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LEGISLATIVE ASSEMBLY

Tuesday, 16 November 2021

Legislative Assembly

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THE SPEAKER (Mrs M.H. Roberts) took the chair at 2.00 pm, acknowledged country and read prayers.

VISITORS — DARLINGTON PRIMARY SCHOOL, COMO SECONDARY COLLEGE, OCEAN REEF PRIMARY SCHOOL, SHIRES OF WAROONA AND MURRAY AND NOEL AND IRENE DEW

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.03 pm]: We are very lucky today to have quite a few school visitors. On behalf of the member for Kalamunda, I would like to welcome student leaders from Darlington Primary School, their principal, Mr Andrew Newhouse, and parent helper Stephanie Scott, who are visiting Parliament today. Welcome.

On behalf of the member for South Perth, I acknowledge the student council of Como Secondary College.

On behalf of the member for Joondalup, I welcome the student leaders from Ocean Reef Primary School.

On behalf of the member for Murray–Wellington, we have some guests from the Shire of Waroona, the CEO and president, and also from the Shire of Murray, the CEO and president. On behalf of the member for Murray–Wellington, I particularly want to acknowledge Noel and Irene Dew. Noel has served 22 years on the Waroona shire as a councillor and also as president. Welcome to all those people.

It is great to see so many people coming along to Parliament and learning about our great democracy today.

EXPLORATION INCENTIVE SCHEME

Statement by Minister for Mines and Petroleum

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [2.04 pm]: It is with great pleasure that I stand here to inform the house that round 24 of the exploration incentive scheme co-funded drilling program has been awarded. A total $6.35 million in McGowan government funding will support 51 exploration projects at greenfields terrain across the state. The EIS continues to be extremely successful, having previously supported a number of major discoveries.

Capricorn Metals' Karlawinda gold project in the Pilbara is a recent example, having celebrated its first gold pour on 30 June. Gold production from Karlawinda is estimated to be up to 120 000 ounces per annum over 10 years. It is an example of the McGowan government's support for the mining industry, which is creating a pipeline of jobs for Western Australians. Gold exploration in under-explored areas of the state continues to attract significant EIS support.

I am happy to report there is also a healthy appetite for battery minerals exploration. More than 35 per cent of the drilling projects will be looking for battery minerals like manganese, lithium, tantalum, rare earth elements and cobalt. Of the battery minerals–related co-funded drilling taking place, 73 per cent of the projects are dedicated to nickel. DevEx Resources has used its grant at the Sovereign nickel–copper–PGE play in the Julimar region. Of course, Chalice Mining has recently lit up the Julimar area, 70 kilometres north of Perth, and we are all amazed at the company's initial resource estimate.

The McGowan government's beefed-up $12.5 million EIS also includes funding for the energy analysis program. Six EAP studies will receive a total of $245 000, with the grants offered for core analysis and seismic reprocessing studies across the Carnarvon, Perth and Canning basins. The next round of the EIS opens on 7 February 2022. I wish all successful recipients the best of luck in their efforts. Never has the economic importance of WA's mining and resources sector been so clearly demonstrated than during the COVID-19 pandemic. The McGowan government resisted calls to shut down the sector at the height of the pandemic. This protected tens of thousands of WA jobs and helped cement our place as the engine room of the Australian economy. The McGowan government's support for the resources sector is promoting innovation and exploration. Our boosted EIS is just one example of our commitment to economic diversification and creating jobs for Western Australians.

CYCLONE SEROJA — RECOVERY GRANTS

Statement by Minister for Emergency Services

MR R.R. WHITBY (Baldivis — Minister for Emergency Services) [2.07 pm]: I would like to take this opportunity to inform the house about the severe tropical cyclone Seroja recovery grants. Applications are open and money is being distributed in communities. Severe tropical cyclone Seroja left a trail of destruction across the midwest, an area half the size of Victoria, and its impact will be felt for some time. The joint commonwealth–state funded $104.5 million cyclone Seroja recovery package is the largest in WA's history. It includes four tailored reimbursement grant programs for small business owners, primary producers, property owners and heritage and cultural asset owners who have been directly impacted.

The grants program is based on community recovery need. There are primary producer recovery grants of up to $25 000 to assist with clean-up and recovery costs so that farmers and producers can continue to focus on harvesting; dedicated small business recovery grants of up to $25 000 to help small businesses with repair costs to get them back on their feet; cultural and heritage asset clean-up and restoration grants to claim back costs in restoring heritage buildings and cultural sites that are important to the history of the region; and recovery and resilience grants of up to $20 000 to help insured home owners to build back better, including for roof tie-downs and cyclone shutters to mitigate the impact of future severe wind events.

These grants are in addition to other support for the community, including temporary accommodation for those who need it, assistance for uninsured property owners to make their properties safe, and more than $12.4 million in commonwealth and state support and donations received through the Lord Mayor's Distress Relief Fund appeal. Information on how to apply for the grants is available at dfes.wa.gov.au/site/recoveryandresiliencegrants, and I encourage those who have been impacted to apply.

I would also like to take this opportunity to assure farmers in the midwest, who are continuing their focus on harvest activities, that support and access to assistance packages will remain available for when they are ready to apply. Recovering from a natural disaster is an individual journey. Cyclone Seroja's impact spanned 16 local government areas, from urban through to remote communities, and we will be there every step as the midwest builds back stronger than ever.

ACCESS PLUS WA DEAF — CENTENARY

Statement by Minister for Disability Services

MR D.T. PUNCH (Bunbury — Minister for Disability Services) [2.09 pm]: I am pleased to inform the house that on 5 November, I had the great pleasure of representing our Premier at the centenary gala of Access Plus WA Deaf, formerly the WA Deaf Society. It was a privilege to attend and speak at the event, celebrating that momentous occasion. Access Plus has an incredible history of supporting the Western Australian community. Since 1921, it has provided a range of inclusive services to make information more accessible for the deaf and hard of hearing. One hundred years of generous service is almost unheard of these days and is certainly a remarkable milestone to be recognised and celebrated.

For more than 30 000 Australians, Auslan is their primary language. Access Plus has played a critical role in raising general awareness of deafness in society and the importance of creating an accessible environment. But more notably, it has helped to empower the deaf and hard of hearing to live more connected lives, free of communication barriers. With the challenges of the last few years, a continuing global pandemic, border closures and lockdowns, fires and cyclones, never has it been more imperative that these communication barriers are broken down. Such events have reminded us all just how important it is that everyone receives timely and accurate information. The work that Access Plus has done, and is continuing to do, to make critical, public announcements accessible to those who are deaf or hard of hearing has been phenomenal. I think we all recognise Fiona, who is often standing alongside the Premier as he makes important community announcements. Premier, Fiona sends her best wishes. However, I would like to take this opportunity to recognise all the Access Plus interpreters for assisting the state government to reduce communication barriers and help keep everyone safe. I hope the increased visibility of Auslan encourages more businesses to invest in interpreting services to make information more accessible. I also hope that this will encourage more people to become Auslan interpreters, something we know we need. There has never been a better time to enrol to study Auslan either, with the cost of studying a diploma in Auslan recently reduced by 70 per cent at WA TAFEs.

I have every confidence that Access Plus' strong established legacy will propel it to achieve even more great things over the next 100 years. I will be excited to see some of these life-changing achievements unfold in the coming years. Congratulations, Access Plus.

DISTINGUISHED VISITORS — HON BOB KUCERA AND SUE KUCERA

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.12 pm]: I am delighted to acknowledge guests of the member for Balcatta—Hon Bob Kucera, former member for Yokine and former minister, and Mrs Sue Kucera, in the Speaker's gallery. Welcome.

QUESTIONS WITHOUT NOTICE

HOSPITALS — ICT OUTAGES

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

I refer to the ICT failure at Fiona Stanley Hospital overnight and the 185 other code yellows called at hospitals in 2020–21 due to ICT failures.

(1) Why are our hospitals regularly calling code yellows due to ICT failures?

(2) Why were these issues not prioritised, as promised, in the *WA health digital strategy 2020–2030* released two years ago?

Mr R.H. COOK replied:

(1)–(2) I thank the member for the question. Clearly, with her reference to the health digital strategy, she understands that the McGowan government has a plan for making sure that we can modernise our health system to ensure that our digital platforms provide the best possible care for Western Australian patients.

In relation to the outage last night, obviously, any ICT outage is a concern, but it happens from time to time in all hospitals and in all settings. It does not matter whether it is in our health sector or in other parts of government and business, from time to time any organisation will be hit with ICT issues. I have told the South Metropolitan Health Service that I want it to do two things: first, I want it to get the problem fixed as quickly as possible; and, second, its highest priority must be the safety of the patients in that hospital. Mr Paul Forden, the chief executive of that health service provider, is doing everything he can with his team to ensure that we get on top of this issue.

HOSPITALS — ICT OUTAGES

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

I have a supplementary question. How can the WA public have any confidence in the health system the minister oversees if hospitals are being forced to call internal emergencies and revert to a system because of these ongoing ICT failures?

Mr R.H. COOK replied:

It is not an ongoing ICT issue; it is an ICT system that is complex and is the most modern in our health system. The fact that you come in and ask how the public can have confidence, well, if people listen to you, member, they never would, because you are constantly undermining —

Ms L. Mettam interjected.

