get the implementing framework in place before anyone can avail themselves of that system, I would question the urgency of the bill. I might have it completely wrong, but I do not think that I do.

Other members have some very interesting amendments on the supplementary notice paper concerning community consultation, rights of appeal and things of that nature. I want to deal with the issue of community engagement in a thematic way, because the explicit point in every planning reform document is that we need to make the planning system more accessible, understandable and credible. People at least need to know that development assessment panels or the Western Australian Planning Commission is meeting. Minutes need to be published. People need to have some sort of physical or IT access to these proceedings to be part of it. These are all very fair points to make. In previous briefings I have sought to understand how the government intends to give effect to this improved community engagement regiment, because a lot of work is to be done. A lot of bridge-building can be undertaken and there is a dire need to restore trust in the overall planning framework to re-establish the fact that it is designed and operates with the public interest in mind and not vested interests.

It has always been put to me, at least over the course of the last two or three weeks, and it is explained in the explanatory memorandum, the second reading speech, the media statement and everything that goes with it, that this bill is one of two bills that will be introduced to this chamber this year that enacts planning reform. The government has made a decision to prioritise this bill, which creates new powers, expedites decision-making and unbinds the WAPC from being bound by other legal instruments, including planning instruments. That is interesting. But this is the priority the government has chosen. I seek clarification about when this house might expect the second bill.

The second bill is supposed to improve the community-facing aspects of planning reform. A lot of work needs to be undertaken. I would like to know the envisioned content of that bill. I would like to know, insofar as the government is prepared to tell us, whether permission to draft or even permission to print such a bill has been provided. It would be very dangerous for the government to prioritise this legislation and exclude the community from participation in what is an important economic portfolio, something that is complex and complicated, and does not always deliver the outcomes people want. It is essential that we all improve community engagement, that there is a sense of participation and access. I am frankly staggered that I cannot get a clear line of sight about what might be in the second bill, other than to say, "It's coming! Don't worry, it's coming." I look at the available sitting weeks and the ever expanding list of legislation on the notice paper and I wonder whether the government will ever get around to it. I would, to cite a colloquial expression —

**Hon Stephen Dawson**: I wonder whether we will ever get around to this bill, let alone the next one.

**Hon TJORN SIBMA**: You dish it up and we will deal with it!

You can put forward puppy farming bills on notice papers and they drop off, and all kinds of things happen. If the government wants to prioritise its bill, it should tell us what is in it and give us a straight answers and we will deal with it, as we have. But I want to know, very clearly: is there a second planning bill, what is in that bill and will it come to us this year? If the government does that, can it please undertake some consultation on the bill, at the very least? We do not do bills on the vibe or on the glacial, expansive, continentally sized reform package of meetings, conversations and the like. The government needs to negotiate, liaise, communicate and consult on the bill so that, at the very least, I do not receive all these documents from aggrieved parties seeking the insertion of their claims and concerns into supplementary notice papers and the like.

I actually think the government has got this wrong. It has been caught out for its lack of achievement in reform generally, but specifically in the planning portfolio. Confronted by the emergency of COVID-19, it has sought to confect something, cobble something together, and make it look passable. I think there is a lot of misapprehension about the good this bill will do. It was very clear that certain notable developers in this town, people who are successful and have a great track record, had a certain view about the merits of this bill, but I think if they actually understood it or it was explained to them properly, it might not have been met with such warm applause. But they were so starved of reform and economic health that they just threw their arms open to the mere mention of the word "reform"; it was a hallelujah moment—finally, a government that puts reform out in a press release and has a bill about reform.

It is about a lot more than that. As I said, the devil is in the detail. I look forward to the contributions of all other members in this place, particularly that of the minister representing the Minister for Planning, and I look forward to dealing with this bill in Committee of the Whole.

**HON CHARLES SMITH (East Metropolitan)** [5.51 pm]: I rise to speak this evening on the Planning and Development Amendment Bill 2020, and I indicate that the Western Australia Party will not support it in its current form. The aim of the bill is allegedly to improve the planning approval processes in Western Australia by getting better outcomes for the community, cutting red tape and simplifying the planning rules by making them more consistent. In reality, I think all of us here know that this bill will hand Perth over to developers. I especially note that the Premier can refer any proposal deemed to be of state significance to the Western Australian Planning Commission for determination. A "significant development" is apparently a development that is either 100 or more dwellings with a capital cost of $30 million or more, or a development that is 20 000 square metres or more of net lettable area with, again, an estimated capital cost of $30 million or more.

The Western Australia Party has grave concerns about the Premier having the ability to refer development applications deemed to be of state significance to the WAPC for determination. For me, this raises significant concerns about the potential power of some developers and their lobbyists over the government and its ministers. Even my good friends over at the Western Australian Local Government Association are concerned that the government is using the COVID-19 recovery as a basis for circumventing local government involvement in the planning system.

We have grave concerns about the extraordinary power granted to the minister, having complete control over local planning schemes. The bill also completely removes the requirement to inform landowners of changes to local planning schemes. Coupled with the extraordinary powers granted to the Minister for Local Government, the takeover of our estate is almost complete, and there appears to be simply no opposition to this takeover. We seem to be drifting towards some sort of Soviet-style central planning dystopian disaster, where democratic processes are diluted and private property rights diminished. This bill will cement this coming disaster.

Whether the government wants to hear it or not, corruption is rife in the property development industry; we all know that. Let us quickly examine the Western Australian Planning Commission. This is an unelected organisation wielding enormous power over people's lives, and it is stuffed with big property people. Every single one of the people who serve on the Western Australian Planning Commission has either worked for, or on behalf of, the Satterley Property Group. How can we expect its decisions to be unbiased and impartial? I do not think they can be. It was said by some that I could not possible say that Mr Nigel Satterley actually owns the WAPC.

Planning decisions have a major impact on communities and on individual residents' lives and, in some cases, their livelihoods. There are parking and traffic issues and privacy and community infrastructure concerns, to name but a few. It is very clear that the Minister for Planning wants to hand Perth over to the developers, pure and simple. Nobody in this house can possibly not see that this is what is happening.

After a really good start, the government put in the foreign buyers' tax via the Duties Amendment (Additional Duty for Foreign Persons) Bill 2018. We can all remember that bill; it caused a bit of controversy.

**Hon Stephen Dawson**: Which one?

**Hon CHARLES SMITH**: The foreign buyers' tax—taxing foreign buyers of residential properties in Western Australia. I think it started off at a four per cent tax rate and we managed to bump it up to seven per cent.

**Hon Rick Mazza**: Now there's no foreign buyers.

**Hon CHARLES SMITH**: I would like to see a 20 per cent tax rate on foreign buyers.

But soon afterwards the government went into reverse; obviously people got in the government's ear, and it started working for the property industry. Let us quickly remind ourselves of the so-called stimulus that the industry has enjoyed thanks to the Western Australian taxpayer. There is a 75 per cent off-the-plan transfer duty rebate on apartments, which costs the Western Australian taxpayer $8.2 million. There are the brand-new $20 000 building bonus grants provided to homebuyers who sign up before 31 December 2020 to build a new house or purchase a new property. That comes to $170 million, courtesy of the Western Australian taxpayer. Why are the taxpayers funding the private gains of speculators and so on while some of our young people will never, ever own their own home?

There are temporary changes to income limits for Keystart borrowers—increasing for both singles and couples. That will be continued until 31 December 2020. Keystart is trapping many young couples in negative equity and in mortgage interest rate deals they simply cannot escape from. That is a big concern for me.

In sum, the McGowan government has invested more than $1.6 billion in specific economic measures to support the housing sector. Is it not a shame that the government could not find any money for a decent pay rise for our hardworking public sector workers—our police, teachers, nurses and so on? As I mentioned, the government got off to a good start when it first came to power. It took us out of the regional migration scheme, but that has been reversed back in. It taxed foreign buyers, but then it went to work with the property industry.

I refer to a 6PR Gareth Parker interview with the Treasurer, who said that the property industry expected the government "to react to every demand that comes across their desk". I think he is right. He continued —

> "But I have to say, it's a never ending supply of demands from these guys," Mr Wyatt said.

He said it was not the government's job to —

> … "fix the problem the property sector created itself by bringing on too much supply when there's not enough demand".

Correct. He continued —

> "I didn't create the problem, Gareth, the property sector did that," he said.

Correct. He continued —

> "We can't continue to … just … simply react to the whims and thought bubbles of the property sector."

Our esteemed Treasurer is absolutely correct, but what happened? He then went into reverse.

*Sitting suspended from 6.00 to 7.00 pm*

**Hon CHARLES SMITH**: I think I was alluding to how great I thought it was that the Treasurer was actively pushing back against pressure from the property lobby and—I think he used the phrase—"its never-ending supply of demands". I think we have spent around $1.6 billion of Western Australian taxpayers' money on the so-called stimulus grants. The argument was that a lot of that money has been for housing affordability, making houses more affordable for people who cannot quite get there. That is the idea behind these grants; right? No, that is wrong. It has the reverse effect. Housing stimulus grants, would you believe, push up property prices. Only this afternoon, I received an email from one of my researchers, who had found a house and land package in Tapping—for members who do not know, it is in the northern suburbs—that a month or so ago was listed for $349 000. With stimulus money coming in, that same deal is now $409 000. It is amazing, is it not? WA taxpayers are privatising those profits. Are we not generous?

It is widely acknowledged by intelligent economists—when we can find one—that the policy we are discussing—

**Hon Stephen Dawson**: Name one!

**Hon CHARLES SMITH**: That is a challenge. I will nominate my friend John Adams; how about that?

An opposition member: Who's he?

**Hon CHARLES SMITH**: He is an obscure economist.

Several members interjected.

**The ACTING PRESIDENT (Hon Robin Chapple)**: Members!

**Hon CHARLES SMITH**: I have invited him to lunch at Parliament.

With this policy, we are looking at making WA's oversupply issues worse. What happens when we have an oversupply of property? Generally speaking, prices go down. This will generate more investment into new builds at a time when population growth, thank God, remains anaemic. Once again, all the property stimulus goes into the property developer's pockets and then property prices continue to go down.

I will introduce a concept new to many of us because Western Australia is the only state that does not have it: third party appeals in the planning process. The Western Australia Party would have gladly supported the Planning and Development Amendment Bill 2020 had it contained clauses for third party appeal rights. Currently, there are no appeal rights over a development assessment panel decision, except for developers—not for people or residents, but developers. Having third party appeal rights would mean better buildings. Without third party appeal rights, the planning system is open to accusations of serving special interest groups, such as those in the property development industry. To that end, I will be introducing an amendment to provide limited third party appeal rights during the COVID-19 emergency period.

Despite the proliferation of cracking and flammable apartments across Australia, the minister has now promised to slash red tape and speed up developments. What could possibly go wrong? The question the Parliament has to ask itself is this: Is cutting red tape really the answer? Will this not lead to a more deregulated market and worse building outcomes? The Western Australia Party says that it will. Many of these developers over the last few months have been in the local media and so on, putting down their plans for greater density, which is all about stuffing as many people as they can into high-rise apartments. Shoddy buildings, crush-loaded traffic, diminished environmental and urban amenity and general liveability will all worsen under these scenarios and under this legislation. There is significant anger in the community towards the trashing of people's suburbs by inappropriate developments. People are angry about overdevelopment and declining liveability. The crux of it all is that building evermore concrete box apartments and homes for more people, which is the only economic policy that we have in this state, and, indeed, the entire country, is the hallmark of a brain dead policy and a guaranteed recipe for a lower living standard for everyone. Perth, under the control of developers, is facing a dystopian future in which only the wealthiest residents will be able to afford a detached house with a backyard, and the poorest residents will be forced to rent high-rise apartments. Is this the future we want to bestow on future generations?

I want to divert attention slightly towards buildings. The building industry is in need of urgent reform. I am talking about what we call shonky builders. Currently, shonky builders are home free. They are in a position to collect the profits and then phoenix themselves if something goes wrong, with absolutely no consequences for destroying people's lives and, in many cases, their livelihoods. It is abundantly clear that the current system is failing to effectively police these matters. It is clear that between the Department of Mines, Industry Regulation and Safety, the Building Commission and the State Administrative Tribunal, many shonky builders are slipping through the cracks. I would urge the government to bring in legislation as soon as possible—I was hoping it would come in with this bill—to urgently reform the construction sector. We need to provide the Building Commissioner with new broad powers to prevent low-skilled or shonky builders from erecting unworthy or unsafe projects. The confidence of Western Australians in the building sector is at an all-time low due to this pandemic of shonky builders, and nobody is doing anything about it. We need new legislation now. That will be critical to restoring confidence in the building sector. Without that new legislation, the Building Commissioner has no real power. We need boots on the ground now to keep the shonky builders away during this crisis.

For the better part of the last 20 years, the development industry has demanded more and more deregulation and the removal of so-called red tape in the planning system to allow it to build bigger apartments faster. It claims this will allow housing supply to respond to demand and help fix the so-called housing crisis. Instead, we have rubbish apartment blocks and homes spreading like weeds, with many requiring rectification, and with owners and taxpayers left to pick up the tab. For years, the development industry has been allowed to run rampant across Perth, with the North Stoneville site just the latest example. The development industry must now be muzzled, not placated, by this government.

Cutting red tape to stimulate growth is not the answer. This will lead to even worse building outcomes. We need a system that will give more power to the regulators so that they will be able to block suspect developers and rank builders accordingly, perhaps through a quality rating regime that would be informed by their record on workplace safety, customer complaints, the age of their business, financial credibility, suspicions about phoenix activity, and so on, so that people will know who and what they are dealing with, rather than the lucky dip that it is now.

The first task that I would love to see the government address is the need for all tradesmen to be registered and their qualifications assessed as competent. This is the first step in improving quality. I would love to urge the Minister for Commerce, Hon John Quigley, to radically overhaul the construction sector and put the interests of consumers first and foremost, because far too many stories are reaching my office of people whose lives have been literally ruined by shonky building practices.

It is high time our politicians represented the interests of the ordinary residents, who are being kicked to the kerb by never-ending development. I would like to conclude by quoting a planning professor at RMIT University, Professor Michael Buxton, who said —

> "People have lost control of their city to the development industry and government acting on behalf of vested interests instead of the voter," …
>
> "It's been incredibly disappointing to see how public policy has been subverted towards achieving private gain at the public expense."

That sums up the building industry, with government and taxpayer subsidies privatising all the gains, and we are left to pay the costs. Thank you.

**HON RICK MAZZA (Agricultural)** [7.13 pm]: What a couple of very pessimistic contributions we have heard today about the Planning and Development Amendment Bill 2020. Developers and builders are all terrible people. "Developers" is a dirty word. They are overweight fat cats who are smoking cigars and ready to rip off their next customer. That is what we heard today. The fact of the matter is that we are entering a period in which we have a massive challenge ahead of us in this state and in the whole of Australia. We have yet to see the COVID-19 effect on the economy. In a few months when JobKeeper finishes and the double payment of JobSeeker finishes, we will start to see how COVID-19 has bitten into the economy. That is why the federal government is so keen to cut red tape and make sure that we can get a lot of these projects up and running.

The only criticism I have of this bill is that it is prescriptive, in that it is for projects that are worth at least $30 million and have at least 100 units or 20 000 square metres of commercial space. That really narrows down the number of developers that might fit that criteria to cut red tape and try to get their project through a bit sooner. I am particularly concerned with the 100-unit criteria, because we could end up with some very ordinary properties being built to try to meet that criteria rather than something of a better quality. That is why I have an amendment on the supplementary notice paper that will lower those thresholds to $10 million within the Perth metropolitan area and $5 million in the regions. In a lot of regional towns throughout the state, such as Busselton or Geraldton or those types of places, a $30 million, 100-unit project is very unlikely, but a $5 million project in one of those towns would be a pretty good project and very important to them.

I think that a lot of members are failing to see that if we pass this bill, we will not have a rush of developers wanting to get their approvals through to straightaway go out and build all these 100-unit apartment buildings or 20 000-square-metre developments. Developers and builders have to make a profit. I know that is a dirty word to some people in here—making profits—who think that it is all profit driven, but developers have to make a profit to provide the product, which ends up being housing and shelter for people. They will not do that if there is not a market to meet. It is no good for them to just fast-track something and cut the red tape. It is not as though everybody is going to run out and create a development. They will have to do profit and risk studies and work out what their costs will be and whether there is a market for the product that they produce. If no market is there, it will not matter how fast they go through the planning process, because they will not build it. No-one is going to enter into a $30 million development project knowing that they will lose money. In my mind, market forces will play a significant role in whether a developer will go ahead with a project.