Mr R.H. COOK: Sorry, member, did you want to interject?

Ms L. Mettam: I said it's a systemic failure—185 code yellow emergencies.

Mr R.H. COOK: Once again, Madam Speaker, we see the member for Vasse come in here and make fundamentally untrue statements in this house to support her commentary in relation to health.

Mr V.A. Catania interjected.

Mr R.H. COOK: I just wish for once —

Mr V.A. Catania interjected.

Mr R.H. COOK: I just wish for once that the member would come into this —

Mr V.A. Catania interjected.

The SPEAKER: Member for North West Central, it is not your question. You have interjected three times. I am asking you to desist.

Mr R.H. COOK: Member for North West Central, to be a member of Parliament, you have to have integrity. I think it is time you found another career, my friend.

Mr V.A. Catania: I've been here a long time.

Mr R.H. COOK: It is taking you a long time to find your integrity, I admit. I am not sure you ever brought any into this place!

Mr V.A. Catania interjected.

Mr R.H. COOK: Just be quiet, member for North West Central. No-one believes a word you say because they know your reputation.

The SPEAKER: Minister, I have asked the member for North West Central not to interject any further. However, you are provoking him, so can you return to the question that you were asked by the member for Vasse.

Mr R.H. COOK: From time to time, any organisation will confront ICT issues. This is a situation whereby we require the hospital to take action to make sure that we can preserve hospital services and make sure that we keep patients safe. I am very pleased to say that substantially the ED is steady and is continuing as normal. The ICU is steady, albeit a bit busy. All the theatres are running as normal, although we may have to suspend some lists due to downtime procedures because it is all subject to manual arrangements. Outpatients are working as usual for face-to-face and telephone consultations, although obviously video consultations have had to be postponed for today. The hospital is coping very well, given the challenges that it is having to face in relation to working on a manual system. On that point, I suspect that people remember the manual system because they remember when the opposition was in government and it did not have a digital strategy for our health system at all.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — TRANSITION PLAN

760. Mrs R.M.J. CLARKE to the Premier:

On behalf of the member for Dawesville, I welcome the student house captains from the Frederick Irwin Anglican School Halls Head campus. Welcome to Parliament House.

I refer to the McGowan Labor government's continued commitment to keep Western Australia safe.

(1) Can the Premier outline to the house how WA's safe transition plan will ensure that WA's existing way of life can continue safely?

(2) Can the Premier update the house on the state government's response to the evolving outbreak in the Northern Territory?

Mr M. McGOWAN replied:

(1)–(2) I thank the member for Murray–Wellington for the question. Nearly two weeks ago, the Minister for Health and I announced Western Australia's safe transition plan to provide a soft landing for Western Australia out of the pandemic as we ease our controlled border when we hit 90 per cent double-dose vaccination. Our controlled border has been a flexible tool to keep WA safe depending on the conditions around us. We now have a serious outbreak in parts of the Northern Territory; therefore, under the controlled border regime, the Northern Territory has been declared a low-risk jurisdiction. That means from 4.00 pm today, arrivals must now complete 14 days of self-quarantine and get tested within 48 hours of arrival and again on day 12. Arrivals from low-risk jurisdictions, including the Northern Territory, are also now required to be double-dose vaccinated. Anyone who has arrived on or after 10 November 2021 and has been at an exposure site, up to and including today, will be required to self-quarantine for 14 days and be tested immediately within 48 hours and again on day 12. Anyone from the Northern Territory, especially Darwin, Robinson River and Katherine, who did not visit the exposure site venues and has arrived from 10 November up until 4.00 pm today, should go and get tested if they develop any symptoms.

The controlled border gives us the flexibility to impose stricter conditions if the situation deteriorates, or softer ones if it improves. Obviously, we are very concerned now about what is going on in the Northern Territory, so this measure is necessary to protect Western Australia as we get our vaccination levels up. Our controlled border cannot last forever. Early next year, in late January or early February, we will ease the controlled border. We will make a decision on the exact day when we hit 80 per cent double-dose vaccinations in December. We expect that will be in late January–early February. Once the date is locked in, it will be there and will remain in place. Our safe transition plan will ensure that we have good health outcomes and also keep economic momentum into 2022.

I remind members that there are some states in which restrictions are in place. New South Wales still requires mask wearing indoors, the two-square-metre rule in venues and no music festivals. South Australia, based upon the new rules it is putting in place, will have a whole bunch of restrictions, particularly on businesses over the Christmas–New Year holiday period, which will be devastating for many of those businesses. On the other hand, we are very keen to avoid any of that while we get to the 90 per cent vaccination rate.

There is one other point I want to make: we are all in this together. We need to work cooperatively. Now is not a time to undermine or to nitpick. It is not a time to pander to the anti-vaxxers and the conspiracy theorists who are out there. What we have seen in both Western Australia and Victoria has been deranged and crazy. Some of the behaviours are deranged. They are lunatic. They are crazy behaviours, both here and in Victoria, with intimidation and threats, and people rolling gallows around the streets of Melbourne. This is not the Australian way. No-one should support that. Everyone should condemn that sort of conduct. I encourage everyone to condemn that conduct. We need to join together at this time of trouble and strife and condemn that sort of behaviour. My advice to everyone is: please go and get vaccinated.

MATERNITY SERVICES — GERALDTON

761. Mr R.S. LOVE to the Minister for Health:

I refer to the suspension of midwifery services at St John of God hospital in Geraldton and the subsequent pressures upon the already beleaguered Geraldton Health Campus, and to the minister's refusal to support a training program through the Geraldton Universities Centre to deliver midwifery training in the midwest.

(1) Why did the minister not take the opportunity to invest in local training before the situation reached such a crisis point?

(2) What is the minister's plan to deliver world-class obstetric and maternity services to Geraldton families during the suspension of services?

Mr R.H. COOK replied:

(1)–(2) I thank the member for the question. Obviously, I have no control over what people do at St John of God hospital in Geraldton. It is a private hospital and it is the owner of its own destiny. I very much look forward to a point in time, in the not-too-distant future, when it can resume maternity services, because I want the people of Geraldton to have that choice. I think that is important feature of our health system. I can assure all the expecting mothers and fathers of Geraldton that we will continue to support the people of Geraldton by making sure that we have maternity services at Geraldton Health Campus.

The member raised the question of maternity services at the Geraldton Universities Centre. I was supportive of the idea of the centre having more access to maternity training. However, in order for somebody to train in maternity or midwifery, they need to have access to a large volume of episodes of care to get the experience that they need to be trained properly. Unfortunately, we could not provide that at Geraldton, and that is regrettable, because that would mean that those students would have to travel to Perth, ideally to a place like King Edward Memorial Hospital for Women, in order to get the opportunities that they wish. This is something that I have spoken with the department about on a number of occasions. We are within the constraints of the Australian College of Midwives and other colleges in relation to the training requirements. It has nothing to do with the government's commitment or otherwise; it is simply the reality of the context in which people are training. We will continue to support the Geraldton community by making sure that we have great maternity services.

I would also like to place on the record that I understand that there was a report earlier that alleged that we are refusing to induct patients at Hedland Health Campus because of the workforce constraints that we are working under at the moment. I have an assurance from the WA Country Health Service that that is not correct.

The SPEAKER: Induce rather than induct, I think, minister!

GREAT EASTERN HIGHWAY BYPASS INTERCHANGES PROJECT

762. MR S.J. PRICE to the Minister for Transport:

I refer to the McGowan Labor government's record investment in congestion-busting infrastructure, such as the Great Eastern Highway bypass interchanges project.

(1) Can the minister outline to the house how this project, which combines five major road upgrades, will reduce congestion and improve safety in the area, as well as support local jobs and local businesses?

(2) Can the minister advise the house how this government's record investment in road infrastructure compares with the record of the previous Liberal–National government?

Ms R. SAFFIOTI replied:

(1)–(2) I thank the member for Forrestfield for that question. Today, we were at yet another sod-turning, member for Forrestfield, and that was for the Great Eastern Highway bypass interchanges project. This project will create 2 700 jobs. It is a partnership with the federal government and the councils of both Kalamunda and Swan. It will be delivering five separate projects in one, members: two grade-separated interchanges at the Great Eastern Highway bypass, at Abernethy Road and Roe Highway; the extension of Lloyd Street from Clayton Street to the Great Eastern Highway bypass, including a new bridge over Helena River; upgrading the Great Eastern Highway bypass, including the removal of the existing intersection at Stirling Crescent; the upgrade of Roe Highway between Talbot Road and Clayton Street; and upgrades to Abernethy Road.

For all those cyclists out there, and all those who will be able to use their e-scooters very soon, Minister for Road Safety, a new principal shared path will also be constructed. That will create an uninterrupted 30-kilometre link between Midland and Jandakot.

Mr Y. Mubarakai: Hear, hear!

Ms R. SAFFIOTI: Members will be able to go and visit the member for Midland in Midland and the member for Jandakot in Jandakot, uninterrupted, on their PSP.

This is an alliance between Laing O'Rourke, AECOM and Arcadis. As I said, this is a major infrastructure project, $380 million worth, in the eastern suburbs, again supporting road safety and reducing congestion, and also supporting the freight industry.

Members, a quick quiz question: what does this project have in common with the Midland train station, the Tonkin Highway extension and the Byford rail line? They were all projects that the then member for Darling Range and former member for East Metropolitan Region talked about but never delivered.

Several members interjected.

Ms R. SAFFIOTI: My old favourite, Alyssa Hayden, who in 2013 was out there with the then transport minister, Troy Buswell, talking about the Lloyd Street extension and about how that was a very important project, members, in 2013, a very important project. Did they deliver it?

Government members: No.

Ms R. SAFFIOTI: Did they start it?

Government members: No.

Ms R. SAFFIOTI: Did they fund it?

Government members: No.

Ms R. SAFFIOTI: That is all they did—they showed ministers around, and the minister would say, "This is a very important project", and they never delivered it. The Lloyd Street extension has been talked about for decades. Madam Speaker, you would know it very, very well. It is very satisfying to be a minister who can actually bring these items to conclusion and deliver projects that have been talked about and are much needed. This is yet another example of this government delivering on projects throughout the suburbs and throughout the state.

CORONAVIRUS — ELECTIVE AND NON-URGENT SURGERY

763. Dr D.J. HONEY to the Minister for Health:

I refer to the announcement by New South Wales Health on Monday that elective surgery will return to full capacity for both public and private patients. Given the minister's statements that all health systems in Western Australia are under pressure at the moment, is he concerned that New South Wales can resume its full elective surgery list despite extraordinary —

Several members interjected.

The SPEAKER: Order, please, members!

Dr D.J. HONEY: Is the minister concerned that New South Wales can resume its full elective surgery lists despite extraordinary COVID-related challenges and that the WA health system, which has no community COVID-19 cases, cannot?

Several members interjected.

The SPEAKER: The Minister for Health with the answer, unless the Minister for Water wants the call. Minister for Health.

Mr R.H. COOK replied:

Sorry, Madam Speaker, I did not know he had finished. I assume the member is referring to two months ago when we suspended a few non-urgent elective surgery operations over a few weeks. The member is conflating that with the fact that New South Wales is at last conceding that it is crawling out from under a most horrendous outbreak of the disease.

Several members interjected.

The SPEAKER: Members, please allow the minister to answer the question.

Mr R.H. COOK: Madam Speaker, please work with me here. I assume that the member is saying that we have currently suspended elective surgery, but that is not true. The member is wrong.

Dr D.J. Honey: Your hospitals are under pressure. You can't cope.

The SPEAKER: Member, if you would like the right to ask a supplementary, you need to listen to this answer first.

Mr R.H. COOK: This is just hopeless; it really is.

There was a point in time back in September when we suspended elective surgery for a couple of weeks just to take a bit of pressure off our emergency department staff who were doing it tough, and all our doctors and nurses. That was some months ago. It is not the case today. What the member is drawing our attention to is the fact that if you have a massive outbreak of the disease, your hospitals will come under significant pressure. The reason that this is newsworthy in New South Wales is that it suspended elective surgery for literally months. I do not know what the period was; potentially, it is six months that they have been struggling with this outbreak. What the member for Cottesloe is drawing our attention to is the fact that Western Australia is doing so well because we have had very little disruption to our elective surgery. Our hospitals continue to operate, our economy remains open and people are going about their lives because we have kept the disease under control. I wanted to lay that out to members because I can understand that we are all a bit confused. I would like to thank the member for Cottesloe for the question because it allows us to draw the Parliament's attention to that very fact.

The fact of the matter is that we have elective surgery, both emergency and non-urgent elective surgery, going on in our hospitals today because we have kept the disease under control and, as a community, we have done such an outstanding job. New South Wales is now coming out of the big freeze of the massive outbreak of the disease.

It has had tens upon tens of thousands of cases and literally over 1 000 deaths and a hospital system that is under extreme pressure because of that outbreak. That is why New South Wales suspended its elective surgery. That is not the case in Western Australia, and for that we thank the people of Western Australia and should all be very grateful.

CORONAVIRUS — ELECTIVE AND NON-URGENT SURGERY

764. Dr D.J. HONEY to the Minister for Health:

I have a supplementary question. It is indisputable that elective surgery waitlists —

Several members interjected.

The SPEAKER: Order, members! We do not need commentary while the question is in progress.

Dr D.J. HONEY: It is indisputable that elective surgery waitlists have blown out since the Labor Party took government. What confidence can those patients who have already had surgeries cancelled or rescheduled have that they will actually get medical care on time in the current system?

The SPEAKER: Before the minister answers, I again draw to your attention that a supplementary is a short, sharp question. You cannot preface it with "it is indisputable this or that". Just ask the question. If you continue to do it, I will rule your supplementaries out of order.

Mr R.H. COOK replied:

The embarrassment rolls on. Day after day opposition members reveal how ill-prepared and lazy they are to get their head around the facts. I will share a few facts with the chamber. As of September 2021, 29 140 reportable cases were on the elective surgery waitlist. As former Minister for Health Hon Kim Hames always used to point out to me—I acknowledge Hon Bob Kucera, who must be loving this question time; yes, Bob, the questions to the Minister for Health never stop—I was talking about Kim Hames! Kim Hames always used to explain to me that it is not the number of people who are on the waiting list; it is how long they wait. If someone is in a bank and the bank has four bank tellers, it does not matter that four people are waiting in the queue because they know that they will be seen to quickly.

Ms L. Mettam: How about ramping?

Mr R.H. COOK: How about just listening for a change, member for Vasse?

The SPEAKER: Member for Vasse, you will get an opportunity to have more to say on this topic during the matter of public interest. This is just a brief answer to a supplementary question.

Mr R.H. COOK: From the most recent data available, we know that Western Australia is second only to Victoria in having the shortest median wait time for elective surgeries in the country. The very premise upon which the member Cottesloe asks his questions is false. The lessons from this question are that the opposition should not be lazy or embarrass itself by coming into this place and be ill prepared, and it should stick to the facts. The fact of the matter is that our hospital system is doing very well under very difficult circumstances with a constrained workforce, and for that we should all be very grateful to the doctors and nurses of Western Australia.

HOUSEHOLD ENERGY EFFICIENCY SCHEME

765. Ms M.J. HAMMAT to the Minister for Energy:

I refer to McGowan Labor government's commitment to supporting those Western Australian households facing hardship. Can the minister update the house on how the government is helping WA's most vulnerable households reduce their power bills and become more energy efficient, and can the minister advise the house whether he is aware of anyone who opposes this government's support for those households that are doing it tough?

Mr W.J. JOHNSTON replied:

I am very pleased to answer the question for the member for Mirrabooka. I know that everyone is well aware of her keen support for people who are doing it tough in society, including in her career prior to entering Parliament.

I am very pleased that last week, in company with the Minister for Community Services, we announced the household energy efficiency scheme in Western Australia that builds on a program that was run in the past under a former Labor government here in Western Australia. This scheme is based on global research that shows how these types of schemes make a huge difference to people in hardship because they assist them to understand what is driving their energy costs, they help them live with lower energy consumption but with the same level of outcome, and, in certain circumstances, they can replace inefficient household appliances. For example, they might have a very old fridge that uses a lot of energy. People cannot turn off the fridge, so providing an energy efficient fridge makes a huge difference to people's lives.

I was very pleased to see the Western Australian Council of Social Service put out a media release announcing that it was supporting us in this. It states —

> The Western Australian Council of Social Service today welcomed the announcement of a four-year, $13 million scheme to assist low-income households with large bills to reduce their energy consumption.

I am very pleased that WACOSS did that. Of course, we were not universally supported. The member for Cottesloe tweeted about this scheme. He said —

> Their scheme is just expensive bureaucratic PR with little tangible benefits for those affected.

Again, I reflect on what WACOSS said —

> "Access to good advice on energy use, together with financial support to replace old fridges and lightbulbs can make a huge difference to families struggling to make ends meet."
>
> Western Australia was once a leader in this area, and WACOSS worked with community services and the WA Government to implement one of the first hardship energy efficiency programs in Australia back in 2008. The program assisted thousands of WA families before it was cut by —

The Liberal Party.

The member for Cottesloe rejected a scheme that is internationally recognised as delivering benefits not only as a one-off but also for the long term for families here in Western Australia. He continued —

> For the same cost, we would give these struggling families $1,300 each.

That is interesting, because the McGowan government gave those families $1 210 each last financial year because we doubled the energy assistance payment and gave them all a $600 credit. We did exactly what the member wanted to do. We have gone further and adopted what every researcher in the world in the energy policy space knows is a very good program. We should remember that the average person in energy hardship uses 49 per cent more energy than the average constituent. They are in energy hardship because they are using more power than they need to. We want to work with those families to reduce their costs—not a one-off benefit from pocketing $1 300 in a one-off project, but an ongoing benefit in discounted electricity for the rest of their life.

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

766. Dr D.J. HONEY to the Minister for Mines and Petroleum:

My question is to the minister under standing order 75(3), as the minister who has carriage of the Industrial Relations Legislation Amendment Bill.

(1) Can the minister confirm that under the industrial relations bill before Parliament, WA Labor intends to allow union officials to access Western Australians' private homes or farms if any work is being done or has been done in that place?