I think that cutting red tape is very important. Anyone who has ever been in the property or development industry would know that red tape can be infuriating and frustrating. It delays many projects and sometimes there is no rhyme or reason for why we have it. I am not talking about $30 million developments. I am talking about developments such as a triplex, a quadruplex, or a small subdivision of a large block into three smaller lots. It is so complex to navigate red tape that I have had clients in the past who had to employ a consultant to navigate their way through the red tape to simply do a triplex subdivision.

**The ACTING PRESIDENT**: Members, there is a little bit of conversation going on. I know that the minister is listening intently to the member, so please continue.

**Hon RICK MAZZA**: Thank you for that, Mr Acting President. I do not know how anybody could not be focusing on me right now!

The fact of the matter is that there is a barrier to people doing business in the state. We should not be cutting red tape to make this a good place to do business; we should be putting out the open sign to make Western Australia a great place to do business. God knows we need it, because this state, along with other states in Australia, has been hampered by a lot of red tape.

I wholeheartedly support this bill. I think we need to revisit the $30 million, 100-unit and 20 000-square-metre restrictions and I am hopeful that when we are in Committee of the Whole, we can discuss that point and see whether we have some support for that. I think that a lot of middle-tier developers would like to bring projects on. If we lowered the threshold to $10 million and more developers were able to bring their developments forward, we would not have a mass of 100-unit developments. It might be a very nice duplex on the waterfront somewhere or a nice row of townhouses in an area. A diversity of property would be built. That would also spread out the

number of contractors who could build them, so it would not just be one or two big developers getting the benefit of the fast-track cutting of red tape that we have in the bill in front of us. A broad base of different businesses could take advantage of this development assessment panel system, so it is very important that we engage all of those people. There are electricians, plumbers, bricklayers, carpenters and roofers who need a job—all sorts of trades that in the next few months will need work. I think we owe it to our tradies to make sure the work is there.

Issues have been raised, for argument's sake, with the foreign investors tax in Western Australia. I remember my contribution to the second reading debate on the bill related to that tax. I said it would affect the very fragile market that we currently had in the state, and it did. The effect ended up being about 20 per cent, with stamp duties and foreign investment tax at seven per cent et cetera, and foreign investors just avoided our market. We already had a fragile market.

**Hon Charles Smith**: Good.

**Hon RICK MAZZA**: Hon Charles Smith says that is good, but for someone who owns a property at the moment in negative equity and owes more than the house is worth because the market has been so fragile, it is not good at all. That is one of the problems we have in this state right now. We have a lot of people underwater with their mortgages, and we need the Western Australian real estate market and construction industry to bring us back from that.

When it comes to the integrity of the amenity of construction development, I do not think this bill is suggesting that we do away with all approvals from all departments. The advisers have explained to me that it is more about roundtabling all those departments, because at the moment things are very ad hoc. One department takes a long time before the approval goes through with the Water Corporation, and then another approval might take some time to go through with Western Power, so some of these things can take absolutely years to get off the ground. One of the hard things with that for developers is that they do not know where the market is going to be by the time the development approvals come through, and that makes it very uncertain.

I turn to small investors and developers. I had a case in Mandurah, probably 10 years ago or more now, of a single mother who had a property that she was able to subdivide. She was able to subdivide two blocks off the house, which was on a long corner block. It took her years to get approval simply from the Water Corporation for the sewer and water on the headworks, and for power, because of all the hurdles that were thrown in front of her to get those approvals through. In the end, I had to drive to Bunbury to see the Water Corporation and find out what was going on, and I managed to isolate the problem. No-one from the Water Corporation was communicating with the woman to tell her what she needed to do if she wanted get things sorted out. There was no resolution process. The project needed intervention to get up and running. I think that is indicative of what happens a fair bit with departments just not communicating with each other. The concept of a roundtable with this development approval system is a sound idea, particularly if those requirements are lowered so things are more broad based and more people can get moving on developments. As I said, there will not be an avalanche of developers flooding the market with properties, because that would cause a problem of oversupply for them. We already have oversupply in this state. However, it will allow some developers more certainty on time frames to try to get things up and running.

Some information came back to me from the department about the number of development approvals going through. There were 283 applications in 2019, but only 57 of those would fit the criteria for this amendment before us. Of those 57, a lot of developers would probably put their projects on pause and park them for a while, because market conditions are not there for them. That is why I think we should lower the criteria to spread it out.

We also heard Hon Charles Smith's contribution about dodgy builders. There are a very small number of dodgy builders. In the main, they are reputable businesses, many of which have operated for a long time. They run on very fine margins to meet a competitive market, and build quality homes. Yes, there have been circumstances when builders have opened a champagne home then closed their doors and opened up another building company a week later. During the estimates committee in the last term of Parliament, we discussed the Building Commission. In the real estate industry, a licence holder, a licensed entity, can trade under only one business name and a fidelity guarantee fund ensures that consumers are reimbursed if money is misappropriated or a deal goes wrong because of fraudulent activities. We do not have those measures for the building industry. Myriad businesses can be opened under different names with one building licence, which I think is problematic. Also, there is no guarantee fund to act as a safety net for consumers who may, at some point, find that their builder has packed up and left. There is the home indemnity guarantee fund, but the protection it offers consumers is limited. I take on board the points Hon Charles Smith raised but it has to be said that although dodgy builders make headlines, they are not indicative of the industry.

I think this is a good bill and I support it. I know that there is a lot of fear around transparency and consultation. There has been discussion about infill in older, established suburbs. Some people do not like the idea of infill when someone's backyard is filled in with another dwelling. That causes problems because some of these older areas that were developed on larger blocks include a lot of public open space. Not a lot of people realise that when a suburb is infilled, the population doubles but the public open space for the residential population remains the same. Suddenly, all the parks are crowded because twice as many people who live in the area attend the parks. More thought has to be given to infill planning. I do not have a problem with infill when a landowner who has a 200-square-metre block,

with weeds growing in the backyard, decides that it is a good idea to subdivide the land because it is commercially viable to do so, but some planning has to go into the use of public open space and other amenities provided for the people who live there.

We are yet to see the impact COVID-19 has had on the cutting of red tape. I do not know whether this bill goes far enough because it is very narrow and will affect only a few developers who may not take advantage of it. Overall, I think it is a step in the right direction. It is a good bill and, hopefully, when we go into Committee of the Whole we can amend it and improve it.

**HON DR STEVE THOMAS (South West)** [7.28 pm]: I am pleased to be the first speaker tonight who does not have an unlimited time frame. We will see where we get to with my contribution on the Planning and Development Amendment Bill 2020. I am delighted to make a few comments about planning in general before I get to the bill itself. I remind members, including the Minister for Environment, that the lead speaker for the opposition said that the opposition would support the intent of the bill. We are not here to undermine the bill. In my view, we are trying to make it better. I think we traditionally try to do that. For all the back and forth about our position on this, it is pertinent to remember that we do support the bill.

Planning is one of those thorny issues that has been around forever. For my sins, which are many and multitudinous, I spent some time as the shadow Minister for Planning, as my good friend Hon Tjorn Sibma does now. That was back in 2007 when I combined the roles of environment and planning into the same shadow ministry. It was a really interesting time trying to balance those two great components of future planning. How do we develop a community at the same time as protecting the environment in which it is? That was a really interesting time and I learnt a lot. I read both the Environmental Protection Act and the Planning and Development Act and those two tomes together were a fairly complicated piece of work. Planning will always be contentious. To be honest, the minister can generally be reasonably comfortable with where he is going if everybody is a little unhappy. I suspect he will find with the bill before the house tonight that everybody is a little bit unhappy. There are those who have said already that it goes too far, which is balanced by those who said it does not go far enough. There are those who think that development is the key to saving the economy and those who think that development is the great evil of our times. I suspect the minister will find he is not too far away from some reasonable outcomes. Of course, the Liberal Party is here to try to assist him to get to an even slightly better place.

There is an old truism—you might appreciate it, Mr Acting President (Hon Robin Chapple)—which I have extended a little bit in my own quirky way. It has been said for many years that a developer is someone who wants to build a house in the forest. A conservationist is someone who built their house in the forest last year. A Greens supporter is someone who built their house in a completely different location and believes the only people who should be in the forest should be wearing tie-dye, have dreadlocks and be protesting something. I sort of added the last bit myself. It is one of those ancient truisms that everybody has a vested interest in the planning process, either to promote it for development or to prevent it because they have developed. It is therefore almost impossible to make everybody happy in the planning process. I commend government members for this version of their attempt, albeit somewhat rushed, I suspect. The government is to be commended for giving it a go. Governments prior to this one have attempted a similar sort of process and most of them have come to a similar conclusion that no matter what they do, someone is always immensely unhappy with the process. I have no doubt that the same will apply to this legislation.

I will raise a few specific issues on this bill. The first point is that it will apply, in theory, for a limited time span. I take the view that most significant developments, and the thresholds with which a "significant development" has been defined is a very big one, do not just fall off the back of a truck. These projects generally have their inception some time before we get to the point of having a set of plans drawn up. With my experience in the industry, I would be surprised if many major projects suddenly appeared for approval in the next 18 months that are not somewhere down that path already. I am fairly certain that the government, at some level, in a cabinet-in-confidence way, has a list of projects that it thinks might be applicable and might come under the provisions of this legislation. I would love to see a list of major projects—even if it is the beginning of a list—that the government suggests might come under this legislation. I suspect that if we stick to the time limit of 18 months, then almost every project that is likely to be approved under this legislation is already in someone's mind on a drawing book somewhere. It almost has to be, by definition. We might find that a couple of projects will slip in at the end, because everybody gets highly enthusiastic about a proposal, but I think that the government already has a targeted list. If that is the case, I am sure the minister will stand up and say that it does not, and I am sure the minister will be completely honest in his answer and that he would be completely unaware if such a list existed. That is the way that government works. In my view, it is almost inconceivable that a target list of projects is not already on somebody's desk somewhere.

**Hon Stephen Dawson**: Perhaps the honourable member might ask me the question and I could possibly reply to it during my second reading reply.

**Hon Dr STEVE THOMAS**: I will ask him the question, and probably the safest question is: is the minister aware of any particular proposals that have been targeted by this legislation, or is a list being developed for potential targets? I do not think that is a bad idea. This is not an issue for me to wave a stick at the government and say,

"This is some form of corruption." In fact, to be honest, if the government has not done some of this work, I would say that it is bordering on incompetence. With only an 18-month period, the government would really want to have some targets in mind if it has a competent set of advisers and staff. I am happy to leave it to the minister's reply, if he wants.

**Hon Stephen Dawson**: Noting that I am not the minister with the responsibility of the bill, I am not aware of a list, but before my reply I will ask the question and if there is such a list, I will provide that information later.

**Hon Dr STEVE THOMAS**: Thank you; I appreciate that. As I said, if it were me, I would have a list. I probably would not give it to the minister if he was in opposition, but I would have a list. This is what we do in opposition. We ask the questions that we do not necessary get the answers to. That is okay.

**Hon Stephen Dawson** interjected.

**Hon Dr STEVE THOMAS**: Excellent. Hon Tjorn Sibma should have done two or three more hours in his speech then. That would have maybe got the minister across the line.

I say that there is probably some form of list, and I think Hon Rick Mazza demonstrated this, because there is a conception or a feeling amongst the community that the process does not work particularly well. This legislation is being put forward as a response to the COVID-19 crisis and the economy. I am the first to acknowledge that the economy needs stimulus. Somebody said that it is $1.6 billion in stimulus—it might have been Hon Charles Smith. I think he might be including the $400 million in electioneering that was included in that, so let us knock it down a bit and say it is potentially $1.4 billion of COVID-19-related expenditure; some of it quite reasonable. I suspect that if we get to the end of this process and discover that we can cast through projects under an accelerated or streamlined system, the question will have to be asked of government, Parliament and everybody: why would we go back? If this is about streamlining the processes, why would we return to an un-streamlined process?

**Hon Rick Mazza** interjected.

**Hon Dr STEVE THOMAS**: Precisely!

If the government's agenda is to streamline the process, why would we return? I can see us back here in 18 months' time, hopefully—perhaps not all of us, Mr Acting President (Hon Robin Chapple), but most of us—and potentially debating why these particular measures should not be held for a long time. It might be a particularly valid debate. I would have had grave concerns with this bill and that prospect on the basis of the bill that was presented before the chamber only a week ago. The reason I would have had grave concerns is that in my view, the bill proposed to abandon the Environmental Protection Act in preparation for accelerating approvals. That was an immensely dangerous concept, one that I obviously opposed then, as I oppose now. If we were to go ahead under those circumstances and come to the obvious debate about this needing to be extended forever, and we were to throw the Environmental Protection Act out the window completely, I personally would have been devastated. I really would have been. I might deal with that issue in a little more detail before we progress, because I am already running out of time.

At page 4 of the bill presented before the house is a definition of "legal instrument", which includes any of the Contaminated Sites Act 2003, the Environmental Protection Act 1986, the Heritage Act 2018, the Swan and Canning Rivers Management Act 2006 and the Swan Valley Planning Act 1995. The impact of this will be reflected in proposed section 275, "Application of legal instruments and matters to which Commission must have due regard". Proposed section 275(3) states —

> Without limiting section 270(1) for the purposes of the Commission's consideration and determination of the development application —
>
> (a) the legal instrument does not apply; and
>
> (b) the Commission is not otherwise bound or restricted by the legal instrument.

That means, Mr Deputy President—Mr Acting President. I keep promoting you; I am sorry.

**The ACTING PRESIDENT (Hon Robin Chapple)**: I am happy with that; do not worry!

**Hon Dr STEVE THOMAS**: You would get my vote, Mr Acting President! That means that if the bill were to go through as it has come from the chamber that shall not be named, basically, the Environmental Protection Act would cease to hold the power and effect that it does.

If we jump to proposed section 276, which goes to consultation, it states —

> (3) The Commission must —
>
> (a) consult the EPA; and
>
> (b) consult the Heritage Council …

That is if it is likely to affect the Heritage Act, or —

> (c) consult the Swan River Trust …

That is if it is likely to be in its area. So, there is a consultation process. I accept that that consultation was the government's way of appeasing those people who have a bent for the environment, which is a group that I quite strongly include myself in. The problem with the proposal is that one would not have recourse to the Environmental Protection Act. If the Western Australian Planning Commission is simply required to consult with the EPA, that does not require a full development assessment, according to the Environmental Protection Act. If the Environmental Protection Authority suggested to the planning commission that it should do a full environmental assessment all the way up to a public environmental assessment—a public environmental review, which is the highest level of assessment—under this legislation, the planning commission would have the power to say, "We don't think so". It occurred to me that we are talking about large and major developments. There is currently a minimum price tag of $30 million. Those large projects will most likely have a significant impact on the environment. It occurred to me that this was a major impediment, in my view, particularly because of the inevitability of somebody coming along and saying, "The system is now working well because we are getting developments in the time frame that we think we should; therefore, we need to keep this particular system." I thought that this was an immensely dangerous position, and immediately, the first chance I got, I signified my intent to move an amendment.

I have to say to the Minister for Environment that I am immensely pleased and thankful that he has taken a similar position. I will give him some credit for this. I think he probably had to have a fairly decent bunfight across the cabinet table to give the environment the prominence that I think he and I both believe it deserves, so I thank and commend him for that. I do not want to be in the habit of commending government ministers, but in this case I think it is well worthwhile. I think that is an incredibly important advancement.

I do not generally speak on many of the other acts involved there, particularly the Heritage Act, because I consider myself to be a heritage heathen. I am absolutely a champion of the environment. If I was king of the world, I would probably repeal the Heritage Act and use it on a bonfire. My view has always been that if the government wants to retain buildings for heritage, it should purchase them. I do not like the fact that the Heritage Act impacts on private landowners and tells them what they can and cannot do on their property. However, I am perfectly comfortable with most of those other acts being on the list of legal instruments. I note that the Heritage Act 2018 was included in the legal instruments that could be bypassed, but the Aboriginal Heritage Act was not. I suspect it would be a very brave minister who would take on the Aboriginal Heritage Act, but it strikes me as a bit of an interesting comparison that we are happy to leave the Aboriginal Heritage Act with its full powers and entitlements, but throw out the Heritage Act.

**Hon Alison Xamon**: What rubbish.

**Hon Dr STEVE THOMAS**: It is a double standard. I suspect it would be incredibly brave, and an election year is not the time to be brave; I fully understand that. I did not propose any amendments around the Aboriginal Heritage Act; I simply proposed to remove the Environmental Protection Act 1986 as one of the legal instruments that can be disregarded, and I am immensely pleased that the Minister for Environment now has exactly the same amendment on the supplementary notice paper. That makes it much easier for me to support the bill that the minister has carriage of through this house. My personal view is that it would have been extremely difficult for the Minister for Environment to be in the position of putting a planning bill through this house that, in my opinion, denigrated the Environmental Protection Act and the protection of the environment. I am pleased that the minister does not have to do that.

On one level, I am immensely pleased; on another, I am immensely saddened because until the middle of this week I was in the process of launching a media attack on the minister! I will make a personal apology to the minister. Since I spoke to him yesterday and saw that he had moved an amendment equivalent to mine, I have spent 24 hours running around, withdrawing most of the media attack that I had arranged, some of which, although not attacking the minister personally, attacked his position. I suspect I was too late for one regional media outlet, so if that media outlet prints a story saying that the minister has not supported my position on protecting the environment, I formally apologise. Everything else that has come out has been corrected within the last 24 hours; it was not a small undertaking! I have to say that it weakened my media position significantly when the minister made that move, so well done. I think Hon Tjorn Sibma earlier used a phrase about the government that was something like good political operators —

**Hon Tjorn Sibma**: Clever.

**Hon Dr STEVE THOMAS**: Clever political operators, yes. I am afraid my attack was significantly dented over the last 24 hours. These are some of the things that I was going to use; I am not going to use them against the minister now! There is no need. He has done the right thing, and I acknowledge that he has done the right thing, and I thank him for it. But I asked a question of the Minister for Environment a couple of weeks ago. In fact, the Leader of the Opposition asked it on my behalf because I was called away on extremely urgent parliamentary business, although not that far away! I asked how many proposals for developments that met the criteria had been submitted to the EPA since the beginning of 2016, and how many of them had undergone formal assessment. It took the minister a couple of weeks to get a fulsome answer, because that is a very technical question. The minister committed to give me an answer during the first week back. I submitted the question on 21 May. He did provide me with an answer, as he usually does. I know that today members questioned the performance of other ministers. This minister always tries

very hard to provide good answers. On 9 June, the next sitting day back, he provided an answer. Effectively, from the beginning of the 2016 calendar year to 21 May 2020—almost four and a half years—two proposals meeting significant development definitions were referred to the Environmental Protection Authority under section 38 of the Environmental Protection Act 1986. Part (b) of that question was —

> how many of those proposals were formally assessed;

The answer was nil. That effectively means that the Environmental Protection Authority did its job. It looked at these proposals and decided not to formally assess them, which is a normal part of the process. In theory, it is a 28-day process under the Environmental Protection Act—an act that we will debate in some detail next week, which I am quite looking forward to. In effect, the Environmental Protection Act does not have a significant impact on the delivery of major projects. That probably comes as a very big surprise to everyone. At every business and developer meeting I go to in my role as the shadow Minister for Environment, people tell me how this horrible Environmental Protection Act stops them from developing. The reality is that that is not the position. That is not borne out by the facts. Although there are proposals that get delayed by the Environmental Protection Act—I am hoping that the minister will deal with them under a different bill, Mr Acting President (Hon Robin Chapple), one that you will probably have great interest in—when it comes to planning approvals, the Environmental Protection Act is not the great evil that people suggest it is. For that reason, if the government had proceeded with the original legislation to retain the Environmental Protection Act as part of the legal instruments, which could be effectively ignored by the Western Australian Planning Commission, it would have been both immensely dangerous to the government and probably immensely helpful to my political standing! In both cases, I suppose the government has had a win. Well done, minister. I think that is a very sensible solution. As I said, I suspect that the minister had to go in to bat for the environment with his colleagues to get that outcome. He has my appreciation and my enormous respect.

How much regard would the planning commission have had in its consultation process? The explanatory memorandum to the bill, which we received quite late in the process, is quite illuminating. Page 7 states —

> ***275. Application of legal instruments and matters to which Commission must have due regard***
>
> This section sets out what criteria the Commission applies in considering and making a determination.
>
> The cornerstone principle is that the Commission has broad powers as to how it comes to a decision. It is not bound by any legal instrument, which is to say any planning or non-planning law, rule or other requirement that might otherwise apply to limit the Commission's decision-making power.

I think that spells out quite clearly that in making something like the Environmental Protection Act a legal instrument for the purposes of these bills, it gave carte blanche to the WA Planning Commission to effectively ignore it. Well done, minister; I think that is an excellent outcome. It puts me in a position to be able to support the bill, which I would have otherwise struggled with. I appreciate that.

As I said at the beginning of my contribution, the planning process is fraught with danger because we are always dealing with someone who either desperately wants or desperately does not want something to happen. This has not changed, and I do not expect it to change under the bill before the house. Every project that is put up that has local community opposition will still see the same process and the same reactions. I do not think the bill is going to deliver the kind of certainty that a number of people think it will deliver. I do not think it will deliver that certainty of outcome.

One of the other members mentioned what happens in other states, and I forget who that was; it might have been Hon Tjorn Sibma. The Public Accounts Committee from 2005 to 2008, of which I was the deputy chair, did a review of the approvals process and committee members went to Queensland. I think the Queensland model is extremely interesting. In my view, it is probably better than the New South Wales model.

**Hon Stephen Dawson** interjected.

**Hon Dr STEVE THOMAS**: It actually combines the whole lot. Queensland has a separate system again. It allows a very similar system to that in Western Australia to occur, but it puts a time frame on it. When we examined the process back then, Queensland had a Department of Infrastructure and it had a statutory time frame, and I presume it still does. Effectively, the Department of Infrastructure took over the approvals process if the approvals process, which is similar to the one we have now, was hamstrung and a decision was unable to be made. That is something that the Liberal and Labor Parties should look at at some point and say effectively that the system should be given a chance to work and it should be streamlined. Next week, I will move some proposed amendments that I think will streamline the environmental approvals process. Once again, the Liberal Party will support that bill. We think there are lots of really good things in the Environmental Protection Amendment Bill, just as we think there are some good things in the Planning and Development Amendment Bill, and the Procurement Bill will tie lots of these things together, which is quite interesting. In Queensland, there was a set process and a set time frame. A normal environmental approvals process would be gone through and if that was unable to be completed for some reason, ultimately, the Department of Infrastructure had the power to take over the decision-making process. That might be worth looking at, giving the current system a chance to work.

The current system is rather unwieldy. We always talk about reform. It is a bit like red-tape reduction. I have been around politics enough to know that every government and every opposition talks about red-tape reduction, and then we inevitably put in more legislation, and more legislation inevitably leads to more red tape, and the only red tape that ever gets removed are the statutes that are no longer used. I remember this in the federal sphere. A Liberal government removed all this red tape—in fact, it repealed unused pieces of legislation and removed them from the statute book, which is fine, except that they were not holding anything up because they were unused. Those are the sorts of things that we get to.

I think there is an issue with planning for development, particularly around the regionalisation of it. This bill seeks to make the regionalisation and the strategic focus of planning better than it currently is. To be honest, that is more important than the process of major developments. It is a bit like the environmental approvals process. The big developers and the big project owners have their own teams of people who can go through this process. Often, the strategic approach is the bit that is missing. There are local governments and local government planning processes and local town planning schemes, and often they end up in conflict with each other. For example, 20 years ago in the south west, everybody was building a recreation centre, so we ended up with three or four recreation centres within a 10-kilometre radius, all of which lose a significant amount of money. Then there is the modern disease that we call cultural centres. There is one in Bunbury and there is one in Margaret River, and Busselton wants to build one right in the middle between the two, and they all lose significant amounts of money as well. Regional planning is critically important in this, and if this bill goes some way towards getting that in place, that would be good.

The greater Bunbury region scheme is still behind the eight ball. I was the shadow planning minister when the greater Bunbury region scheme was developed in the lower house, and I believe the current Minister for Regional Development was the then Minister for Planning and Infrastructure and we had great debates about the greater Bunbury region scheme. It was sold as having the potential to outline the strategic plan for the greater Bunbury region for the next generation, but it does not do that; it is always in catch-up mode. It is not strategic enough and does not go forward. The planning process for region schemes in particular is too much in the rear-view mirror and not forward at the horizon. If there is some way that the government can get a wriggle on with regional planning schemes, that would be a great idea. My good friend Hon John Day, who was the former Minister for Planning, introduced the development assessment panel scheme. That was his version of attempting to bypass the morass that had become the planning system. It is not really much less of a morass, but that was John Day’s attempt to make a difference. He went into it with absolutely the best ideals; he truly did. He decided that if we wanted to look at regionalising some of the larger projects, we needed a system that was not bogged down in one local government versus another. In some cases, they did become overly bureaucratic—I get that. The intent was good and it remains good. If the Minister for Planning looks at empowering DAPs and giving them the resources to be more strategic, we might again get a better outcome from the planning process. Of course, once we move from the local area, to some degree we disempower the local community. There is some inevitability of that. I absolutely understand that. I do not think anyone has used the word “nimby” yet, but we will always get —

A member interjected.

**Hon Dr STEVE THOMAS**: Did you? Sorry. That must have been the one time that I stepped outside on urgent parliamentary business!

It is absolutely the case that as we streamline the planning system, those people who are aggrieved will have fewer avenues to express their aggrievedness—absolutely. The question is how much of that is appropriate because historically, particularly further in the past, developments have occurred that should never have occurred. Today, we are more likely to see development stopped that probably should have been allowed to progress. The DAPs process has the capacity to take matters out of local hands, and that is not always a bad thing. A local councillor, particularly in a rural area, lives close to the community, and the community that is angriest on both sides will be the community that knocks on the door. That is the bit of the community that is biggest in their vision, even though it probably does not represent the mass view of their community or electorate. That is what they need to deal with. Moving the decision-making process a bit further away sometimes establishes a clarity that does not exist when a person’s neighbour does not like what is happening. I get that. In my role as shadow Minister for Environment, I have inspected a few proposed rubbish tips in my time. Nobody who lives near a rubbish tip wants a rubbish tip there. If pushed by the local community, there would never be another rubbish tip. Minister, the south west councils are still trying to find a proposed location for a south west re-use and processing centre. It had two, but as soon as the potential location got out, the local community became involved. If we allowed that process to go unchecked, we would never have a new waste treatment facility in the south west. Dare I say it, some disenfranchisement of some people is not always a bad thing. It is unfortunate and sad for them and not very nice, but occasionally it is a requirement to get things going.

In terms of the bill, the great thing about local government is that even though there will be questions about its role in higher level planning, in most cases most constructions will still require building approval, so there will still be a role for local government in the process. Every time local government says, “There’s nothing in the process for us”, it should be remembered that it will still be involved in the building approvals process. It is not necessarily the case that it will be utterly disempowered.

Goodness, the time has disappeared! I am sure I could have matched Hon Tjorn Sibma on this very important topic, but I have limited time and I want to respond to some things that have been said today. I have already responded to some, but I want to respond to others. I do this in particular for Hon Alison Xamon. This is not a debate on an appropriation bill, in which I commit to bring to the chamber at least one chart.

**Hon Alison Xamon**: I would hope so.

**Hon Dr STEVE THOMAS**: However, this bill is a bit economically based, so in a minute I will seek leave to table a little bit of my research. This arises from the comments of Hon Charles Smith and, to some degree, of Hon Rick Mazza, who spoke about the price of housing in Western Australia. It is absolutely the case that there are some interesting parts of the marketplace. I agree with Hon Rick Mazza that the construction and development industry needs support, but Hon Charles Smith is also correct that in most cases, when government funds are put into a scheme, the very common sequel is that prices rise an equivalent amount. That is absolutely the case. There have been many times in history when the price of land has had to go up to pull up a reduction in stamp duty, for example. If stamp duty is knocked off by a certain amount, the price of land goes up by a certain amount.

**Hon Alison Xamon**: The table?

**Hon Dr STEVE THOMAS**: In this table I compare the mean house price in Western Australia with average normal weekly earnings. I have used Australian normal weekly earnings so it is not specific to Western Australia; it is quite closely linked, but not quite the same. I will seek to table this, but this is what it looks like. The blue line at the top is the housing price. The red line at the bottom is the average wage. Just so that members are aware, I went back to 1971.

**The ACTING PRESIDENT**: Member, perhaps if you turn around and direct your comments to me, it might help Hansard with the microphones.

**Hon Dr STEVE THOMAS**: Certainly, Mr Acting President. Thank you for your guidance.

In effect, those two lines are not too far apart. Most home owners know that the massive boom in housing prices started around 2000 and 2001, and hit a peak in 2013. The average mean house price in Western Australia went from about $150 000 to over $500 000 in 10 years. I seek leave to table that chart.

Leave granted. [See paper 3965.]

**Hon Charles Smith**: Why did that happen?

**Hon Dr STEVE THOMAS**: More than anything else we had a mining boom and people had money to spend. It is not just the case that it was purely population based. Housing prices are immensely emotional. Every time we talk about getting first home owners into housing, we talk about the need to make housing prices cheap. Members will see a line in the middle of that chart, which is what I consider to be sustainable wealth creation, so if the price of housing were to go up at the same rate as wages, the average house price in Western Australia would be $300 000 instead of $450 000 and everybody who owns a house in Western Australia would be $150 000 worse off. That is the issue that everybody misses in relation to the price of housing. It is a two-fold issue. In one instance, it is the capacity of people to purchase houses and get into their first home. For most families, it is something like 50 per cent of their wealth, and for lower income families it often ends up at about 90 per cent of their family wealth. When there is a negative impact on housing, as Hon Rick Mazza said, there is a very negative impact on equity. If we look at where house prices should probably be right now in the Perth metropolitan region, everybody who has bought a house in the last couple of years at $450 000 would be $150 000 in the hole and they would be paying interest on that $150 000.

There is a lot of emotion about house prices. It is absolutely the case that population growth puts upward pressure on house prices because more people are looking to buy houses. I will pick up on one of Hon Rick Mazza's comments. He said that developers would not go out and create an oversupply of housing because they have to make a profit. That is okay except that the member's next words were, "and we already have an oversupply". Obviously, that means that the developers did go out and create an oversupply of housing. The argument might be that that occurred because population growth slowed. Certainly, the supply and demand logistics of housing are not simple and linear; a lot of emotion and a number of side issues are involved. It is not a simple question of the market running itself in an incorruptible system, because when emotions run high, as they did during the mining boom, prices go far too high, and that creates an enormous problem for everybody who buys at that time. A group of people who at the time of the boom had high disposable incomes got into a level of debt that Hon Rick Mazza and I would have been appalled by when we were young. Like me, the honourable member probably bought his first house many years ago. My first house was a three-by-one fibro that cost $42 000. My wage was 25 000 bucks. It was the average wage in Australia at the time. The average wage today is about $84 000 or $85 000, which means an equivalent first house today should be 100 grand. Can members see a young person today finding a house for 100 grand? We have also raised young people's expectations, and that is part of the issue as well. Everybody now expects to buy a four-by-two brick and tile house, not a three-by-one fibro house with a tin roof.

I think part of the problem is that it is very hard to get planning in place that will provide a perfect outcome for everybody. I wish I had another hour or two to talk about planning issues because they are critical. I will finish on

these points, but I wish I had a bit more time to go into a lot more detail on this. Hon Tjorn Sibma did an excellent job going through the minutiae of the bill. I actually think it is not a bad bill. Again, I thank the minister for joining me in changing the bits about the Environmental Protection Authority, because that makes it far easier for me to support the bill. To be honest, it is an immensely optimistic bill. I will leave members with these two points. I think anyone who thinks that suddenly there will be a great plethora of $30 million to $200 million projects falling out of the sky and landing in Western Australia in the next 18 months is kidding themselves. The other point I will leave members with is, as I said earlier, that the coming demand to maintain these rules well past the 18-month time frame will be something that this house, in my view, will have to deal with in the forty-first Parliament of Western Australia, and the pressure we will be under will be incredible because it is about getting development through.

**HON AARON STONEHOUSE (South Metropolitan)** [8.13 pm]: I am glad to speak to the Planning and Development Amendment Bill 2020 this evening. This bill seeks to achieve a few outcomes, but I will home in on three: reducing red tape around planning approvals; stimulating the economy in the wake of COVID-19; and what perhaps might be described as the centrepiece of the bill, introducing a new streamlined approval process for substantial developments through a new planning approval pathway through the Western Australian Planning Commission. I have some concern about whether the bill does what it says on the tin—whether the bill will achieve the outcomes that the government says it will. Although they are quite aspirational goals, especially around the reduction of red tape and stimulating the economy, I am not sure that the government is either capable of achieving that with a bill like this or properly understands matters from the get-go, but I might talk about that later towards the end of my remarks. For the moment, I would like to acknowledge how rushed the process has been up until this point. I am glad that previous speakers have taken their time to carefully consider the details of this bill. I think the first speaker spoke for three or four hours.