(2) Can the minister confirm that he previously promised to clarify beyond doubt that union officials will not be able to access Western Australians' private homes, but that WA Labor has failed to do so in this bill?

Mr W.J. JOHNSTON replied:

(1)–(2) The member is referring to an undertaking that I put on the record during the consideration in detail stage here in Parliament when we were dealing with the Industrial Relations Amendment Bill 2020, rather than the Industrial Relations Legislation Amendment Bill 2021. I gave that undertaking as described, and I asked the Liberal Party to support the legislation through the upper house with those amendments and it rejected that offer. I then went back to it and said, "Look, if you accept those amendments, we would not oppose you removing the local government arrangements on the understanding that if we were re-elected, we would reintroduce them", and the Liberal Party rejected that. I then went back to the Liberal Party and said, "I will just propose the modern slavery provisions plus the item to raise the age for the industrial commissioners from 65 to 70." Again, the Liberal Party rejected that. I went back to it and said, "I just want the thing to raise the age to 70 so that the Chief Commissioner will not have to retire", and the Liberal Party again rejected that. The reason these amendments were not included in the 2020 legislation was that, firstly, the Liberal Party voted against them in this chamber and then it rejected them in the other chamber. That is what happened. It not only rejected that, but also three other compromises that would have delivered for the people of this state. The Liberal Party wants to continue modern slavery in Western Australia, as does the member. The member for Cottesloe voted against this legislation, personally, himself!

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

767. Dr D.J. HONEY to the Minister for Mines and Petroleum:

I have a supplementary question.

Several members interjected.

The SPEAKER: Order, please! The Leader of the Liberal Party.

Dr D.J. HONEY: Why did the minister and the Minister for Industrial Relations not remove unions' power to enter private Western Australian households; and, is it simply another example of WA Labor using its absolute majority to benefit its union mates?

Mr W.J. JOHNSTON replied:

We will get to the consideration in detail stage because the presentation the member has given is completely wrong. Let me make it clear: last week, on Thursday, the member said —

> At the outset, on the nominal issue of dealing with modern slavery, obviously, on this side we are concerned no more and no less than the government that this is dealt with properly …

Yet the member voted against that. The member personally, and the member next to him as well, voted that down.

FAMILY AND DOMESTIC VIOLENCE — KIMBERLEY

768. Ms D.G. D'ANNA to the Minister for Prevention of Family and Domestic Violence:

I refer to the McGowan Labor government's commitment to combating family and domestic violence. Can the minister update the house on the McGowan Labor government's significant investment in family and domestic violence services throughout Western Australia, including culturally sensitive and trauma-informed services?

Ms S.F. McGURK replied:

I can. I am really pleased to answer this question. I was in the Kimberley recently, specifically Fitzroy Crossing and Derby, to meet with a number of stakeholders about not only combating domestic violence, but also community services. It was great to see the work being done in those areas. We know that although resources and focus are important, both of which this government is bringing to its efforts to combat family violence, local capacity is also essential—building up local organisations that can deliver the services and be leaders in their own communities to really start to get in front of high levels of domestic violence in our community.

I was particularly pleased to visit the Marninwarntikura Women's Resource Centre in Fitzroy Crossing, which was given a Lotterywest grant of $736 000. The people there were very grateful for that three-quarters of a million dollars of Lotterywest money. That service has been supporting women to heal from family and domestic violence and trauma for over 30 years. I think anyone who has had anything to do with Emily Carter and the organisation that she leads would agree that it is deserving of this grant. The grant will enable them to refurbish the centre, create an outdoor community space and purchase two new vehicles to support local families across the valley. I would like to particularly acknowledge Emily Carter, the CEO of the centre, for her fierce advocacy in keeping women, children and families safe in Fitzroy Crossing. I was able to hear from the organisation about a number of researchers it has embedded in the service to work on understanding trauma and young people affected by foetal alcohol spectrum disorder, and how we can better support them and understand some of the challenges that they face in their community. I also had the opportunity to meet with June Oscar, AO, the Aboriginal and Torres Strait Islander Social Justice Commissioner in this country, who is another tireless advocate for promoting the rights of Aboriginal women and girls in the Kimberley. I was proud to stand beside these women who are taking action to make a real difference. They are leading their community, and we thank them for it.

Now in my fifth year as Minister for Prevention of Family and Domestic Violence, I understand we need a breadth of responses to keep everyone in our community safe, from providing crisis accommodation to keeping perpetrators accountable and, most importantly, helping families heal. To this end, during my visit I also met with the Men's Outreach Service Aboriginal Corporation in the Kimberley, which the McGowan government has funded to provide its Change Em Ways program in Fitzroy Crossing and surrounding communities. I met some of the program leaders, who have a cohort of men doing the perpetrator program that they are delivering in other parts of the Kimberley, but in this case it was early days for the Fitzroy Crossing program. They support men and their families heal from past trauma and better understand emotions, and challenge them about using violence as a response. This program was funded as part of the $2.8 million Addressing Family Violence in the Kimberley grants program. We heard from the community that it wanted some of those grants, which we have provided in past years, to go to Aboriginal community controlled organisations in the community. While I was in Derby, I visited the Emama Nguda Aboriginal Corporation, which is partnering with Anglicare to provide a Derby family violence service that is integrated with wraparound supports for families in Derby and the Mowanjum community. That is in its early stages but, again, we are starting to see the partnerships between traditional community organisations and Aboriginal organisations that want to build up their capacity and use their cultural knowledge and cultural credibility to provide good outcomes. Overall, since 2017, the McGowan government has invested over $120 million in past and future commitments to prevent and respond to domestic violence, and our efforts to support communities across the state will continue into this term.

CORONAVIRUS — SCHOOLS — VENTILATION

769. Mr P.J. RUNDLE to the Premier:

I refer to comments from the Australian Medical Association WA president, Mark Duncan-Smith, that suggest that the WA government has had its head in the sand over the need to ensure ventilation standards in schools. Will the Premier detail to the house what measures the government has taken to date to prevent the spread of COVID-19 through our classrooms in 2022?

Several members interjected.

The SPEAKER: The Premier.

Mr M. McGOWAN replied:

We have done everything we can to prevent the spread of COVID-19 throughout the course of the last two years. When the member for Roe said "head in the sand", I think he should look in the mirror, because we have done everything possible to stop it and, as a consequence, we have had the best health and economic outcomes of anywhere in the entire world—yet the member for Roe still finds ways to criticise. Over the course of the last two years, while the world burned with COVID, one person in Western Australia has acquired the virus and passed away—one person—yet the member for Roe comes in here and criticises every single day. He finds ways to attack, criticise and undermine. We have got these outrageous rallies going in Victoria and multiple death threats and intimidation happening here in Western Australia, yet the member for Roe still finds ways of undermining. Why do you not just support us? Why do you not say to your constituents, "Please go and get vaccinated"? Why do you not go out there and do that? Why do you not actually condemn some of the conduct that is going on out there?

Point of Order

The SPEAKER: Premier, please sit down. I will take the point of order. It cannot just be a point of disagreement; it has to be a genuine point of order.

Mr V.A. CATANIA: No; it is standing order 78, which states that answers must be relevant to the question. Will the Premier answer the question that the member for Roe asked?

The SPEAKER: There is no point of order. Premier.

Questions without Notice Resumed

Mr M. McGOWAN: It would just be great if the state opposition—the Liberals and Nationals—actually helped us with this. It would be great if the shadow Minister for Health put up a post encouraging vaccination. There are no posts and no words from her encouraging vaccination. We are out there trying to get people vaccinated across the state and all the Liberals and Nationals do is undermine.

New South Wales has adopted one model and Victoria has adopted another model. There are different models in place in terms of ventilation in our schools. The Department of Education is reviewing this at the moment. I will explain to the member for Roe something that he may not know. New South Wales and Victoria have lots of COVID in the community, so it is obviously urgent in those communities in New South Wales and Victoria. We do not have COVID here; therefore, we are working through what the best options are for the Western Australian context.

CORONAVIRUS — SCHOOLS — VENTILATION

770. Mr P.J. RUNDLE to the Premier:

I have a supplementary question. I ask again: why has the government rejected offers by the AMA to assist in the development of COVID-safe schools and ventilation plans?

Mr M. McGOWAN replied:

We talk to, and the health minister talks to, the AMA regularly about these sorts of issues. I urge the member for Roe to stop trying to politicise these matters. It did not work for you in March and it will not work for you in the future.

LOCAL GOVERNMENT REFORM

771. Mr M. HUGHES to the Minister for Local Government:

I have a sensible question!

I refer to the McGowan Labor government's proposed reforms to local government announced last week.

(1) Can the minister outline to the house how these significant reforms will help make local government more efficient and more consistent?

(2) Can the minister outline to the house what benefits these reforms will provide, particularly for small businesses?