**Hon Alison Xamon**: They didn’t in the other place.

**Hon AARON STONEHOUSE**: No, they did not do that in the other place. In fact, the government tried to ram this bill through the lower house in a single day. We are all aware of the absurd scenario in which non-government members were offered briefings for a bill that was not even ready. Advisers and staff were trying to brief members of Parliament on a bill that they could not even show them because it was still being worked on. This was happening mere moments before the bill was introduced into the lower house. Even at that point, the government seemed to have some notion that it would be able to ram that bill through. It is quite worrying. I am glad that we are taking our time here to properly consider this bill. It is a very lengthy bill; it is 95-pages long and it deals with a complex subject. Luckily, in this place we will take our time, unlike those members in the lower house. It is good that we do that because, time and again, the government has introduced legislation that it has insisted is perfect and flawless, and we have found drafting mistakes or omissions. We have had an opportunity to review those bills through the Committee of the Whole House or we have referred them to one of our standing committees for legislative scrutiny, and those committees have made findings and produced a report on how those bills can be enhanced. That has happened on many occasions with so-called perfect bills that the government has tried to expedite and rush through.

I spoke a little before about red tape and the claim that this bill will somehow reduce red tape and bureaucracy. However, it is worth noting that most, if not all, of those red-tape reductions will actually be in the regulations that will follow the passage of this bill. They are not in the bill that we are debating today. What those red-tape reductions will look like exactly, we do not know. The Premier and the Minister for Planning have made some claims about that. In a joint media release of 20 May 2020, Premier Mark McGowan and the Minister for Transport, Hon Rita Saffioti, said —

> The planning reforms will include initiatives that respond to community and stakeholder feedback, such as:
>
> …
>
> exempt a wider range of small residential projects such as patios, decks and extensions from planning approval;

I have looked through the bill to find where those exemptions exist in the primary legislation. I could not find them. It might be that I am not familiar with the principal act and how this bill will amend the principal act to expand those exemptions, but it is my suspicion that those exemptions will have to come through regulation. The nice, fawning op-eds and articles in the press and the Facebook posts and media releases that claim that this bill will allow people to put up a patio without having to go through an onerous approval process are not quite true. That is not what this bill does; that will be found in the regulations later on. The question that hangs in my mind is: how many of those regulatory changes that we can expect to be made later on are dependent on the passage of this bill, and how many of those regulatory changes could have been made months or even years ago? Perhaps I can get an answer during the Committee of the Whole House.

A claim has been made that this bill will stimulate the economy. I am rather sceptical of that, too, Mr Deputy President, because, as was pointed out by a previous speaker —

**The ACTING PRESIDENT (Hon Matthew Swinbourn)**: It is Mr Acting President.

**Hon AARON STONEHOUSE**: I am sorry, Mr Acting President.

I am sceptical of those claims because, as was pointed out by a previous speaker, and as I have observed before, I am not so sure that this kind of stimulus creates new economic activity as opposed to just moving it through time—shifting it forwards or backwards depending on what the incentives or disincentives happen to be. For instance, when we talk about significant developments that will be eligible for the streamlined WA Planning Commission process, those are defined as developments that are worth $30 million or more and will have 100 dwellings or more. That is a "significant" development by any definition of the word. Those kinds of developments are not made on a whim. Those kinds of developments are years in the planning before any kind of proposal is lodged to a government planning approval body, whether that be a development assessment panel or some other body. Therefore, the idea that this bill will somehow create new developments is absolutely false. We should be realistic about the outcomes of this bill. It will potentially help bring developments forward. It will also reduce the regulatory burden on developers, because the process will be streamlined. I admit that it appears that the proposed process will make it much less burdensome for developers to get approvals. Indeed, some approvals might be more forthcoming than they otherwise would have been because subsequent decision-makers were dragging their feet. However, the bill will not really create new economic activity; it will merely bring it forward, if we are lucky.

My principal concern about this bill is that at the top level, at first glance, it will centralise an immense amount of power in the hands of the Minister for Planning. An incredible amount of power that was previously decentralised across various local government bodies, development assessment panels and other bodies will be vested with the minister in a rather extraordinary way. That concerns me. Proposed section 272 of the bill states that development applications may be referred to the commission by the Premier, on the Minister for Planning's recommendation. We have the criteria for significant developments worth $30 million or more, and with 100 dwellings or more, that can be assessed by this streamlined WA Planning Commission process. However, this bill will allow the Premier, on recommendation from the minister, to find any other projects that they like and put them through this streamlined process. It concerns me that that will potentially open the door to corruption and inappropriate influence. I do not want to make any comments about the current minister, but we do not know how these powers, or powers like this, might be used by ministers in the future. We need look back no further than to the days of WA Inc, when donors to the Western Australian Labor Party were able to find favour with the Premier and government ministers of the time. Perish the thought that something like that will happen again. Perhaps I am being a little too paranoid, but when we give a minister the power to streamline development proposals in this way, we are asking for trouble—we really are. That is especially the case when we see how these kinds of deliberations are shielded behind the curtain of cabinet-in-confidence. We can never get a straight answer about how these decisions take place, because as soon as they are made in the cabinet room, they become supersecret and nobody can ever see them or ever know about them. We are asking for trouble there.

The bill goes further. Proposed section 280 states that the minister may give direction to another person or body, and that person or body is obliged to comply with that direction. That sounds pretty normal. That is a typical power that a minister may be given. It goes on to say that they are obliged to comply with that direction even if it would otherwise be unlawful or invalid. I do not think that is a risk for corruption. However, that is a very questionable provision in law. This really needs to be teased out. Do we want to give the minister the power to tell someone to do something that is unlawful? In this instance, it has to do with planning approvals. One would not think there would be anything untoward about what the minister might direct a person or body to do in this instance. However, it raises a question of legal principle about whether it is appropriate to give the minister the power to direct somebody to do something that is unlawful. If that person, in complying with that order or directive, does something unlawful, who will be liable for that person's actions? Proposed section 284 provides that the Governor may amend or cancel an approval granted by the commission under section 274. This is touted by the government and the minister as an oversight measure. At the end of the day, the buck stops with the Governor. He can step in and amend or cancel an approval granted by the commission under proposed section 274. But who does the Governor take his or her direction from? They take it from cabinet; they take it from the government. Effectively, the government has the discretion and the power to not only direct projects to the Western Australian Planning Commission, but also amend or cancel approvals granted by the planning commission. Why do we have the planning commission at all in this case? We might as well just let the minister approve these things with the flick of a pen. Ultimately, the bill will grant the minister the ability to exercise that power with virtually no checks, no balances and no accountability. All that power rests with the minister in this case.

There are a few other examples. Clause 42, "Section 62 amended", inserts new provisions outlining the minister's powers to approve, refuse or require modifications to a minor region planning scheme amendment. Proposed section 62A, entitled "Minister may withdraw or direct withdrawal of proposed scheme or amendment", affords the minister a broad power to cause the withdrawal of a regional planning scheme amendment at any time before it has been officially determined. A few other clauses in the bill vest power, again, with the minister. This centralises decision-making power in one person, with very little oversight and accountability, and at the expense of community consultation and input into planning decisions. I certainly think that we should be expediting and approving development and trying to build this state up. Some cranky person who does not want their perfect river view obscured by a building should not necessarily get to hold up the process for everybody else, but we cannot

ignore the fact that people have to have some say in the process when their own enjoyment of their property is at stake—when their ability to enjoy their property is affected by somebody else's planning decisions. We cannot cut out people entirely. People need to feel as if they have some say in this stuff. This is how democracy works, right? We do not get to just override and run roughshod over everyone else in the community because some developer wants to build a swanky high-rise apartment tower. This is a further centralisation of power and decision-making at the expense of local authorities and local residents, who otherwise have a stake in this and should have a say. It concerns me. As I said, centralisation presents a corruption risk. That is further compounded by the fact that there will be no third party appeal rights for decisions made by the planning commission. The planning commission will have this incredible power to approve significant developments on direction from the minister or the Premier, and the Governor, on direction from cabinet, will be able to step in and interfere with or amend these planning approvals, but no third party will be able to appeal these decisions; only the applicant will be able to appeal the decision. That potentially represents a real gap in the checks and balances that powers like these need to have.

I would also like to share my frustration with the claim that this is a reform bill. A previous speaker said this, so I am perhaps re-treading old ground, but it is not entirely clear to me that this is a reform bill. There is apparently some problem with the development assessment panels, although what that is remains a little unclear. I admit that that may be due to my own ignorance of the planning process, but there is apparently some problem with them. Our solution, our apparent reform, is to just take a certain class of proposals and shift them to a different body. I am not so sure that that really will fix whatever problem we have with the DAPs. Of course, those DAPs will be amalgamated. That is in the primary legislation. The bill will amalgamate the DAPs to create new special-matter DAPs. But again, most of the function of these development assessment panels will be prescribed in regulation. All the red-tape reduction and removal of unnecessary bureaucracy is actually left to subsequent regulatory amendments and are not in this bill at all. That raises the question whether the problems with the DAPs could be addressed not through this bill but through a change in regulations that the government could bring forward any time it likes.

Finally, I would like to home in on what I would normally like in a bill like this, which is apparently a COVID-19 response bill that needs to be rushed through very quickly—so quickly that it was attempted to be passed in the lower house in a single day and members were receiving briefings on the bill before they even had the bill before them. There is effectively a sunset clause for 18 months for many of the provisions in this bill. If this is an emergency COVID-19 response bill to kickstart the economy, it is appropriate to have a sunset clause—that is; "We're going to do this quick and dirty and see what the outcome is in 18 months. If it's no good, that's all right because it falls off the statute book." To some extent, the rushed pace in passing this legislation is justified because we are responding to an emergency. However, the government is touting this legislation as a reform package. If it is reform, it should be permanent; it should not be temporary. It is a little confusing. I understand that the drafting process took into account recommendations that came from a green paper, and wide consultation has been going on for a really long time. Perhaps there is mixed messaging. It is either an emergency measure or a root and branch reform. Which one is it? It is a little confusing for me at times.

**Hon Stephen Dawson**: Honourable member, before you finish, can I ask if you have identified whether you are supporting the bill or not?

**Hon AARON STONEHOUSE**: I was about to get to that, minister.

Red-tape reduction is great but the bill does not reduce red tape in any way that I can see. It amalgamates panels and creates a new streamline process. It does not actually remove the revelatory burden from businesses and applicants as far as I can tell. Most of the promises made by the government are not part of this legislation. They will be part of later regulatory changes. The process proposed here sounds like it will likely speed up approvals for some types of developments—the really big ones—which I would absolutely like to see sped up. I would like to see that process streamlined. Does it get the balance right? It is a further centralisation at the expense of local and community input in those decisions, and that is bad. However, at the same time we cannot hold up development because of a few complaining neighbours who do not want their perfect views interrupted, right? We cannot hold up development of the state for such trivial things. There are a few issues, including no third party right of appeal. I also have some questions about the rather arbitrary threshold for what is a "significant development". I understand there are several amendments on the supplementary notice paper so, at this point, I am keen for us to proceed past the second reading stage and into Committee of the Whole House so we can consider those amendments and see whether they enhance the bill or increase transparency and accountability. We will also have an opportunity to interrogate some of these clauses. As I said earlier, we can find out whether this bill does what it says on the tin. Will it deliver what the government promises? I am happy to see it through a second reading and see what comes out of the Committee of the Whole House.

**HON TIM CLIFFORD (East Metropolitan)** [8.33 pm]: I would like to identify that I am the lead speaker for the Greens. Touching on what a couple of other speakers mentioned earlier, I was in a bit of shock a couple of weeks ago when the Planning and Development Amendment Bill 2020 was read in and pushed through the other place. I thought it was a bit of a joke to think we could possibly address a bill like this overnight and in one day, and not be able to scrutinise it in the correct manner. What compounded that shock was the fact that last year I received

a briefing, and I was quite pleased walking away from that briefing. We talked a lot about past issues, the journey that planning has taken in this state and the need for reform. In my mind, that journey built up a lot of capital—one might call it political capital—in the community, and it brought a lot of people on side. When I saw this legislation, my phone lit up with a lot of concerns raised by councillors and people within the community. One of the questions was: Why? Why does this need to happen now? Why are we here? Why go through this whole consultation process to get to a point whereby we have to rush it all through and pretty much do what a lot of us in the community were not happy with in the first place, which is rushed projects, overreach and all those issues that were raised with me. I am still a bit taken aback that we are dealing with this bill.

I see this bill in two parts. I see the good part, parts 3 to 17, which embody a lot of the aspects of necessary reforms, and then I see the other part that deals with the COVID-19 reforms. In my mind, if this bill were to deal with fast-tracking approvals, proposals and developments, we would be dealing with that part tonight. I suspect the bill might not pass, because if these provisions were not attached to all the good things, it would be a lot easier to oppose. That is why I have to put it out there that, on those grounds, the Greens will be opposing this bill. My colleague Hon Alison Xamon will go into detail in her contribution on a lot of the reasons why we are opposing the bill, and cover a lot of the parts about overreach. As I said before, the political capital that the government is looking to expend will be diminished with a lot of the powers that it is looking to put in the hands of the government, which, given the fraught nature of planning in not only this state, but also across the country, and the relationship between developers and politicians, I find really difficult to understand why we are in the place we are at right now. I understand that we are experiencing a pandemic, but, in my mind, the actual numbers and reasons have not been given. What will be achieved by fast-tracking this bill? What are the numbers? What jobs will come out of these projects? Not much information has come my way when I have looked to find exactly what benefits will come from getting this bill through in the way that it has been put on the table.

I am familiar with planning issues, from watching and being a part of a few campaigns within the community. A lot of them relate to not only environmental issues, as one of the previous speakers raised, but also different councils and a lack of consistency across the board. One such issue that I took part in was the campaign about the Midland Oval redevelopment. That still has a bit to play out and a lot of community members are not satisfied with that process. When I was briefed on the planning reforms, which were discussed in good faith, we went around and discussed the issues and found that there was a lot of agreement across the community and the political divide to ensure that planning reforms being put forward would take the community with us, and I was assured that everybody would be very happy with where we were going to go with this thing.

**Hon Dr Steve Thomas**: It's never the case that everybody is happy.

**Hon TIM CLIFFORD**: Yes.

The issue of Midland Oval was borne out of a council that was not there to consult thoroughly with the community when the community wanted more public open space. There was a lot of trust bankrupted within the community, given some of the statements made by the council about adequate space and offsets. The council said, "The community has enough open space; there is enough open space to enjoy in the community", but the public open space it was talking about was pretty much drainage systems, bitumen car parks and road islands. That is serious; that is what it put out to the community in 2018. I found that galling, and it highlighted the need for reform.

Consultation was another issue. The City of Swan did a post-out; it sent letters out to the community asking, "Do you agree with the business plan?", but the business plan was not attached to the ballot; it was just a ballot with "Yes" and "No", and the community was expected to make an informed decision on a business plan that it had not been provided with. When I raised questions about it in this place, the answer I got from the Minister for Local Government was to the effect that the council mostly followed the Local Government Act, which did not go a long way towards reassuring people in the community that their issues had been adequately addressed throughout the whole process.

Before we go into the COVID-19 side of things, I want to highlight some of the good things in the Planning and Development Amendment Bill 2020, and why I think we should have taken stock and had a different kind of debate. I would have liked to have gone through the debate that was put on the table last year—the actual reforms. We could have been in this place, debating how we could get to a point at which the community would be happy. Not all of the community would be happy, because not everyone always is, but we could have been addressing inconsistencies across local government areas. We could address transparency in situations in which, if there is a major development, we could have adequate fora for planning proposals to be put to community members so that they could understand exactly what is involved when they go to council meetings.

Some community leaders have commented that it is not great to be part of a community in which every single council meeting is stacked with 300 community members yelling at the council. Some local governments have taken the steps necessary to address those issues by being ahead of the game with regard to planning and rezoning. The City of Vincent is one that has addressed some of these issues. The City of Bayswater has taken a lot of steps in the right direction. The Town of Bassendean has gone from being absolutely despised as a council to a local government that

is out there, working with community members to see what they want, but it has taken a lot of effort and a lot of work for it to ensure that it is ahead of the game. Some local governments are under-resourced, and to get ahead of zoning issues, they have to put in a lot of time, effort and money. That is what the good parts of this bill could address—consistency in the way we assist local governments so that they have the necessary tools across the board to deal with those issues.

Part 5, "Acquisition of land", creates the ability for a responsible authority to purchase the unreserved portion of a reserved lot to reduce the risk of creating a portion of land that is landlocked. I have spoken to communities in which there is land that the government has not been able to take back, so it has not been able to adequately compensate the people for being put into a situation in which their land is basically worth nothing. That helps to clarify the compensatory rights of landowners whose property has been acquired by the state. A few people have come into my office in the east metro with issues. I know that some people are really pleased. I sat down with a family last year and we talked about the hopes they had to move into a neighbourhood. There was an acquisition and they were left in absolute limbo. They wrote to federal members, the local council and local members. They did not know where to turn. Their last resort is to go to the media. That is when we end up finding out about these issues. They become political issues and they are then fought between political parties. Ultimately, people have to take sides, which erodes a lot of the trust that those people originally had with the powers that be, who they thought were there to protect them.

Part 6 of the bill relates to planning schemes and the referral of matters to the Environmental Protection Authority. The EPA has the ability to determine which scheme amendments should be referred to the EPA by regulations, which reduces the workload of the body. That streamlines the process in the appropriate way.

Under part 7, "State planning policy and planning codes", clause 62 of the bill ensures that all planning decision-makers, including public authorities, are directed by state planning policies. This is a welcome reform to ensure consistency and clarity across all planning bodies, which goes to some of the inconsistencies that have been identified by many people in the community.

Part 10 relates to requirements to set aside public open space or make a payment in lieu. Naturally, the Greens have concerns about the potential to reduce public open spaces. Clause 86 is welcomed. As our urban areas are increasing in density, it will be much harder for developers to adequately deliver public open space requirements. Allowing for the option of making a payment in lieu when proposing a development instead of negotiating afterwards will increase efficiency but hopefully will deliver better public open space outcomes.

Part 13 relates to improvement plans. I am pleased that the requirement of the commission to consult with local governments within an improvement plan is clarified. Hopefully, this will reduce future conflicts across council lines. One of the examples given was South Perth and a couple of local government boundaries and precincts, which allows one of the councils to get ahead of the game when planning or wanting to create a liveable space to ensure that people have the right amenity, including in future plans, the potential for public transport and the like. Only a couple of kilometres down the road, if a council was not so quick or forward looking, it ends up having to battle developers after the approvals have already gone through, and the community is left with developments that do not fit within the scope of where the community wishes to go. Pretty much the only people benefiting are the developers themselves as they walk away with the profits from those developments and the community is left to look at the eyesore that is left behind. That is very hard to reform once it has been built. That will definitely be a legacy issue in the future.

There are also concerns, as mentioned by other speakers, about the development assessment panels. They will be reformed within this process. Many members in the chamber would have heard of the term "scrap the DAP". That is a campaign cry for many people in the community. The DAPs were initially introduced to independently assess higher value and often dense urban environments. However, that has not always happened. The bill attempts to address some of these concerns by formalising the consolidation of the existing nine DAP panels, as implemented by the minister in April, and introducing a special development assessment panel. The talk around that consolidation and the concerns I raised with the government relates to the make-up of the panel and the specialists involved within that panel. I understand that there will be no change to the arrangement for local government members on development assessment panels. If the minister could confirm that before we go into the committee stage, that would be really appreciated. I also understand that there will be no local government members on the special matters DAP that deals with developments worth over $30 million, so it would be good if the minister could clarify whether that is the case. That goes back to what I was saying before about community members looking at significant developments in their backyard; that is, when they look at who is making the decisions, they will find that there is no-one who is close to that community to help them with that process.

I have a few questions about the special matters DAP. I would like a bit more clarification around the thinking and what led the minister to think that it was a good idea to put the special matters DAP together. That goes back to the other speaker who said that if these significant reforms are going to be introduced, there must be some type of development that the minister had in mind. It might have been a particular project, but it would be good to have some clarification about the types of developments that are being looked at to be streamlined by this process.

As I mentioned before, I would also like to see any economic modelling around this process to determine whether it will help the state get through this pandemic.

I also note that the Western Australian Local Government Association has raised concerns about the special matters DAP. Questions have been raised about the broad strategic nature of the special matters DAP. The special matters DAP can give advice to the minister, the commission or the local government about the development application, as detailed in proposed section 171A(2). It would be good to get more clarification about that. Are there concerns about public works? The explanatory memorandum references public works exemptions for the benefit of social service. What does that mean? I note that the department clarified in our briefing that it is intended that "public authority" will include bodies like the Water Corporation and Western Power; however, WALGA has highlighted concerns that there could be a broad interpretation of "public authority", so exactly what sort of scope are we looking at there?

I would like some clarification of the planning codes referred to in part 7. During the briefing, the department indicated that planning codes introduced under new part 3A could include industrial codes. If the minister could provide a bit more explanation about why that is the case, that would be great. Could the minister also confirm what the responsible authority will be relevant to the purpose that the crown land is being developed for under part 9?

Ultimately, outside of the concerns that I have raised in my contribution to the second reading debate, it is worth noting that different speakers spoke about economic development being at the core of this bill and it will provide many jobs and the like, but we have to think about the long-term repercussions of fast-tracking a bill like this. When a government goes through a consultation process within a community but it does not bring everyone along, it needs to satisfy many people that at least there was a process that people could be a part of. If the reforms are put forward in a way that is acceptable to the community, there will be space for the government to say that it did this in the right way and it had input from people who do not necessarily agree with the Greens, but they really appreciate the fact that it got to a point at which they felt consulted and were part of the process. The alternative is to be part of a council that basically walks all over the community and has people pointing to another council and saying, "Why don't we have what they have—active members and active people who work within the council who want to a develop a space where people want to live?" Those broader planning reforms would have allowed for consistency and a framework for the councils that are not doing such great things that they would have to work towards. That would mean better outcomes for people in the community, which means that people are not only more satisfied with the transparency of the process, but also glad to live in their community. It was pointed out to me when I went to one council area that the area has the worst tree coverage in Australia and that if I drove 200 metres the other way, I would be in an area with some of the best tree coverage. I do not need to be a nimby to point out that there are inconsistencies between the two places.

Not everyone will get what they want. At the end of the day, agendas are playing out between councils and different developers and lobbyists who want certain developments to go ahead. A strong framework that has been developed in consultation with the community means that we will get to a point at which we will not have what we have had up until now, which is pitched battles and multiple petitions about planning coming to this place. I have seen my fair share of petitions, as a member of the Standing Committee on Environment and Public Affairs. All these issues go back to inconsistencies with planning and the different personalities at play across the community that the community does not trust. To its credit, when the government first got into office after the 2017 election, it was quick to point out that it would definitely take the community on this journey and that it would get to a point of meaningful reforms to ensure that we have vibrant communities in which people want to live.

It is disappointing. It will take a long time before the government can get back to the space it was in before it tried to fast-track this bill a couple of weeks ago. If governments are going to put through bills like this, they should not try to put them through within 48 hours. This bill has 100-plus clauses and two distinct parts, which could have been separated. If the government had wanted us to deal with the COVID-19 part of the bill, we could have done that. I understand the reasons why the government attached one side to the other; doing it that way makes it very difficult to oppose the bill. In saying that, it is disappointing. I hope that whatever happens, the government works extra hard to get back some of the capital that it built in the community. It needs to listen to what has been going on. As one member pointed out, the North Stoneville development is a legacy of the 1990s. Do we want a planning legacy issue from 2020 that people are dealing with in 2042? Those are the real tangible outcomes of poor planning reforms being fast-tracked through this place without the proper checks and balances. As I said, the Greens oppose this bill. My colleague will go into more depth about the COVID-19 side of things. I hope the government monitors the outcomes of this bill because I do not think it will produce its intended outcomes.

**The ACTING PRESIDENT (Hon Dr Steve Thomas)**: Hon Alison Xamon, before I give you the call, are you the lead speaker for the Greens?

**Hon Alison Xamon**: No, Mr Acting President, I am not the lead speaker for the Greens so the timer will start.

**The ACTING PRESIDENT**: I was just checking.

**HON ALISON XAMON (North Metropolitan)** [8.58 pm]: As was indicated by my colleague Hon Tim Clifford, who is the lead speaker for the Greens on this bill, I, too, have some comments about the Planning and Development Amendment Bill 2020. When I think of this bill, I think of the little girl with the curl because parts of this bill are very, very good, but, unfortunately, parts of this bill are horrid. It is for that reason that the Greens will not support this legislation. Tonight I will go into the very details about why, unfortunately, this bill cannot be supported.

Some elements are part of the orderly progression of planning reform that has been underway for the last couple of years, as my colleague Hon Tim Clifford alluded. I have said multiple times in this place when I have stood to talk about various shambolic processes that have occurred, particularly in my electorate of the North Metropolitan Region, that there is a desperate need for wholesale reform of planning processes. Unfortunately, some elements in the bill that we have been left to debate today are, frankly, nothing but a wild grab for power by the Minister for Planning. That comes on top of previous power grabs by regulation, and I will talk a little about that later. I also note that the government has amendments it will move that would at least allow the Parliament to disallow some of the worst of that overreach, but I am concerned that we should not allow that overreach in the first place.

Like many MPs, I assist constituents to navigate the various levels of the planning system. I have done that in this term of Parliament as a member for the North Metropolitan Region and I most certainly did it repeatedly when I was previously a member for the East Metropolitan Region. What we do know about navigating our way through the planning system is that it is not easily legible. To be honest, most electorate issues that come into my office are about planning matters and not about my portfolio issues, which are mainly mental health and prison issues. Most issues in the north metro electorate are concerns about planning. That tells me that the system as it stands simply does not serve the community. It is widely accepted that there are valid problems with the planning system. Some issues that need urgent remedy include a lack of consistency and efficiency across the different elements of the system, difficulty on the part of all parties to navigate within the system, and a lack of clarity about what is and what is not allowed. I, personally, have had my own nightmares trying to navigate my way through those planning systems, so I absolutely understand that.

I have also made multiple submissions on petitions that I have tabled in this place regarding local planning scheme updates. Members of the Standing Committee on Environment and Public Affairs can testify that I have repeatedly mentioned in those submissions how poorly infill has been done in the past. Too often in the past infill has resulted in a loss of local amenity, with none of the social, cultural and economic benefits that we would expect from well-executed infill. That is frustrating because the Greens are huge supporters of infill. It is absolutely the way to ensure that our city boundaries do not extend beyond what is sustainable.

I note the second reading speech firmly acknowledges that the proliferation of poorly planned and designed infill projects have generated significant community concern and distrust. As I have said, I am a member of Parliament who can stand here to testify to that. I have previously spoken about my overall enthusiasm for planning reform. For example, I have spoken on a number of occasions about the good work Evan Jones did in the planning reform green paper, which built on years of calls for reform prior to that. I look forward to the implementation of Design WA and the finalisation of policies for apartment, precinct, neighbourhood and house design. I have also spoken in the past about my hopes that these policies will have the effect of making desperately needed infill of a much better quality than we have seen in the past. I have also spoken, however, about my fear that those quality design principles still run the risk of being disregarded and at the discretion of the relevant decision-making body.

This bill contains some elements that flow naturally from the review process, and these are the positive elements that my colleague spoke to. But a large chunk of the bill, and hence my and the Greens’ concerns about the bill, flow from those elements that are designed to make it easier for large development projects to get off the ground—the so-called COVID-19 provisions. I will particularly focus on the COVID-19 recovery elements of this bill—that is, specifically part 2 of the bill. I think part 2 of the bill dramatically overreaches on the powers that should belong to any one agency or any one minister. To summarise quickly, large developments worth $30 million or more that provide 20 000 of square metres of lettable area or 100 dwellings or something else entirely that is yet to be specified in regulations will have access to an approval pathway through the Western Australian Planning Commission, rather than the joint development assessment panel process. In 2019, we saw 57 developments meet the $30 million mark and of those, probably 90 per cent met the additional requirements of lettable area or number of dwellings. That would make up roughly 20 per cent of applications that came before the DAPs in 2019, and that includes the WAPC process to determine whether and how to grant approval for a development. That process explicitly sits outside the reach of a range of acts that I note we have deliberately put in place to make sure that we have checks and balances around inappropriate development.

After much community protest, I note that the supplementary notice paper now includes government amendments to ensure that community consultation in some form will take place and that the Environmental Protection Act will still apply fully. But the WAPC is not required to give due regard to the advice it is required to seek from the Environmental Protection Authority, the Heritage Council of Western Australia and the Swan River Trust. The decision-making process explicitly—I will talk more about this—involves input from the Minister for Planning,

and due regard must be given to that submission. The WAPC must not determine an application based solely on planning grounds, but it is a planning decision. Despite the WAPC disregarding all other legal instruments while making a determination, the developer is still required to seek ordinary permits. However, if those permits cannot be granted because the development cannot be done within the boundaries of existing legal instruments, the developer is able to apply to the minister to direct the pesky agency standing in the way to effectively stop doing its job under the act, even if the minister's direction would—this is a classic—result in action or inaction that would ordinarily be illegal.

We now have a number of amendments on the supplementary notice paper that it is intended will ameliorate the effect of this hugely problematic part of the legislation, ranging from my own amendment, which removes this power from the minister entirely, as is proper, to the government's amendment, which, in response to community outrage, intends that these powers will at the very least be disallowable. I suspect that if that amendment gets up, it is likely that power will be exercised.

Despite the enormous amount of assistance and what we expect to be considered assessment within the approval process, the developer will still have 48 months from the time of approval until significant commencement. One would think that given all the handholding and deliberate overturning of all other legal instruments, a shorter time frame would be more appropriate. Despite the legislation being labelled as a COVID recovery action, it might take up to six years from the time that this bill passes for developments to begin. There is a deliberate setting aside of legislation that we have developed over years to ensure that we retain our natural and built heritage to pass on to future generations and a deliberate deferral to the minister and the Premier in a number of different aspects of the legislation, but we will not necessarily see action any faster than we would have ordinarily.

I am enthusiastic about the pre-engagement process that has been described to me. I think that getting all the decision-makers around a table early and ensuring that foreseeable issues are addressed as early as possible is obviously a very good thing. My only concern is that this process is not actually reflected in the bill before us. Instead, the legislation will give power to the minister to issue directions to other government agencies and bodies to comply with the WAPC approval.

I was also pleased to see that time limits on the decision-making body have been removed. Planning and development is definitely an area to which to the old saying more haste, less speed should apply. It is better to take the time that is needed at the beginning of the process to make sure that the issues are appropriately untangled before they become unsolvable problems and cause a project to fail months down the track, which is a waste of time and money for everybody. I am genuine when I ask this question: could we not have solved the problem of a lack of communication across government departments, which is a genuine issue, in a way that did not take out good governance and turn the whole thing on its head? There must have been a better way for us to achieve that outcome.

I particularly want to talk about some of the concerns I have with the way this bill is presented and how it could potentially facilitate corruption risk. We know that planning and development is an area that carries huge consequences for communities. It can also be extremely lucrative and very dependent upon government policies and decision-making. Every year, when the political donation disclosures come out, the biggest corporate political donors are those who stand to benefit the most from government contracts and lose the most from increased regulation or taxation. If members look at the returns from 2017–18, property developers have remained one of the largest industries providing direct political donations across Australia. They stand with extractive industries as one of the groups with the most to gain and also the most to lose when it comes to issues of government regulation and reform. Unsurprisingly, we find that those industries tend to be amongst the biggest political donors because money, frankly, gets them access. At the moment, access to ministers and their senior staff is one area in which we have the least transparency in Western Australia. Managing the corruption risk in this area poses an ongoing challenge. It is also a very big challenge to manage the risk of a patron–client relationship, in which corruption is much harder to detect, but the prioritisation of a donor's wants and needs at the expense of the wider community most certainly exists.

I turn now to how risk has been mitigated elsewhere. In some of the eastern states, which have different arrangements and ministers are more immediately involved in planning and decision-making, there is unfortunately a perception of corrupt activity and a history of planning ministers being stood down for poor behaviour in this space. To ameliorate some of that risk in the eastern states, caps and bans have been implemented on political donations from the development sector. Traditionally in Western Australia, we have attempted to mitigate the corruption risks by limiting the amount of direct involvement that the minister and the Premier can have in decisions. The Western Australian Planning Commission and the development assessment panels make decisions and the Department of Planning, Lands and Heritage provides the framework and the structure for that decision-making process. We have deliberately made a policy decision to hold the minister and the Premier at arm's length, but this bill turns that on its head. Instead, we are pushing towards the minister having much greater input in these very large decisions, but none of the concomitant leashing of the development industry and how it engages with the minister and the political system. I will be moving amendments to reduce the minister's multiple avenues for influencing the outcome of this decision-making, but the situation is worse than that.