Mr J.N. CAREY replied:

(1)–(2) I wish to thank the member for the question. I am deeply proud that our government is delivering the most significant reforms to the local government sector in the past 25 years. As I flagged last week, the primary task, the primary change, is the creation of the office of the local government inspector, backed by monitors, which will deal with dysfunction and deal with it early. What we know, and as I have already said, everyone pays, including small business, the building sector—all those that have to deal with local government—because when it comes into dysfunction, it ceases, it stops and it focuses inwards. We are bringing in reforms to deal with that problem. But we are also looking beyond that to greater consistency, transparency and accountability. Consistency is the key. We have 139 local governments with, it is predicted,

around 1 000 elected officials. We are not going down the path of forced amalgamations. The previous government did that and failed at huge expense to ratepayers and taxpayers, creating chaos and division in the community. Instead, we are seeking to standardise local government across a number of areas.

This is about saving ratepayers' money because when we standardise and mandate the same system, it means that ratepayers do not pay for that mandated policy. There will be significant standardisation across the board. We will be standardising and mandating meeting procedures and public questions, including rules for confidential meetings. We will be streamlining local law processes and the time for review. We will be standardising the number of elected officials based on population and removing wards for tier 3 and 4 councils. We will be mandating and streamlining standard model financial statements and reporting, which will reduce the burden on smaller local governments. We will be creating and standardising caretaking periods. But we will also be making it easier for small business. We will be backing in the planning reforms that we have already introduced, which is about making approvals easier for small business. Although the Leader of the Opposition mocked this—she mocked it because they were seen as small changes—they are actually important for mum-and-dad businesses that deal with local governments every day. We will be creating one set of rules and standards for alfresco dining, one set of rules for minor signage approvals and one set of rules for crossovers on all local roads. That does cause significant hurdles and challenges for small businesses working in the housing and construction sector. While the opposition mocks those changes because it does not have any understanding or appreciation of the hurdles that small businesses have with local government, we are actually bringing in reforms that think about the ratepayer and small business. This will deliver meaningful change for this important constituency in local government—that is, small business owners.

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

SMALL BUSINESS — TRANSITION PLAN

772. Mr V.A. CATANIA to the Premier:

I refer to the government's transition plan for reopening when double-jab vaccination rates reach 90 per cent for those over 12 years of age and that some lockdowns or restrictions will be inevitable. What financial assistance will the government provide tourism operators and small businesses that are unable to endure another lockdown or regional border closures?

Mr M. McGOWAN replied:

It is a very hypothetical question, which is obvious to everyone here, including the member for Roe. It is one of those questions that is very difficult to answer because it depends upon a lot of circumstances. All I will say is that if we get to 90 per cent double-dose vaccination, obviously having lockdowns would be a rare event and I would expect that it would be in the case of those communities that are at relatively low levels of vaccinations. Our expectation is that when we get to 90 per cent double-dose vaccination, we will have to have very strong rules about who can come in and out of remote communities in Western Australia. For regions—for instance, the Pilbara, which has relatively low levels of vaccination—there may well be restrictions on who can go into the Pilbara, and they would have to be double-dose vaccinated. People interpret that in various ways and put various names around it, but that is potentially what will happen. In terms of other forms of lockdown, it is certainly our aim to try to avoid that, because we know they are very debilitating.

I will make one other point. Since, I think, May last year, we have had 12 days of lockdown. Between them, Victoria and New South Wales have had hundreds of days of lockdown, and there has been $12 billion to $15 billion in federal funding as a consequence and mass deaths. We see this published every day; on some days, 10 people die, 15 people die, six people die, 25 people die. I think, over there, they are sort of used to it, whereas here, we are horrified by it. We want to avoid that, and that is why we are putting these measures in place—to avoid that. We got advice that indicated up to 200 people would die if we went at 80 per cent as opposed to 90 per cent. I know that gets a lot of criticism; I know there are media commentators over east, and some here, and Liberal Party politicians who criticise that, but imagine if we ignored that and 200 people died—that would affect 200 families. That is why we are very cautious and will continue to be cautious. Members opposite can ask all the hypothetical questions they like, but our response to all of this is that caution—being very careful—works.

SMALL BUSINESS — TRANSITION PLAN

773. Mr V.A. CATANIA to the Premier:

I have a supplementary question. Will the Premier commit to financial assistance for small businesses that have to endure future lockdowns and regional border closures?

Mr M. McGOWAN replied:

Honestly, the undermining by the Liberals and Nationals does not stop. The hypothetical questions do not stop, either. This is, without any doubt, the worst opposition ever seen in Western Australia and probably in any Parliament in Australia. Its behaviour and undermining of everything we try to do to keep the people of Western Australia safe has been absolutely shocking, disgraceful and appalling.

LEGISLATIVE ASSEMBLY — SPEAKING TIMES AND DIVISIONS — SURVEY

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [3.02 pm]: Members, on your desks you will find a short, one-page survey. There are two questions. The first relates to whether members' speaking times should continue to be displayed on the Legislative Assembly broadcast feed, which includes the internal TV channel and internet livestreaming.

Mr T.J. Healy: Yes!

The SPEAKER: We know we have the support of the member for Southern River!

The second question relates to the conduct of divisions in this chamber and asks whether you would like the current practice of stand–sit divisions to continue, or whether you would prefer to revert to the walk-through past the Clerks' table divisions that the Assembly trialled last year. There is space on the survey form should you wish to make some comments on the subject. I would appreciate you completing the survey and returning it by the end of the sitting week to enable the Procedure and Privileges Committee to consider the responses. Please hand the completed surveys to the Sergeant-at-Arms.

PAPERS TABLED

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

BILLS

Notice of Motion to Introduce

1. Aboriginal Cultural Heritage Bill 2021.

2. Aboriginal Cultural Heritage Amendment Bill 2021.

Notices of motion given by **Dr A.D. Buti (Minister for Finance)**.

ABORIGINAL CULTURAL HERITAGE BILL 2021
ABORIGINAL CULTURAL HERITAGE AMENDMENT BILL 2021

Remaining Stages and Cognate Debate — Standing Orders Suspension — Notice of Motion

Mr W.J. Johnston (Minister for Mines and Petroleum) gave notice, on behalf of the Leader of the House, that at the next sitting of the house the Leader of the House would move —

> That so much of the standing orders be suspended as is necessary to enable the Aboriginal Cultural Heritage Bill 2021 and the Aboriginal Cultural Heritage Amendment Bill 2021 to —
>
> (a) proceed forthwith through all remaining stages without delay between the stages; and
>
> (b) be debated cognately at the second reading stage, with the Aboriginal Cultural Heritage Bill 2021 to be the principal bill.

BUSINESS OF THE HOUSE — PRIVATE MEMBERS' BUSINESS

Standing Orders Suspension — Notice of Motion

Mr W.J. Johnston (Minister for Mines and Petroleum) gave notice, on behalf of the Leader of the House, that at the next sitting of the house the Leader of the House would move —

> That so much of the standing orders be suspended as is necessary to enable private members' business to have priority from 4.00 to 8.00 pm on Wednesday, 17 November 2021.

EDUCATION — MANAGEMENT

Notice of Motion

Mr P.J. Rundle gave notice that at the next sitting of the house he would move —

> That this house condemns the government's lack of planning and management of the state education system resulting in staff shortages and unsafe conditions for staff and students.

MINISTER FOR PLANNING — PERFORMANCE

Notice of Motion

Dr D.J. Honey (Leader of the Liberal Party) gave notice that at the next sitting of the house he would move —

> That this house condemns the Minister for Planning for failures in the planning portfolio, including implementing the state development assessment unit process that routinely rushes through developer approvals that ignore the concerns of local communities.

MINISTER FOR HEALTH — PERFORMANCE

Matter of Public Interest

THE SPEAKER (Mrs M.H. Roberts) informed the Assembly that she was in receipt within the prescribed time of a letter from the Deputy Leader of the Liberal Party seeking to debate a matter of public interest.

[In compliance with standing orders, at least five members rose in their places.]

MS L. METTAM (Vasse — Deputy Leader of the Liberal Party) [3.07 pm]: I move —

> That this house calls on the Premier to remove the Minister for Health for his litany of failures that have pushed the health system to breaking point, with maternity services at imminent risk of failure and health staff under-resourced and feeling undervalued across the whole health system.

Although I will focus on maternity services, it is undeniable that there are escalating issues causing pressure across the whole WA health system at a time when there is no COVID-19 in the community. We have a situation in which elective surgery cancellations are ongoing, including, as we saw last week, the cancellation of three cardiovascular surgeries at Fiona Stanley Hospital, which is of great concern. There are also regular code yellow emergencies across the health system. Over the last 12 months, there were 111 code yellow emergencies relating to a lack of capacity in our health system. We on this side of the house have spoken at length about the government's lacklustre response to ensuring that our health system is better prepared. The government has not delivered on its promise to ensure that our hospitals are battle-ready for when COVID comes to WA.

We have heard the list of excuses, and no doubt we will hear more excuses today, whether it is a lack of general practitioners, border closures, people no longer taking out private health insurance, ambulance cleaning or many others. The list of excuses points directly to what we are seeing—that is, a litany of failures across the health system. These pressures are now, more than ever before, impinging on the services delivered to expectant mothers and children, and that is certainly of grave concern. We have raised these issues before. The Minister for Health has rebuffed, and I am sure he will do so again today, some of the issues with the shortage of midwives across the health system and the litany of maternity bypasses. The reality is that because of the McGowan Labor government's lack of prioritisation and investment in our health system, particularly in its first four years in government, our patients are overwhelmingly being put at risk.

I would like to start my comments on the matter of public interest by sharing a very distressing account of a pregnant mother who wrote to the Minister for Health last month to highlight just one experience in our health system and how it is failing our most vulnerable. This mother had noticed that her baby was not moving as much as usual, so she went to hospital as she was concerned. The mother was assessed by midwives and two registrar obstetricians, who advised that she needed to be induced because there was reduced foetal movement.

The matter was deemed urgent on 25 October, yet the earliest she could be booked in for this so-called urgent induction was some four days later. The mother waited anxiously for four days. Upon arrival at the hospital for the induction appointment, there was a further delay due to what she was told was an influx of emergencies and not enough staff. She was told to come back the following day. She was told that if she went into labour spontaneously during that day, she would not be admitted to that hospital, but would be diverted to another. In a letter that was written to the minister at the time, she stated —

> … I'll be at the hospital tomorrow morning, with my fingers crossed that the maternity team can do what they said they would a week ago to ensure the safety of my baby. I'll be there because I have no choice in the matter. I need to give birth to my baby, and I need the health system to help me do that.
>
> I ask what justification you can provide on my ongoing dismal and anxiety-inducing maternity experience? I am not a health professional myself, but I'm certain that within a functional and sophisticated healthcare system this should be a standard and straightforward procedure … And how, as Health Minister, can you justify the provision of anything other than optimal healthcare to a populous which actively contributes to such a successful economy?

Those are the words of that pregnant mother. Her questions of the Minister for Health are certainly fair and reasonable. It is a sad indictment that the mother was admitted on the Sunday and she waited until 2 November to have her induction—over a week later. I should state that the mum in question was certainly very clear in stating that the midwives did all they could. They were extremely apologetic about their limited resources. The mum was explicit about ensuring that this was not a reflection on the staff themselves, as we in opposition have maintained, but a reflection on the lack of resourcing. One midwife told her that although women were waiting in the ward to go to a delivery suite, only three or four of the six delivery suites were being used.

Thankfully, this mother's baby was delivered safely. There were some other issues following the birth that caused great distress to that mum, appreciating that the induction, which was deemed urgent as there was reduced foetal movement and the size of the baby was of concern, happened much later. That mum has been under extraordinary stress.

That brings me to the number of midwives at a time when we are experiencing a baby boom. The Chamber of Commerce and Industry of Western Australia predicts that an additional 400 babies will be born. It is extraordinary that in the first quarter of this year, the number of midwives has dropped—not increased—by 40, from 1 191 in January to 1 151 in June. The Australian Nursing Federation had warned of this, and I quote Mark Olson —

> "They saw this shortage coming. They've been on a COVID holiday," …
>
> "They sat back behind the border—they knew back then that we were short. They also knew that around 30 to 40 per cent of our nurses and midwives, according to the survey we do with the nurses board every year, obtained their initial qualification either interstate or overseas.

What has this government done to address the shortage? We know that much was said about an international recruitment campaign, and the Minister for Health has talked much about this. In addition to the first response—which was to blame the federal government for closing the international border while at the same time it imposed restrictions so onerous that for many midwives and nurses, travelling interstate was a great frustration and many gave up—there was mention of an international recruitment campaign. Again, reflecting the fact that this government has dragged its feet in addressing this important issue of patient safety, it is extraordinary that it took some six months for the advertising campaign to begin, with the Minister for Health blaming creators for the delay.

There were also 62 maternity bypasses over the winter period from June to August. According to a health spokesperson, a bypass situation is a standard operational practice when one hospital has an unusually high number of obstetric patients, so there is no cause for concern, apparently. As we have heard from many mothers, particularly a mother who was pregnant with twins who was bypassed from two hospitals before giving birth at the third, it can be particularly stressful.

Former president of the WA branch of the Australian Medical Association Andrew Miller said that the situation at King Edward Memorial Hospital for Women was so dire that staff had to use an operating theatre that was outdated and unsafe. Obstetrician Michael Gannon said that it was unfair and inhumane to tell women who had been receiving care at King Edward to give birth elsewhere. We also heard about the suspension of the community midwifery program at King Edward Memorial Hospital. We are aware that these pressures on hospitals have been exacerbated by the fact that Bentley Hospital ceased maternity services on 27 March last year, a couple of weeks into the pandemic. A thousand babies also had been redirected from Bentley to other hospitals. We appreciate that the decision was not made lightly, and comments were made by the minister at the time, but I go back to the comments by the ANF—that is, this government has been on a COVID holiday in trying to ensure that patients' needs, recruitment and our health system are prioritised. Many mothers have faced extraordinary stress as a result of this situation.

There are also concerns about the leadership in maternity services. We are aware that the principal midwifery adviser position is now just a part-time role; it was changed from being a full-time position to just 0.6 FTE. I have also been advised that the PMA has now gone. I would like some clarification from the minister, if possible, about whether that PMA position has gone into arbitration, which means there is currently no senior midwife advising this state and no-one in that permanent position. There has been a lot of uproar from midwifery leaders about the fact that there has been a 40 per cent reduction in this important role. The principal midwifery adviser obviously has a lot of support. This is just one area that the Minister for Health has failed the people of Western Australia on. The failures in this area are particularly concerning, given the vulnerability of those involved in a state such as ours. The minister regularly insists that expectant mothers deserve more. He says on an ongoing basis that we have a world-class health system, but we hear from these expectant mothers that it is a situation of "maybe later". Quite clearly, they deserve more when they are in labour than "try a different hospital". It should not be a standard operational practice in a system such as ours. It is clear this minister has done very little to address these urgent matters when they have been raised by the Australian Medical Association and the Australian Nursing Federation and also in letters such as the one from the pregnant mother who was feeling extraordinary stress. It is clear that this government, and in particular this minister, has done very little to address these issues that have been escalating over the last 21 months. It is very clear that this minister is also not up to the job.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [3.22 pm]: I rise to contribute to this important matter of public interest moved by the Deputy Leader of the Opposition. It refers mainly to midwifery and maternity services, but, of course, there is a whole —

Mr R.H. Cook: You are the Deputy Leader of the Opposition!

Mr R.S. LOVE: The Deputy Leader of the Liberal Party—my mistake!

Several members interjected.

Mr R.S. LOVE: There has been a coup! Just because the leader is sick, does not mean that we have lost the balance!

We support this motion concerning midwifery and maternity services, and nowhere is that situation more stark than in the areas north of the city of Perth. If we head up the coast to Geraldton, the Pilbara and onwards into the Kimberley, we find there is a great dearth of health services, especially for women looking to give birth locally in

their region, which is of great concern to any family. I feel for those families in Geraldton in particular who have made arrangements to give birth in the St John of God hospital in Geraldton. They probably had a choice of an obstetrician, a GP or some other health provider that they wanted to be with them. Now they will be put into a public hospital without that choice. I know that some of them will make a decision to go elsewhere, which, again, puts pressure on those families at a time when it is certainly not needed.

In response to a question I raised today about the Geraldton situation, the minister made the point that he is not the minister responsible for what goes on at St John of God Geraldton Hospital, but we know that Geraldton is unique in that there has been a long history of cooperation between St John of God Geraldton and Geraldton Health Campus. Geraldton Health Campus is not of itself large enough and capable of providing all the services for the midwest without the assistance of St John of God. There is a long history of interaction between the two. We also know that unique to Geraldton is the placement very nearby of the Geraldton Universities Centre, which was opened in 2003. When it was opened, the late Hon Kim Chance said that nursing and family health service courses were provided for all at the new regional hospital, and having the new university campus on the adjoining site would complement that facility. It seems that aim of the Geraldton Universities Centre has been lost somewhat, especially the practice of training midwives.

This is not a new situation. It did not happen just during the COVID pandemic. This has been going on for quite some time. In fact, in regard to this situation at the moment in Geraldton, the WA Country Health Service regional director of nursing and midwifery, Marie Norris, was quoted in an article on ABC online of 4 November. She said that Geraldton Health Campus could cope, with extra staff, but she later went on to say —

> … hospitals across the country were battling a shortage of midwives.
>
> "Staffing across nursing and midwifery has been a pressure point for the system for some time that we've all been aware of …
>
> "I don't think it's just about a single variable to be honest."

That is probably quite true. In fact, as I pointed out in today's question, it had been raised earlier by the opposition that there needs to be a training program for midwives across country areas. Almost half the midwifery positions advertised at Western Australian country hospitals last year went unfilled, leaving pregnant women and newborn babies vulnerable because of the lack of staffing. That exists right across the country, from Esperance, Carnarvon and Narrogin up into Kununurra and the Kimberley. This is not new; it has been going on for some time. Of course, that leads to families having a lack of choice or being forced to travel to have children. That can be especially hard if there are complications or difficulties, which might be expected. There are real costs to families and regions with the neglect of providing sufficient midwives to country areas in the state.