The effect of part 2 of this legislation is that it conflates the profits of developers with the overall good of society; that is a stretch. The WAPC, in determining an application, need not refer to any legal instruments. This means that for the projects referred to this pathway, the legislated requirement to consider a number of acts that ordinarily would affect a development application is being set aside. Although it is possible that due regard might be given to the consultation provided by the agencies responsible for upholding the values enshrined in that legislation, the fact is that the WAPC will not be required to do so. In fact, it will be given something of a free pass not to do that. I hold very grave concerns about what else might be found inconvenient over the period of time that part 2 of this bill is live, given the wide sweep of what may be determined later in regulations. If at some point a government body or agency finds that the legal requirement for public consultation simply will not allow it to issue a relevant permit, the minister will be able to make it legal by just saying so. I do not think that is good governance at all. Therefore, I am pleased that the government has recognised this and will be moving amendments to make the use of these powers disallowable at least, as I have said. However, I maintain it should not be done in the first place. There is a line between streamlining an application process and disregarding the checks and balances that should apply to ensure that a project will not disrupt community values. Part 2 of this bill falls completely on the wrong side of that line, and I intend to move amendments to that part. The reason that we have different ministers and different legislation to cover the various elements of our systems is to ensure that the experts in each field are able to implement their legislation to the best of their ability. Entire government departments have responsibility for ensuring that they maintain that expertise to ensure that nobody's pet project can override the protections that are supposed to be, and that the community expects will be, baked into the system.

I believe that the Department of Planning, Lands and Heritage and the WA Planning Commission will enter into this process with every intention of ensuring that community needs are met and community values are protected. I do not intend to ascribe poor faith to these departments. I am commenting on the words of the bill in front of us and what that will enable the WAPC and the Minister for Planning to do. Our responsibility as legislators is to look at the words that are presented to us and determine whether they will enable a framework that we are comfortable with. It is not up to us to simply go on good intentions and assurances. We have to look at the law as it is presented to us and determine whether it satisfies our concerns. Members, this bill does not satisfy my concerns. I have spoken many times in the past about how I am concerned when the regulator and the promoter of an industry are both housed in the same department. This is an issue with mines, for example, that I have been raising for at least a decade. However, this is a substantially worse outcome. That is because the government will not only be able to direct projects onto this pathway, but also advocate for those projects, and then bulldoze any and all objections to those projects. I am not saying that the Minister for Planning will do that. However, the bill as it currently stands means that the minister absolutely can do that. That is appalling. It will be irresponsible of us as a Parliament to allow that to occur.

The WA Planning Commission is supposed to be the deciding body of the streamlined process for the post-COVID recovery. It has been raised with me on more than one occasion that it will be quite hard to ignore a project that has been specifically referred by the minister. It is almost as though there will be an implicit expectation that the project will be approved. It is even harder to ignore the implications of proposed section 275, which strongly suggests that the WAPC will approve projects for reasons that are unrelated to the quality of the planning that has gone before it. That includes ignoring activities that would ordinarily have been unlawful, and approving plans that clearly contravene restrictions that would ordinarily apply. This is clearly an area that is making the community uneasy. I have received quite a bit of correspondence about this, notwithstanding the extraordinarily small time frame that has been available for communities to even become aware of what is in this bill. I note that if we had a history of developers doing the right thing by the community, it would not be quite as concerning. However, people are already anticipating that dodgy developers and dodgy developments will be set on this pathway and approved without sufficient oversight. People simply do not have confidence that that will not happen. I of course respect the planning expertise of the WAPC, and I expect I will also respect the planning expertise of the about-to-be-established development assessment unit of the Department of Planning, Lands and Heritage, which will support the WAPC to assess these applications. However, the effect of this proposed section is to ask the WAPC to approve projects based on reasons outside of planning merit. I have yet to see who will be responsible for holding that expertise for the WAPC, rather than merely being consulted by the WAPC.

During the recent debate on the local government amendment bill, I noted the changes that have been made through the Planning and Development (Local Planning Schemes) Amendment Regulations 2020 in response to the COVID-19 pandemic, and at that time I flagged my concern about the huge swathe of discretionary power granted to the minister under those regulations. I remind members that these regulations basically give the minister carte blanche to issue exemptions from planning requirements under the local planning scheme, with only conditions imposed by the Environmental Protection Authority remaining in force, and that those exemptions can be granted without requiring that the emergency declaration apply to the area covered by the local planning scheme. Further to that, the consultation required under these regulations is that the minister should make reasonable endeavours to consult the Western Australian Planning Commission and Western Australian Local Government Association, but it does not really matter if they do not; it does not really matter if it does not happen. I have to say that between this bill

and the regulations that previously passed in relation to COVID-19 recovery, there has been a dramatic transfer of power away from local government and the community and into the hands of the minister. It has taken substantial public outcry to ensure that the government puts community consultation on to the supplementary notice paper. I again acknowledge that losing community consultation may not have been the initial intent of the bill, but it was initially enabled by it. It is just as well we have a Legislative Council that can ensure that the work is being done to make some corrections to bad legislation. What a shame the other place does not do its job, but anyway.

We know as MPs that there is a huge variation in how genuine engagement in community consultation can be throughout the planning process. I have seen some absolute shockers over my time in Parliament, but I have also seen some excellent planning consultation processes and how it can be done really, really well and bring the community along. There is certainly a huge variation in outcomes as a result. Those decisions can often be extremely hard to understand in the context of our strategic planning documents and directions. I am afraid that part 2 of this legislation and the COVID-19-related local planning scheme regulations will further increase community uncertainty. I think they will reduce the safeguards of other legislation intended to protect community values and prevent tipping the balance, and we will now see the balance tipped even further in favour of developers.

The minister said in the second reading speech that the purpose of this bill is to focus on strategic planning, improve community consultation and provide greater consistency across the state and local governments, but the COVID-19-related elements of this bill will not do that—not at all. If anything, those COVID-19 elements will remove certainty, remove consistency and, effectively, extinguish community consultation. I understand from our briefing that it was not the intention to do this, and I believe the briefers. I believe the government will move an amendment to ensure that community consultation on the WAPC pathway will take place, and I will also move an amendment to be sure community consultation will take place.

I have been following the progress of planning reform with some great interest and enthusiasm, because, as I said, it is desperately needed. Anyone who thinks that our current planning processes are working has rocks in their head. The green paper identified that so many of the issues I see causing problems in the community keep coming up over and again. The initial steps that the government was taking to address those issues have largely been positive, but part 2 of this bill is a massive step away from those positive reforms. Those positive reforms originally sought to enhance the governance, transparency and community consultation around planning, but part 2 of this bill has instead increased the possibility of failures of integrity in the oversight of the development industry. It has removed the necessary application of so many of those laws, which are precisely designed to ensure we can pass natural and built heritage down to our children. I am disappointed beyond belief with the COVID-19 response that is embedded in this bill, because planning reform matters. These processes need to be tidied up so that no-one has to go through multiple iterations of the same information and multiple applications for the same project. It is equally exhausting for the community. Every bit as much as it is time consuming, it is expensive for the developers. Community groups should not have to constantly be on edge, making sure they keep an eye on what developers are doing. They should be able to trust that they have a genuine opportunity to provide input and that the input is going to be appropriately considered, and that what is finally proposed will comply with the various strategic documents and planning schemes. People want to know, particularly if they are residents, that what they have signed up for within a scheme where they live is what is going to be in place. However, over and over, this is not what happens. Community groups are instead left to spend resources—sometimes monetary and sometimes sheer energy and time—to fight every step of the way in an attempt simply to gain a fair outcome. Far too often, consultation is merely a tick or a flick at best. Far too often, only the actions of an engaged community actively fighting an inappropriate development ensure that it is ultimately halted or slowed.

The system should be making it easier for everyone to understand how to engage and ensure that everyone is treated fairly. It has taken us a long time to reach what we currently have within the planning system. It is far from perfect and I will continue to advocate for appropriate planning reform. However, the planning system does at least ensure there is some measure of balance between the community's various needs, whereas part 2 of this bill effectively ensures that we will conflate developers' profits with community good. Of course, I am not arguing there is not a genuine need for economic recovery. We all know that there is. But I am arguing that the time frames this bill allows for a COVID response are not such a compelling argument that we can justify the expediency in sidelining some of our core values—for example, community consultation. An example from my area that caused me not an insignificant amount of work was the 3 Oceans application. I have referenced this before in this place and I will talk a little bit about it now. Part 2 of this bill explicitly excludes Metropolitan Redevelopment Authority land from the Western Australian Planning Commission approval pathway, but the steps by which the 3 Oceans approval was eventually granted clearly demonstrates why the community holds serious concerns about the over-involvement of the minister and the Premier in the planning process. There was originally genuine consultation with the community and a scheme was widely supported and agreed upon. It was a good scheme. The application from 3 Oceans was therefore rightly originally knocked back for being ridiculously out of step with what was allowed under that scheme. A lot of pressure from the minister and the Premier followed, along with ministerial mediation. The decision-makers at the MRA were replaced by representatives from organisations that had been advocating for the proposal. Surprise, surprise—the second time around it was passed. At no point did the Premier or the minister

say, "This proposal doesn't meet the scheme requirements that were finalised just last year, so go away and make sure you design something that fits." Instead, they used their power and influence to ensure it was approved. I have seen that happen and seen similar things happen in South Perth and Canning Bridge. I have also seen the long and ugly history of much-wanted development stymied in East Perth and Claisebrook to keep concrete batching plants on-site, and on that note I want to say, "Hanson and Holcim, go. Nobody wants you there. You've lost your social licence. Please leave—move on." Is it any wonder that the community has no faith that this process, with such a high involvement with the minister, will bring about outcomes that will match local planning schemes? It is a process that seems designed to remove the opportunity for the community and ordinary regulators to say no to dodgy development.

I will move several amendments that I hope will ameliorate what is an egregious overreach of the COVID-19 response elements of the bill. I am disheartened that the genuine need for reform to ensure that agencies are working together, issues are identified early, and proposals are sensitive to local areas and community needs has not been resolved in the way that part 2 of the bill proposes to resolve it. Instead of drawing firm lines within which we expect developments to colour, we have instead written into our legislation that they can colour as they choose and the Western Australian Planning Commission and the minister can redraw the lines to suit and effectively bulldoze any other agencies and departments as required. We have already given up substantial amounts of transparency in and oversight of a range of areas to ensure that we can address the range of issues that the COVID-19 pandemic has caused, and those bills have largely come with sunset clauses that ensure the provisions of those bills will effectively disappear once the crisis has passed. But in this case, despite the time limit of the legislation, the community will not be able to move beyond this. The community will be left to deal with whatever development happens to result from this process for decades, if not indefinitely. Planning and the kind of large-scale developments that will be dealt with through this process need to be considered closely and carefully, with the understanding that what we do now will impact the future for decades. It is unacceptable to even contemplate that poor governance can be borne into these processes. As I said, we will be living with the legacy for a very long time, and, despite the best intentions, poor governance is enshrined in part 2 of this legislation. Regarding the sort of overreach and the sorts of powers that we will give the minister and the Premier, we have not even come close to being able to look at any of the sorts of checks and balances that have had to be put in place within Australia, particularly over east, as a direct result of poor behaviour and overreach.

I am concerned that we are seeking to pass legislation that will enshrine some terrible processes. It is very disappointing that we have lost the opportunity to implement all the positive reform, much of which is outlined within the green paper, and instead that we have this cobbled on overreach. I understand that the numbers in this place indicate that this bill is likely to be passed, which is extremely concerning. At the very least, the Greens will attempt to mitigate the worst excesses to the extent that the house will support them, but it is for those reasons that, unfortunately, the Greens will not be supporting this legislation.

**HON COLIN de GRUSSA (Agricultural)** [9.33 pm]: I confirm that I am the lead speaker for the Nationals WA on the Planning and Development Amendment Bill 2020. With the changes in seating arrangements in the chamber, it is a little different emerging from this side than from the trees and bushes on the other side of the chamber, although I am sure that my colleagues on this side of the chamber agree that we are just keeping the seats warm for next May. As I said, I am the lead speaker on this bill for the Nationals WA. As my colleague in the other place and lead speaker on planning, the member for Moore, has said, we will support this legislation, notwithstanding that there are certainly some concerns and issues that need to be explored in further scrutiny as we go through the Committee of the Whole House stage.

As others have said, the opposition in this place and the other place has shown a willingness to ensure that legislation that is required to respond to the COVID-19 crisis is dealt with in a timely fashion. Having said that, that is not an excuse to rush poorly drafted legislation through the Parliament, and we have seen quite a bit of that. The Standing Committee on Legislation is currently inquiring into three bills, so there is certainly a need to make sure we scrutinise legislation properly in this place, because that does not appear to be happening in the other place.

I will start by thanking the Minister for Planning and her department for the briefings on the bill they provided to me and my colleagues. I know others have had the experience of briefings being arranged before bills are ready, and it was certainly a challenging start. Having said that, the information that was provided in the briefing, the overview of planning reform and the details in the explanatory memorandum, were particularly good and very comprehensive, and certainly went a long way towards explaining the intention of the bill. That was very much appreciated, although the process probably did not get off to the best start with attempts to get this bill dealt with in a very rushed manner. It never ceases to amaze me how those in the other place seem to think we can just whack these bills through willy-nilly, without properly scrutinising them.

There are elements of this bill that create angst and concern amongst community members; that is not unexpected. Any mention of reform of planning and local government causes a lot of concern in the community because people are very anxious to ensure that their voices are still heard on the different elements and aspects of planning legislation in our state. There are however at this time some mitigating circumstances, to some extent, in that a response to COVID-19 is very much necessary. Our economy has and will continue to come under extreme pressure in the

not-too-distant future, and, as a consequence, many different actions need to be taken to kickstart the economy before it needs to be put on life support. This legislation is one element of that. Obviously, there are elements of this bill that revolve around planning reform that has been on the agenda for some years, through the processes of the green paper on planning and the action plan for planning reform. These are all combined in this bill, along with some COVID-19 elements added in. I believe—and the Nationals WA agree—that it will go some way towards providing stimulus to the economy, and that is, as I said, very necessary at this time.

Another important point with planning legislation is the engagement and involvement of local government in any reform. In many smaller regional communities, local government is intrinsically entwined within the community and in many of them is the largest employer. As a consequence, it is important to ensure that local government is very thoroughly engaged in the process. Given the need, from the government's perspective, to be expeditious with this bill, consultation on some aspects of this bill probably has not been as good as it otherwise would or should have been. It is certainly a concern that has been expressed by the Western Australian Local Government Association and by local governments in conversations we have had with them that perhaps they were not engaged as well as they could have been, notwithstanding the fact that there is an obvious need to get this through reasonably quickly. Again, we recognise the importance of engaging local government in any planning process. We are also keenly aware of the opportunities that exist for local governments with planning reform. One of those contentious local issues that can hinder development is poor planning legislation or poor planning practices. It can certainly hold up the development of new and exciting opportunities that might not otherwise be able to happen in communities. Some level of planning reform is good. A level of planning reform that gets other government entities around the table to allow them to be engaged in the process in the very early stages is a good thing. It is certainly a good thing because often those little cumulative effects along the way add up to delay or stop projects from happening. As other members have said, we are a regular point of contact in our electorate offices for people to come in with local planning and local government issues. They will obviously blame the local government at the first point because that is their local point of contact, yet in many cases those local governments have their hands tied through the processes that exist; so reform is a good thing. We certainly hold local governments and the Western Australian Local Government Association in the very highest regard. We seek to ensure that in the second tranche of planning reforms that are contemplated in future legislation, they are thoroughly consulted and are very much involved in the process. I would argue that as many regional local governments as possible would need to be involved, as well as their representative organisation. There are some unique aspects to some of the regional local governments and we need to ensure that they are consulted as well.

The Nationals WA also consulted with other representative bodies. My colleague the member for Moore and I met with representatives from the Housing Industry Association, the Urban Development Institute of Australia and the WA division of the Property Council of Australia. Obviously, industry is very supportive of these reforms; unsurprisingly, I guess. Hon Rick Mazza talked earlier about the need to ensure that the property industry can be a really important part of an economic recovery. We need to ensure that these sorts of things can happen to allow it to get on with doing what it does and help to contribute to the recovery of the economy post-COVID. Notwithstanding that, there are also obviously issues related to planning that have been around for a long time, and the industry is excited about the opportunity that some of these reforms will provide. I think that is a good thing.

The Nationals WA are very committed to sensible economic growth, especially in our regional areas. Improving this sort of legislation is certainly a way forward with that sort of growth. There will be a great number of challenges ahead for our state and our nation in the next 18 months. We need to make sure that we clear up that red tape—as well as some of the green tape—and remove as much of it as possible in order to progress our economic activity and keep our economy as strong as it can be.

In that consultation process with some of those industry players, it was very surprising to learn about some of the contributions developers have to make to local government. They gave some examples. For example, in the City of Swan, the development contribution that the developer had to make on every lot, regardless of its size, was $85 000. That is $85 000 tied up in development contributions on a lot. The City of Swan was not comfortable with the accountability and reporting about where that money was going and what it was being spent on. It kind of ties up a fair bit of capital. There could be a 100-square-metre lot with an $85 000 development contribution. Indeed, there were concerns that nearly one-third of the cost of land is tied up in some of these fees and charges as well. All those aspects of development and planning and so on need to be considered as they are perhaps adding some unnecessary and expensive costs to what ordinarily should be a lot cheaper development. Those contributions need further review and checking through whatever reforms are proposed.

This bill is a hybrid, and others have talked about that. A component of the bill seeks to provide some COVID-19-related changes, and we have the long discussed changes that have come about from reviews of years gone by and the changes proposed by the minister's own review in 2018. It is kind of a hybrid of these three things. I hear the argument that perhaps they could have been done as separate measures and the COVID stuff could have been done separately. My view on that is that if the government is going to make legislative change, why not get on with it rather than taking a piecemeal approach? It would certainly be much more productive to bring that legislation before Parliament all at once so that we can get on with it.

In the minister's second reading speech, he made the statement that this legislation has been brought forward now to assist in recovery from the COVID-19 pandemic and that planning reform is an enabler of better investment outcomes, together with community outcomes. That community aspect is an important point, because much of the correspondence on this bill that I have received as a member of Parliament has been from community members. It has not been from the large developer organisations and others like that; I have had very little contact from them. Most of that correspondence has come from very concerned community people, and I think is it important that we ensure that they are engaged in the process.

Debate adjourned, pursuant to standing orders.

## ABORIGINAL HERITAGE — ARCHAEOLOGICAL SITE PROTECTION

*Statement*

**HON ROBIN CHAPPLE (Mining and Pastoral)** [9.46 pm]: Earlier today, I made a contribution to the debate that we started and I got to the point of talking about Indigenous land use agreements and contracts and exploration and mining. One of the fundamental problems we have is that, notwithstanding the right under the native title legislation and, indeed, under the Racial Discrimination Act, the agreements that are established that go back almost 20 years run against that. There was an interesting article in the *National Indigenous Times* by Wayne Bergmann, who is an industry fellow at Griffith University and also part-owner of the *National Indigenous Times*, and I will briefly touch on it. He makes the following point —

> The first point to recognise is that Australia's Native Title Act 1993 should act to protect cultural heritage as one component of Native Title but does no such thing.

He goes on to say —

> They understand the mining industry needs to wait six months and then the National Native Title Tribunal will do its job and grant the mining lease without the consent of Traditional Owners.
>
> This process places Native Title Holders and their advisors under incredible pressure.

I now want to turn to some of the elements contained in some of the agreements. Professor Ciaran O'Faircheallaigh, who I think has worked for the state on several occasions, identifies that under one agreement that he saw, the Aboriginal group must not lodge any objections, claims or appeals to any government authority under any state or commonwealth legislation, including environmental legislation. So, immediately, they cannot lodge a complaint against a section 18 decision. They have no right of appeal in any court at either the federal or state level.

I think I mentioned earlier that I had some dot points arising from one Indigenous land use agreement, but I want to turn to a real live agreement. It is all redacted, as members can imagine. This is an agreement over exploration; it is not to mine. It contains a number of clauses, and states —

> The Proponent shall not give notice under section 18 of the Heritage Act over any area …
>
> …
>
> The Proponent must consult …
>
> …
>
> The Claimant Group will:
>
> (a) withdraw any existing Objection to the grant of any Tenement Applications within 7 days … of this Agreement;

After the Indigenous group signs the agreement, it is not allowed to object to anything—full stop—and that is just for exploration. These very agreements underpin the whole problem because Indigenous communities have no right. The agreements also provide that they are not allowed to comment on the nature of the agreement. As I said, most of these agreements are about 20 years old and date back to when the industry started in the Pilbara.

There is another problem; the poor old consultants feel the wrath, too. Brad Goode, a well-known archaeologist, was doing some work out there. He found some sites and recommended a 50-metre exclusion zone around the sites. According to *Twiggy: The High-Stakes Life of Andrew Forrest*, which is written by Andrew Burrell, that was, according to my notes —

> … a move that would have involved further consultations and additional approvals under the Act. He was shocked when Fortescue asked him to amend his report: "It was the worst, most reprehensible experience I've ever had as an anthropologist." In response, Fortescue said it always scrutinised the reports of its consultants to ensure their work was relevant …

Mr Goode was literally marched off the site to the local town. He spent seven months in court fighting to be paid for all the work he had done because Fortescue would not accept his report. A while ago, I tabled in this place another set of documents that referred to a consultant whose report had been falsified. Between the time that she

created it and submitted it and it went to the mines department, it had changed. When it got to the mines department, there were no sites, yet during her work, the consultant had established five sites, three of significance. They were all expunged from her report by the mining company before it got to the mines department.

**Hon Alannah MacTiernan**: Which mining company was that?

**Hon ROBIN CHAPPLE**: It happens to begin with “F”. I think members can know.

It is amazing that this sort of stuff goes on. We asked a number of consultants and others to give us an idea of the problems that are faced by traditional owners on their sites. They are consistent. I turn to a letter that was written by Sue Singleton, an archaeologist and consultant, to the Registrar of Aboriginal Sites. The salient points of the letter state —

> These requests included the deletion of Section 4.3 – Ethnographic Context.

This is the company beginning with “F” again. According to the letter, the mining company stated —

- the ethnographic context was not part of the brief …

The letter continues —

> A substantial body of detailed recording, carried out in preparation for s18 notices and s16 applications, was performed by Veritas and Eureka.

The services of the consultancy, which was very reputable, were discontinued because it would not modify its report. This letter of 5 November 2011 to the registrar outlines the basic problems and duplicitous position, but nothing has happened to date. There are two issues. In his paper, Philip Moore, an eminent archaeologist and anthropologist, refers to the problems he had working in Western Australia. The first thing he was asked was, “Can you write the report the way we want you to write it?”

Not only are the traditional owners not allowed to speak; these agreements are embedded. I must say, and I said it during the debate earlier, that I am surprised Rio Tinto did not take the Puutu Kunti Kurrama Pinikura Aboriginal Corporation to the cleaners in court, because by going public they breached the agreement. They are not allowed to do that. That applies also to the Banyjima people, the Nyiyaparli group and all native title groups up there, including the Yindjibarndi people and the Gumala Aboriginal Corporation. They all have the same problem. Since the PKKP went public, there has been almost rejoicing out there because somebody has broken the nexus. It will be interesting to see in the future whether other people will be prepared to stand up. I think the problem is that the PKKP got away with it and it then got to the point that the mining corporation was afraid to take any further action against the PKKP for breaching its contract. The genie is out of the bottle. I have known this for quite a while. I have previously mentioned it to the Attorney General and to the Minister for Aboriginal Affairs, but we just have not dealt with it.

That is all I will deal with tonight. I will have another go tomorrow night because I have quite a lot more to say. I have now received a lot of documents from traditional owners, outlining their concerns. I do not have time to say more now, so I will leave my comments at that and give members more information about some of the things that constrain Aboriginal people from looking after their country and being able to make any comment whatsoever.

## LIVE EXPORT — *AL KUWAIT*

*Statement*

**HON ALISON XAMON (North Metropolitan)** [9.56 pm]: I rise tonight because, unfortunately, I need to say something about the 56 000 ill-fated sheep that were to be exported aboard the *Al Kuwait*. Only a week ago I stood here and spoke about this issue. I said then that I believed the decision by the regulator to not allow an exemption for those sheep to travel to the Middle East was correct. I thought that the decision at that time was sensible and in line with scientific evidence. The independent regulator rejected the exemption request, a move that was subsequently applauded by the RSPCA, veterinarians and anyone concerned about animal welfare. I think the delay should have been the end of the matter, with the sheep remaining in WA and being processed locally by Western Australians for the benefit of local consumers and for the benefit of the animals that would be spared sailing into a horrendous Middle Eastern summer.

I am extremely disappointed that the regulator permitted 35 000 of those sheep to be exported today. Once again, it feels as though COVID-19 is being used as an excuse to cut corners and to allow things that otherwise would absolutely not be permitted. Regulations to ban exports to the Middle East between June and September follow an industry-led moratorium on the practice and came into force this March. Now, less than four months after first coming into force, we see, at the first hurdle, the ban collapse and the federal government sanction a voyage for over 35 000 Australian sheep into the hell of a horrendous, hotter-than-usual Middle Eastern summer. I remind members of the sorts of temperatures that we are talking about. At the moment, it is forecast that in the next two weeks it will be between 41 and 44 degrees Celsius and rising. Last week, there were unbelievable temperatures of up to 49 degrees, with 90 per cent humidity. Clearly, any government reassurance to prioritise animal welfare in the regulation of the live animal export industry is meaningless.

The RSPCA has had a lot to say about this. It said —

> The Federal Government's own reports indicate that, over this period, even with lower stocking densities and better ventilation on board, sheep will almost certainly be exposed to unacceptable levels of heat stress.
>
> The exporters have applied for the exemption in the knowledge that the sheep will face extreme heat and humidity on board at this time of year and will almost certainly suffer from heat stress on the two weeks plus voyage.

Senior policy officer Dr Jed Goodfellow from the RSPCA is reported to have said —

> "To allow this voyage to go ahead is a tragedy; to do so with no independent eyes onboard to report on the welfare of the sheep goes against everything the Minister has previously committed to, and will irrevocably undermine public confidence in the regulator," …

I also note that Rural Export and Trading (WA), the operator of the *Al Kuwait*, is tied to Emanuel Exports, the disgraced exporter behind the *Awassi Express* disaster. I remind members of the voyage of the *Awassi Express* in 2017 that saw over 2 400 sheep die from heat stress. I do not think the term "heat stress" properly explains the slow, cruel deaths that animals experience as they literally cook from the inside out. The footage was horrendous. It showed sheep gasping for breath, sweltering and suffering, and covered in their own excrement. I understand that the live exporter Emanuel Exports is still facing criminal charges over the incident.

It was hoped that by at least introducing the summer export ban, we were starting to see a shift away from commercial interests taking precedence over animal welfare, but in granting the exemption for the *Al Kuwait,* the federal Department of Agriculture, Water and the Environment acknowledged and took into consideration both the impact of COVID-19 and the impact on Australia's trade relationship with Kuwait. In doing so, once again we are seeing the balance shift away from animal welfare. I note that our own Minister MacTiernan has previously flagged that the local meat processing sector was willing and able to handle the sheep that had been originally banned from departing. Last night, ABC TV news reported that WA meat processors are warning that they are facing job losses and that abattoir closures are inevitable in the coming months. That was according to Western Australian Meat Marketing Corporation chairman Craig Heggaton. That will have a flow-on effect in regional communities. The reduction in the number of sheep processed locally will also impact WA consumers, with prices at the check-out predicted to skyrocket.

Australian animals are destined to suffer in the Middle East. As local processing works are predicted to close, job losses will hit rural communities hard. At the same time as WA consumers are paying more, we are seeing opportunities to boost our meat processing sector by value adding and boosting exports going by the wayside. I think now is the time for the WA government to step up and assist the production, marketing and exporting of chilled boxed meat products. We need to make sure that we let our federal counterparts know that we do not support live export. We do not support sending live animals to the Middle East to suffer and die in another catastrophe, particularly in the middle of summer.

Late this afternoon, I learned that today's weather has further delayed the departure of that ship. My understanding from what I have been told is that is because having fewer sheep means the ship does not weigh as much. Part of me wonders whether it is some sort of divine signal that this voyage should not go ahead. It is terrible to think about the ship moving out to sea and anchoring to ride out the storm before heading into the heat of a Middle Eastern summer—those poor animals.

I have one final point. The fact that there have been changes to how these sheep can be transported in itself illustrates the point that sheep exporters could have done it more humanely all along. If I look at all the considerations that have been given to how the industry needs to change the usual practice, I believe it is not enough; I think it is an appalling outcome. It is bad not only for the animals, but also, obviously, in terms of local jobs.

## NATIONAL BLOOD DONOR WEEK

*Statement*

**HON DIANE EVERS (South West)** [10.03 pm]: I just want to mention that Sunday was World Blood Donor Day and this is National Blood Donor Week and thank everyone who gives blood. In Australia, over 1.5 million blood donations were made last year. It is a really nice thing that people can do. We have some lovely places to go to donate blood, including seven clinics in the city, one in Bunbury and my favourite clinic in Albany. They are staffed by really lovely people who always look after you well. If you are someone who donates regularly, thank you; that is such a nice thing to do for so many people.

If you are somebody like me who gets around to it now and then, maybe it is time to get around to it again—give another donation and help out a few people. There are others who maybe cannot donate for one reason or another, and I fully understand that. That is great, it is not the thing for them, but there are a lot of other people who might have considered it at some time. If you have not considered it, consider it. If you have considered it, sign up. Just go to donateblood.com.au and look at the video of people who have needed blood transfusions to stay alive. Listen to that and see whether you can watch the two minutes without shedding a tear. It is a really nice thing to do. They look after you when you get there and it feels really good when you finish. If you can, get to a blood centre and give a little tomorrow.

## CEO SLEEPOUT

*Statement*

**HON PIERRE YANG (South Metropolitan)** [10.05 pm]: I want to make a statement about Vinnies CEO Sleepout, which I will be participating in again this year. I want to thank the members who have donated to and supported the cause. This is a very special year given that we are in a pandemic and we cannot all gather around again and do it at the WACA. However, like many other members participating in the CEO Sleepout this year, I will be doing it in a home setting. I will be setting up my car and putting my sleeping bag in the back and sleeping rough for one night in support of those who are sleeping rough every day and every night. It is not too late to donate. If anyone is willing to support the cause, please dig deep and support the cause. I am sure that the St Vincent de Paul Society will use the money to support those who are in need of support. Thank you.

## TRANSPORT LEGISLATION AMENDMENT (IDENTITY MATCHING SERVICES) BILL 2020

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by **Hon Stephen Dawson (Minister for Environment)**, read a first time.

*Second Reading*

**HON STEPHEN DAWSON (Mining and Pastoral — Minister for Environment)** [10.07 pm]: I move —

> That the bill be now read a second time.

The Transport Legislation Amendment (Identity Matching Services) Bill 2020 will implement the Intergovernmental Agreement on Identity Matching Services, which was endorsed by the Premier and other first ministers at the special meeting of the Council of Australian Governments on counterterrorism on 5 October 2017. The agreement establishes the national facial biometric matching capability and the national driver licence facial recognition solution, providing a suite of biometric tools referred to as identity matching services. The national driver licence facial recognition solution will act as a central interoperability hub for a driver's licence and related information from WA and other states and territories, transmitting matching requests from participants to the facial image database. The solution will not hold identification information. The national facial biometric matching capability, of which the solution is a part, will also connect to passport, visa and citizenship images and information held by the Department of Home Affairs and the Department of Foreign Affairs and Trade.

The bill will amend WA's road laws—the Road Traffic (Administration) Act 2008 and the Road Traffic (Authorisation to Drive) Act 2008. It will also amend the Western Australian Photo Card Act 2014. This will allow the Department of Transport to contribute Western Australian learner's permit, driver's licence and photo card facial images and information, along with identifying information such as name and address, to the national driver licence facial recognition solution.

Identity matching services will allow members of the community, with their consent, to quickly and easily have their identities verified when engaging with government—for example, when applying for a driver's licence, learner's permit or photo card—by matching their facial images with images on official records. Identity matching services will also benefit victims of natural disasters who have lost their identity documents.

Western Australia's ability to access identity matching services, enabled by this bill, will help deter crime, prevent identity theft and provide law enforcement agencies with a powerful investigative tool to identify people who may be associated with criminal activities. Identity crime is one of the most common and costly crimes in Australia, with around one in 20 Australians becoming a victim of identity crime each year, with an estimated annual cost of $2.2 billion. Identity matching services will also help Western Australians who have become victim to identity theft more easily restore their compromised identities.