I know there was a lot of backwards and forwards discussion between the minister and Hon Martin Aldridge about the Geraldton Universities Centre, the issues of trying to get placements for midwives and the decision that there was not sufficient work there to be able to do that. I think the universities centre said it had strategies prepared to look at making it work, but, unfortunately, the health department and the minister have taken a one-size-fits-all view of this and ignored the fact that it has been almost impossible to recruit people in country areas to fill these midwifery positions over the last 12 months and further back. There has been an ongoing problem of having sufficient workforce development in country areas. To overcome that, a change needs to be made in the way the department is recruiting and training. Hon Martin Aldridge put forward a proposal worked up with the GUC that would have led to people being trained in country Western Australia. We know that when people are trained in country areas, they tend to stay in country areas. It sometimes takes a leap to move beyond accepted practice and initiate a new system and a new way of doing things that will overcome a long-term problem.

I remember when royalties for regions funded the introduction of telehealth services in Western Australia, there was initially a lot of negative reaction and pushback from traditionalists in health. People said that it was not an appropriate way to give a health service. We know that it is not always the best way, but it is a way of ensuring that people in country areas can be serviced. Now that has been taken up and used by country health services and used in other parts of the nation. Of course, everyone has become more used to doing things a little differently since the arrival of COVID.

It is time to look at training again to ensure that staff in country areas are trained so that we have some longevity and a structured workforce that provides for staff in the future. We know that people come in and out of the workforce and they want to shift locations et cetera. We need to train more staff than are expected to work at a particular time. We need those extra staff because it is a highly flexible work environment and a lot of people want to move around. It is not possible to do that if people do not come forward to fill those country positions. When something like 57 per cent of those positions are unfilled at times, it is obviously very difficult to provide the level of service that is required in areas such as Geraldton and in the midwest generally. It is very disappointing that nothing has been done to ensure that midwives are trained locally and that people can look at moving to country areas as a career option going forward. We know that there are issues not just in Geraldton; the situation in the Pilbara has also been very difficult. When the minister spoke today, he denied there had been any shift in the Pilbara, with women not

being induced at a particular time because of a lack of staff. Yet that report came from staff on the ground in the Pilbara. Sometimes reports from staff are closer to the truth than some of the official spin at the top of an organisation. If the minister receives reports from staff in the Pilbara saying that certain dangerous practices are occurring, it would be very wise to not simply rely on a bland assurance from an official in the WA Country Health Service. I would expect the minister to ground truth that and ensure that sufficient services were available in that area so that it does not become standard practice in the Pilbara hospitals—Hedland Health Campus and Karratha Health Campus et cetera.

There are dire shortages of not only midwives, but also other staff in the Kimberley. I raised an issue with the minister in this place a couple of weeks ago through a grievance referring to the situation at Meekatharra Hospital in the midwest where all the staff are fly-in fly-out. No-one who lives locally can be relied upon or has knowledge of the area, the people and their living conditions and the ability to treat them properly. It is a dereliction of duty to allow an inadequate workforce to continue, especially in midwifery, in our regional areas. I urge the minister to implement a plan to address this issue. I join with the Deputy Leader of the Liberal Party in condemning the minister for his lack of action thus far.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [3.33 pm]: I also rise to support this motion. It is important for members in this place to recognise that the crisis in our health system is owned by this government because of its own actions. When I came into this chamber in 2018, I remember the Minister for Health and the Premier did as they are wont to do now—trying to ridicule and criticise this side for what happened in the previous government. They boasted about the fact that they had cut the health budget and they were much cleverer than the Liberal Party and the National Party in the former coalition because they achieved savings that this side was unable to achieve when it was in government.

What have we seen? We have seen a health system that is on the brink of collapse when effectively we have no COVID infection in the state of Western Australia; it has been very minimal during this entire period. Members have outlined some of those issues. All of a sudden, during the last budget, the minister had to admit—I do not think he ever admitted that we have a crisis but it is clearly a crisis—that the health system was under pressure and under stress. Therefore, the government put in this record spin. That so-called record spin was not even sufficient catch-up for what was cut out before.

As I have said in this place, I did a simple projection on the normal rise of medical expenditure over the next four years, over this period of Parliament. The underspend over that period for the normal rise in health costs versus what the government has budgeted for is $1.5 billion. The problems we have now will only get worse. As I said, this government owns the problems absolutely and completely.

We are in the middle of a global pandemic, as the ministers on the other side are wont to point out. We are not exposed to the virus, but we do know that at some stage Western Australia will be opened up and we will be exposed to it. We have a health system that is utterly and totally unprepared to deal with that. One of the queries we on this side have raised is why the government is so equivocal about giving a clear date to reopen. One of the clear reasons is that we have a hospital system that cannot cope at the moment and any extra load coming into it will simply mean that we will be in further trouble.

The minister tried to have a bit of fun today with a proper question that I asked about New South Wales. The truth is that the hospital system in New South Wales is under enormous pressure but it has no restrictions whatsoever on its elective surgery capacity. Even though it is living with COVID, it can cope completely and it does not have to cancel any elective surgeries. New South Wales prepared its hospital system. This state is completely unprepared.

There is no doubt whatsoever that the minister is a good person. I have no hesitation in saying that; he is a very decent person. But being a decent person does not mean that he is the right person for this job. It may be that after 11 years in this field, the minister needs a rest. He may be distracted by his other areas of work, particularly in preparing this state for the green energy revolution—again, something for which this state is completely unprepared. It has no industrial land available, and no land tenure system that is suitable for the mass rollout of solar cells and windmills. We hear that frontline medical staff in Perth Children's Hospital are working 14-hour shifts. That is their standard shift. Then they get asked to work extra time. We have a minister who is a member of a union. What union would allow that to happen? Those staff get called in for extra shift after extra shift. The hours that they are working in the Perth Children's Hospital, for example, would not be allowed in the mining industry. The Minister for Mines and Petroleum would prosecute employers who did that, yet this employer—the state government and this minister—is allowing those conditions to persist.

MR R.H. COOK (Kwinana — Minister for Health) [3.37 pm]: I rise to speak against this particular motion. If we are going to give the opposition one thing, it is that it is consistent. Opposition members consistently raise the same arguments in this place and they are consistently bad at doing it! Today we saw another lacklustre effort by those opposite. Starved of anything to talk about, they continue to talk about nothing. One of the opening salvos from the member for Vasse—once again, she came into this place with wanton ignorance and stupid utterances—was that Western Australian hospitals are suffering, and that is outrageous because there is no COVID. As the member for Vasse well and truly knows—she chooses to withhold this truth, and some would say that is therefore

the perpetration of a lie—hospitals in Queensland, which do not have COVID-19, are also suffering. Hospitals in South Australia, where there is no COVID-19, are also suffering. The fact of the matter is that all hospitals right across the nation are struggling to deal with a post-COVID spike in demand combined with the failure of the federal government to deliver on its NDIS program. All hospitals are suffering from a worldwide shortage of healthcare workers. We are being impacted by this like every other state.

It is not correct to say that the number of midwives is reducing. Since January 2021, we have increased the number of midwives by 15. In addition, we are bringing in 130-odd nurse graduates to specialise in midwifery, and 13 midwives are undertaking their midwifery refresher program so they can come back into the service. We are also undertaking a successful campaign to make sure that we can continue to grow the number of midwives that we are recruiting from overseas. We are undertaking important work to ensure that we have the necessary number of midwives right across the system. But we are challenged in relation to the workforce. That is a fact of life that we have to bear.

I want to address the issue of bypass. King Edward Memorial Hospital for Women operates a two-campus facility, one at Osborne Park Hospital, and the other at the main King Edward Memorial Hospital campus in Subiaco. From time to time, people who have undertaken to have their child delivered at that particular hospital and who are experiencing a low-risk birth may be transferred to Osborne Park Hospital. That will be under the same hospital arrangements, but simply in acknowledgement of the fact that King Edward Memorial Hospital is for the higher-risk deliveries.

The member for Vasse quoted a former president of the Australian Medical Association and said that people are having to use out-of-date or old operating theatres at King Edward Memorial Hospital.

Ms A. Sanderson: What does that mean?

Mr R.H. COOK: That is a very good question, Minister for Environment. What it actually means is the bleeding obvious—that King Edward Memorial Hospital is an old hospital. Therefore, we would be looking to a government to build a new women's and newborns' hospital. The government has committed $1.8 billion to the development of the new women's and newborns' hospital, to make sure we continue to have world-class maternity health services.

That is not all we are doing. We have also committed $256.7 million for the expansion of Joondalup Health Campus. We have created a 100-bed inpatient admission capacity at Fremantle Hospital to deal with the spike in demand. We are building, member for Moore, a new hospital at Meekatharra, something the former government did not do. We are increasing the capacity of Bunbury Hospital at South West Health Campus, with a $200 million upgrade. We are redeveloping Peel Health Campus, with a $152 million upgrade. Geraldton Health Campus is experiencing an $82.3 million redevelopment. Laverton Hospital is experiencing a $23.5 million redevelopment at that site. We are providing a new facility at Tom Price Hospital, with a $32.8 million upgrade. We are well advanced in the $61.4 million redevelopment of Newman Hospital. If that is a measure of a litany of failures, I am quite happy to accept that verdict. That is an aggressive and purposeful redevelopment and renewal of our hospital system right across this state.