Identity matching services will help prevent and detect the use of fake or stolen identities, which can be key enablers of fraud, organised crime and terrorist activity; and protect Western Australians by making it easier for law enforcement agencies to identify people who may be of interest in relation to criminal activities. The identity matching services will use sophisticated, secure facial recognition technology to streamline existing, resource-intensive manual processes for verifying known persons' identities and identifying unknown persons. This will speed up and improve the provision of customer service and law enforcement investigations. The current document verification service, hosted by the commonwealth Department of Home Affairs, cannot detect documents, such as a driver's licence, that contain a fraudulent photo but a legitimate name and address. Nor can it identify an unknown person from a facial image. The document verification system is currently used by WA law enforcement agencies and the private sector to verify identification information on a driver's licence and other government-issued identity documents.

Identity matching services will also improve road safety by increasing the detection and prosecution of driving offences as it will make it harder for persons to obtain a driver's licence with false identities to avoid traffic fines, demerit points and licence cancellations.

Existing road laws and photo card legislation provide strict conditions around how facial images and identifying information are collected, stored, used and disclosed to ensure that the privacy of Western Australians is protected. Current legislation permits release of individual facial images upon request to the WA Police Force, the Australian Security Intelligence Organisation and, with the prior approval of the Commissioner of Police, prescribed law enforcement officials.

Although the bill will expand disclosure provisions, it will provide strict conditions around how facial images and associated personal information will be disclosed via identity matching services. Department of Transport customer information will be subject to strong safeguards through legally binding identity matching services documents called participation agreements and participation access arrangements. These will be signed by senior representatives of other states and territories before access is granted to Department of Transport customer information.

The national driver licence facial recognition solution has been designed and built with robust privacy safeguards in mind, and has been subject to detailed privacy impact assessments and data security assessments. Information will be accessible only by authorised agencies and by individuals within those agencies who are also appropriately authorised and have undertaken required training, and will be subject to a robust compliance framework and independent oversight.

The identity matching services cannot be used to conduct real-time monitoring or live facial recognition of people in public spaces—sometimes referred to as mass surveillance—or identify people to investigate minor offences, such as jaywalking or littering.

This will enable participating government agencies to verify a known identity with the consent of that customer. Due to strict privacy protections in the Commonwealth Identity-matching Services Bill 2020, only agencies with law enforcement, national security or anticorruption functions will be able to establish and verify an unknown identity by searching multiple identities on the database. The bill also supports this government's 2017 public sector service priority review and the ServiceWA (Digital) Program—for example, with customer consent, enabling the use of Department of Transport licensing information for other approved government purposes, such as sharing a person's change of address with approved state government agencies.

Pursuant to standing order 126, I advise that this bill is a uniform legislation bill. It gives effect to an intergovernmental agreement to which the government of this state is a party. This bill by reason of its subject matter introduces a uniform scheme throughout the commonwealth.

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

[See paper 3966.]

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

*House adjourned at 10.12 pm*

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## QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

PLANNING — PORT KENNEDY DEVELOPMENT ACT

**2902. Hon Tjorn Sibma to the minister representing the Minister for Planning:**

I refer to the sales and development agreement (the agreement) between the Western Australian Beach and Golf Resort Pty Ltd and the State Government, as referred to in the *Port Kennedy Development Act 2017*, and I ask:

(a) what are the specific milestones and obligations which apply to both parties;

(b) has each party met those specific milestones and obligations, and if not, why not;

(c) in a general sense, what are the settlement terms of the agreement; and

(d) have the settlement terms of the agreement been met;

(e) what is the anticipated timeline for the closure and replacement of holes at the Port Kennedy Golf Course?

**Hon Stephen Dawson replied:**

(a) The Sale and Development Agreement obligations and milestones include a Local Structure Plan; contract management; public works; and incremental development milestones.

(b) Obligations and milestones to date have been met. The Department of Planning, Lands and Heritage continues to monitor the remaining terms of the agreement.

(c) General settlement terms of the agreement include the final sale price, previously established public works, project costs expended, proposed public works, a cash contribution and retention of land.

(d) Yes.

(e) It is anticipated that all golf course works will be completed by 2027.

PLANNING — TOWN OF COSSACK

**2925. Hon Robin Chapple to the minister representing the Minister for Planning:**

I refer to the historic Pilbara town of Cossack, the 2017 WA Labor document ‘Plan for the Pilbara’, and the City of Karratha’s Local Planning Scheme No. 8, Amendment No. 44, relating to developments in the town, and I ask:

(a) can the Minister please advise what progress, in a general sense, has been made in revitalising the town:

(i) specifically in relation to the lands’ designation with a view to development;

(ii) specifically in relation to the ability of landholders to develop their freehold properties;

(b) would the Minister give reason as to why the Planning Scheme Amendment, by the City of Karratha, allowing development and investment opportunity at Cossack, was rejected by Government:

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

(ii) can the Minister confirm that the proposed amendment was sound in regard to administrative procedures and environmental considerations;

(c) at present, can Cossack landowners apply to construct small-scale, temporary facilities such as caravan parks and campsites:

(i) if no to (c), does the Government intend to permit such developments in the future;

(d) does the Minister consider the restrictions on development to represent an opportunity-cost for persons who invested in land in Cossack;

(e) would the Minister give comment on the Government’s plan for Cossack town, in regards to recreational, tourism, or heritage opportunities; and

(f) has the Department liaised with local Indigenous representatives to discuss the future of Cossack:

(i) if yes to (f), which group or persons did the Department contact;

(ii) if yes to (f), can the Minister advise of the outcomes?

**Hon Stephen Dawson replied:**

(a) (i)–(ii) Development in Cossack needs to be in accordance with the local planning scheme, which includes requirements for connection to reticulated power, water and sewer, and to address relevant state planning policies.

(b) The amendment did not demonstrate that certain factors such as coastal hazards, protection of environmental and heritage values, servicing requirements and bushfire risk could be adequately managed in accordance with state planning policies.

(i) Not applicable.

(ii) This amendment was correctly administered, and the Minister for Planning took into account environmental considerations in determining the amendment.

(c) Yes. Any development application would need to address, and be assessed against, the requirements of the local planning scheme, and relevant state planning policies and applicable legislation.

(i) Not applicable.

(d) No.

(e) The State Government continues to work closely with the City of Karratha to progress future planning and use of the township.

(f) No.

(i)–(ii) Not applicable.

PORTS — BROOME PORT

**2933. Hon Robin Chapple to the Minister for Ports:**

I refer to the Port of Broome, and the Kimberley Marine Support Base (KMSB), and I ask:

(a) how much profit, after tax, has the Port of Broome made in each of the last ten financial years, given by year;

(b) would the Minister please break down this income for the Port of Broome by the following industries, per year, over the last ten years:

(i) oil and gas;

(ii) live cattle export;

(iii) the cruise ship industry; and

(iv) petroleum;

(v) other;

(c) is there an estimate of future income for the Port:

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

(ii) if yes, how far into the future do the estimates go and will the Minister table them;

(d) how much has the Western Australian Government spent on the recent dredging operations at the Port of Broome:

(i) where were the costs of the dredging allocated from;

(e) if, as per question on notice No. 427 answered on 6 December 2017 by the Premier, the cost of the dredging was $7 million, why did the costs more than double;

(f) according to question on notice No. 427 answered on 6 December 2017, the Premier stated the dredging would "… allow for all-hours access for cruise liners …", is this now the case:

(i) if no to (f), can the Minister please explain the change;

(g) has the Port modeled future berth unavailability in relation to the oil and gas industry with particular reference to the potential development of the Browse Basin by the Woodside Joint Venture:

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

(ii) if yes to (g), is it anticipated that the Port would increase business;

(h) has the Port identified a lack of berth availability if the Browse proposal goes ahead;

(i) has the Port of Broome identified the need for increased capacity into the future;

(j) given that the Minister for Ports stated that the KMSB would pave the way "… for export opportunities for the emerging agricultural and resources sector projects in the hinterland …", could the Minister give further information on:

(i) emerging agricultural projects in the hinterland;

(ii) emerging resources projects in the hinterland;

(k) given the Port of Broome made a loss in 2018–19, if the KMSB was built, would this compete for business from the existing Port;

(l) can the Minister explain why jobs at the project are guaranteed for only seven years;

(m) has the Minister or the Western Australian Government had discussions with the relevant unions over the guarantee of jobs at the existing Port:

(i) if yes to (m), what was the nature of the discussions and was any agreement reached;

(n) has the State Government or the Port Authority imposed any other labour conditions on the KMSB leaseholder after the expiry of the initial conditions in the first five years of the lease;

(o) which oil and gas companies are currently using the Port of Broome:

(i) how long are the contracts with these companies;

(p) will the Minister table the business case which details the assumptions behind the estimated job numbers:

(i) if no to (p), why not; and

(q) are there any restrictions on foreign ownership of the company who owns the KMSB, or on the operator;

(r) did the KMSB, or anyone associated with the KMSB, make any representations to the Western Australian Government in relation to the dredging at the Port?

**Hon Alannah MacTiernan replied:**

(a)

| | **2009–10 $'000** | **2010–11 $'000** | **2011–12 $'000** | **2012–13 $'000** | **2013–14 $'000** | **2014–15 $'000** | **2015–16 $'000** | **2016–17 $'000** | **2017–18 $'000** | **2018–19 $'000** |
|---|---|---|---|---|---|---|---|---|---|---|
| Profit/ (Loss) after Tax | 1,193 | (106) | 758 | 3,995 | 2,182 | 2,291 | 3,940 | (2,980) | 95 | (1,713) |

(b)

| | **2009–10 $'000** | **2010–11 $'000** | **2011–12 $'000** | **2012–13 $'000** | **2013–14 $'000** | **2014–15 $'000** | **2015–16 $'000** | **2016–17 $'000** | **2017–18 $'000** | **2018–19 $'000** |
|---|---|---|---|---|---|---|---|---|---|---|
| Oil and Gas | 6,802 | 5,159 | 5,712 | 13,295 | 10,692 | 11,097 | 12,561 | 9,204 | 9,705 | 6,222 |
| Livestock | 1,265 | 1,395 | 1,484 | 985 | 1,564 | 1,321 | 1,710 | 1,089 | 1,270 | 1,955 |
| Cruise | 844 | 632 | 1,193 | 539 | 599 | 691 | 1,073 | 1,194 | 833 | 1,155 |
| Petroleum | 1,778 | 2,120 | 2,349 | 3,181 | 2,962 | 2,995 | 2,713 | 2,005 | 2,309 | 2,646 |
| Other | 3,793 | 3,867 | 4,489 | 6,135 | 4,997 | 6,047 | 6,495 | 4,479 | 5,050 | 5,881 |
| **Total revenue** | **14,482** | **13,173** | **15,227** | **24,135** | **20,814** | **22,151** | **24,552** | **17,971** | **19,167** | **17,859** |

(c) Yes.

(i) Not applicable.

(ii) The estimates are for 2020–21 to 2023–24 and are subject to Government budgetary approval. The Statement of Corporate Intent is then tabled in Parliament.

(d) The dredging project cost was $14.035 million.

(i) Costs were allocated through the Royalties for Regions program, Tourism WA, the Department of Transport and the Kimberley Ports Authority (KPA).

(e) Following the completion of detailed design and vessel simulation work the decision was made to remove approximately 40,000$m^3$ of additional dredge material compared to the original estimates.

(f) Yes.

(i) Not applicable.

(g) KPA has a demand analysis and vessel forecast analysis extending to 2036 looking at low, base and high case scenarios. Berth utilisation and Port Master Planning is based on this demand analysis.

(i) Not applicable.

(ii) Yes.

(h) Based on the demand and vessel forecast analysis and assuming the base case scenario, additional berth capacity will be required in the future.

(i) Yes.

(j) (i) Agricultural produce moving from road to sea for example: meat from the abattoir, the companies about to start growing grapes and asparagus and from vegetable producers located south of Broome.

(ii) Resource companies such as Buru Energy Ltd, and Sheffield Resources Ltd.

(k) The Kimberley Marine Support Base (KMSB) construction project is scheduled to be finalised in 2022, at which time it will compete with KPA for trade, in a growing market.

(l) The guarantee of jobs covers the construction period and stevedoring for the first five years after practical completion of the facility. We would expect that period could be extended if the services provided by KPA stevedores meets the needs of the KMSB operator.

(m) KPA regularly engages with employees and their representatives on economic and industrial relation matters.

(n) No.

(o) INPEX and Shell.

(i) The companies do not have a contract with KPA.

(p) No.

(i) The business case was commissioned by KMSB and provided by a third party, it contains market sensitive information and was provided to KPA as a commercial-in-confidence document.

(q) There are provisions within the agreements requiring approval from KPA and the Minister for Ports, in regard to a change of control in Kimberley Marine Support Base and/or the appointment of an operator.

(r) No.

HEALTH — POSTHUMOUS COLLECTION OF GAMETES

**2939. Hon Nick Goiran to the parliamentary secretary representing the Minister for Health:**

I refer to the system of annual reporting to the Executive Director, Public Health by designated officers of the authorisation of the posthumous collection of gametes, which first reported on the 2014–15 financial year, and I ask:

(a) was a report completed for the period 2018–19;

(b) if yes to (a), will you table the report; and

(c) how many returns have been submitted by designated officers since the establishment of the reporting system;

(d) how many nil returns have been received since the establishment of the reporting system?

**Hon Alanna Clohesy replied:**

I am advised:

(a) Yes.

(b) Yes. [See tabled paper no 3694.]

(c) 111.

(d) The answer to this question has been suppressed for patient confidentiality; provision of this figure would reveal a number less than 5 for the number of positive returns.

CORONAVIRUS — WORK AND DEVELOPMENT ORDERS

**2943. Hon Alison Xamon to the minister representing the Minister for Corrective Services:**

I refer to the COVID-19 pandemic and the impact on people who have been issued a work and development order (WDO), and I ask:

(a) has there been a decrease in opportunities for people to complete WDOs during the COVID-19 crisis;

(b) what work has the department undertaken to ensure people are not negatively impacted where the COVID-19 pandemic has meant they have been unable to undertaken required community work?

**Hon Stephen Dawson replied:**

(a) Yes. This is due to external agency projects and regional/remote communities closing during the pandemic.

(b) The Department has:

(1) Reduced the number of contracted days per person and people have been rotated through work parties, therefore allowing more people to cycle through workdays;

(2) Expanded the availability of Departmental indoor work parties where available and where the required social distancing can be adhered to;

(3) Negotiated with the Fines Enforcement Registry (FER) for opportunities to have people referred back to FER and allow lower repayments of fines until work parties can increase their capacity; and

(4) Considered suspending WDO obligations for up to 12 weeks, under section 78 of the *Sentence Administration Act 2003*, as required.

ROEBOURNE REGIONAL PRISON — DRUG AND ALCOHOL PROGRAMS

**2944. Hon Alison Xamon to the minister representing the Minister for Corrective Services:**

I refer to the provision of Drug and Alcohol programs at the Roebourne Regional Prison, and I ask:

(a) what drug and alcohol programs are currently offered at the prison;

(b) who is the provider of each program;

(c) what is the capacity and duration of each program;

(d) how often has each program been run in 2019–20 to date;

(e) how much funding was allocated in the 2019–20 budget for the provision of drug and alcohol programs in Roebourne Regional Prison;

(f) how much for this funding has been expended to date;

(g) how many prisoners have applied to undertake a drug and alcohol program at Roebourne Regional Prison in 2019–20 to date;

(h) how many participants have successfully completed these programs in 2019–20 to date;

(i) is a program currently being run at the prison;

(j) if no to (i), when is it anticipated a program will next be run;

(k) is an alternative online option offered; and

(l) if no to (k), why not?

**Hon Stephen Dawson replied:**

(a) Pathways is the criminogenic program for Criminal Conduct and Substance Abuse.

(b) At Roebourne Regional Prison, Pathways is facilitated by departmental staff.

(c) Pathways is 100hrs in group work facilitated over 50, 2hr sessions. Ten participants can be booked to each program.

(d) Pathways was facilitated twice in 2019. In 2020, one program has just commenced and a second is scheduled for Q3.

(e) Programs facilitated by internal staff do not have a funding allocation.

(f) Not applicable.

(g) Prisoners do not apply for the program. Prisoners recommended for inclusion in this program by a Treatment Assessor are booked through the Individual Management Plan (IMP) assessment process.

(h) 18 participants completed in 2019. Nil completed in 2020 to date as the program has not yet concluded. A second program will commence in Q3.

(i) A program commenced on 18 May 2020.

(j) Not applicable.

(k) No.

(l) In-person, group-based treatment programs are currently considered to be best practice in addressing offending behaviour and reducing recidivism. The Department is committed to exploring alternative options to maximise rehabilitation outcomes particularly in regional areas and will be exploring the use of remotely delivered treatment programs as part of the review of the Department's Program Suite. However, at this point in time there are no online/remote programs.

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