Let us go for a moment to midwifery services. We have undertaken a significant repurposing of midwifery programs in Western Australia. We have introduced the midwifery group practice, which is now being rolled out right across the state. Since coming to office, we have doubled the number of midwifery group practices available, with the opening of new midwifery group practices in Northam, Carnarvon, Collie and Warren–Blackwood. We have also opened the birthing centre at Fiona Stanley Hospital. Literally hundreds of babies have been born in that facility since it was delivered by the McGowan government. Let us not forget that the previous government closed a significant maternity hospital in Kaleeya Hospital. The former government closed that hospital in 2014 when Fiona Stanley Hospital was opened. If we are going to look to the future for midwifery and maternity services, we would not look to the opposition for examples of good practice, because, as members can see, the former government closed maternity services. We have significantly improved and opened them. Of course, we all remember the efforts by the previous government to close the maternity services at Bentley Health Service. A campaign was waged against the former government at the time, and it ultimately relented because of that campaign and was forced to keep those services open.

A new women's and babies' hospital is not a new idea. It was raised by the Reid review in early 2000. The former government did nothing about redeveloping or bringing about a new women's and newborns' hospital. That has been left up to us, with a $1.8 billion commitment to make sure that we can bring that particular issue to life.

We have also delivered on our election commitment to establish a new midwifery group practice for Aboriginal women, to improve the culture and security of care. We have established a new community midwifery visiting service in the Pilbara, funding the Nintirri Centre to provide a community midwife to visit women in smaller inland Pilbara towns so that they can receive their antenatal appointments closer to country. We have increased the criteria for escorts under the patient assisted travel scheme so that more birthing women can have a support person accompany them. We are also piloting a new statewide lactation service with the WA Country Health Service. We have launched a new free app, developed by the WA Country Health Service and the Health Consumers' Council, to support pregnancy, birth and early parenting for all Western Australian families. Once downloaded, the app can

be accessed without Internet connectivity, and information available on the app will be customised to the user. The WA Country Health Service, in partnership with the Health Consumers' Council, has also launched the My Baby WA app, which provides pregnancy and birth information to Western Australian women at the touch of a button. WACHS received funding of $150 000 for the development of the app through the royalties for regions campaign.

The WA Country Health Service is doing a great job in continuing to make sure that we have strong maternity services and supports for mothers. Today, the member for Moore called the chief executive of the WA Country Health Service a liar. He said that he simply did not believe the advice from the chief executive of the WA Country Health Service. We know that is the standard that members of the opposition run. They have a glaring indifference to the truth. The fact of the matter is that our midwives and obstetricians right across the health system are doing a great job, under very difficult circumstances; and, with the strong investment from the McGowan government, we know that they will continue to have the resources to meet those challenges.

DR J. KRISHNAN (Riverton) [3.48 pm]: I rise to oppose this motion. There are two things that a person needs to do to achieve things—the first is commitment; the second is consistency. I am so confused about why the opposition is following this to achieve failure. The 2021 election was a clear mandate from the people of Western Australia. The main reason the McGowan government was re-elected was that its management of the COVID-19 pandemic has been the best in the world. The opposition is committed to bringing the same motion to this house over and again—repeatedly. The opposition is also consistently bringing to this house the same issues—repeatedly. I myself am speaking on this particular motion for about the fourth time, I think.

The opposition health spokesperson said that there is a lack of investment. I make it very clear that $5 billion plus in investment is a historic investment in health in Western Australia. It is utter lies to say that there is a lack of investment. I was heartbroken by a statement the opposition health spokesperson made. In my career as a doctor, I delivered over 400 babies. I know how important it is, I know how stressful it is and I know what level of skills is needed. The least the opposition health spokesperson could have done was appreciate the work the midwives and the obstetric registrars do in the hospital. She said that foetal heart sound is used to give a clear indication of when the baby inside is distressed. Because we cannot see it through our eyes, we rely on the baby's heart sounds. When that reduces, it is an emergency. Any doctor around the world will care for that patient immediately. For the opposition health spokesperson to say that a patient was sent home and asked to come back after four days is utter lies and is unacceptable.

The opposition health spokesperson asked: where is the recruitment? The Department of Health succeeded in recruiting over 900 nurses between January and August 2021. Is that not recruitment? That was on top of the existing nurses. Since the opposition left government, 4 000-plus nurses have been added. Is that not recruitment? Calling that a failure to recruit is, again, not acceptable.

The Deputy Leader of the Opposition has the important responsibility of holding the government accountable and getting things done for the people of Western Australia. He should be encouraging people to join the system. He should be standing with the government to make things better for the people of Western Australia. Making statements about dangerous practices happening in the Pilbara will scare the hell of out of people who want to join the system and contribute to Western Australia. I cannot understand what dangerous practices are being followed.

The Leader of the Liberal Party spoke about the last budget. Again, I remind him that it was a historic budget for Western Australia to have delivered $5 billion plus for health. He spoke about the New South Wales capacity. He first mentioned ICU and then planned procedures. Why does he not speak about the number of lockdown days and the number of deaths in NSW and the people who suffered in extreme circumstances compared with Western Australia? Is it only the capacity that we look to as a metric? He needs to step up and cooperate with the government. Once again, for the last time, I plead with the opposition to join hands with the government in providing the best health system for every Western Australian.

MR M. McGOWAN (Rockingham — Premier) [3.52 pm]: Obviously, we will not support this motion, which has remarkable similarities to the motion that the opposition moved last week. We will not support it for the same reasons as last week. We are resourcing the Western Australian health system better than ever before and we are recruiting more nurses and doctors than ever before in a very, very challenging international environment. That has been difficult. We have not shied away from saying that the health system is under pressure, as indeed it is in every state in Australia currently. There are a range of reasons for that. Recruitment from overseas has been difficult in every state in Australia, and our health system has traditionally relied upon recruiting doctors and nurses from overseas. It has been difficult to recruit. That has been exacerbated enormously by COVID, obviously. That is the same for every state in Australia. Other states have gone through similar problems as us. As I may have advised the house recently, I saw a story about Tasmania whereby patients were being taken to hospitals in police cars because the ambulances were too busy. That is the type of thing that has occurred in other states. Because there has been a surge in activity levels, particularly in emergency departments, and, as doctors say, an increase in the range and acuity of the conditions people are suffering from going to emergency departments, it has been difficult to manage, particularly in a constrained environment when it has not been easy to recruit staff. All those things are occurring all over Australia at the moment.

As a consequence, in the state budget, which came down in September, we have provided a massive increase in funding and support for health for recurrent services and capital works. We increased recurrent spending by $1.9 billion and funding for capital works in the health system across Western Australia has increased by $1.3 billion, including on rebuilds of hospitals all over the state. Hospitals have sat there for years without any work being done on them. Work is being done on Tom Price Hospital, Newman Hospital, Bunbury Hospital at South West Health Campus, Geraldton Health Campus and Meekatharra Hospital, which have suffered from a lack of attention for many years, and new hospitals are being built. We used our financial success and allocated $1.8 billion to the new women's and babies' hospital to replace King Edward Memorial Hospital for Women. All those things are in the budget, as important as that is the massive increase in funding for recurrent health services all over Western Australia. The motion, which talks about resourcing, is wrong; it is factually incorrect. We have the best-resourced hospital system in Australia with the strongest spend per capita in Australia; it is way above the national average of any state in the country. Therefore, we are resourcing the hospital system better than any state in Australia. We are rebuilding from the ground up many hospitals across the state, and supporting and providing services in a very difficult environment all over the state.

When I go to COVID clinics, which I do virtually every day to encourage people to get vaccinated—it would be great if the Liberals and Nationals WA would assist us with that—I meet nurses. We have had to staff those clinics all over the state with nurses who would otherwise be in hospitals. As we get our vaccination levels up and phase out some of this activity, we can get people back into their ordinary jobs in hospitals and medical practices and the like to help alleviate the pressure on our health system. Running clinics all over the state is unique. It has never happened before that state governments have had to set up these clinics where hundreds and hundreds of people are working on providing COVID vaccines all over Western Australia. Undoubtedly, that has added to the pressure on our health system.

As I have said here before, we have long-stay patients in our hospitals who should not be there; they should be in aged care and disability care. They take up beds that could be freed up for people coming into the emergency departments. A fundamental problem with the way the system works all over Australia is that the states are responsible for the hospitals and the commonwealth is responsible for providing aged-care beds. If the commonwealth does not provide enough beds, those people often stay in hospitals, which is not good for them or their families and it certainly is not good for the health system. Unless the commonwealth provides more aged-care beds, we cannot fix that problem because we cannot get those people out. They do not want to be in hospital. They would rather be in an aged-care facility. It is a terribly difficult and wicked problem, not of our making. All these things combine to put the system under pressure.

The reality is that hospitals are melting down all over the world, yet Western Australia's health system is doing extraordinarily well in the biggest jurisdiction in the entire world. We provide health services in the most remote locations—outside of, perhaps, the Arctic and Antarctic Circles—of anywhere in the entire world. Those services are outstanding by world standards. I would like to thank all the people who work in the system who provide those services. To suggest, as I heard the Leader of the Liberal Party suggest in question time, that somehow New South Wales is doing better, is, frankly, a laughable analogy.

New South Wales has people in ICU and in hospitals with COVID. Its system has melted down. It has instituted what is called "hospitals at home" because people cannot fit into the hospitals. It has suspended elective surgery for months on end. It has had multiple people die—die in the streets, die in their homes, die in hospitals. That is what has happened in New South Wales, and the member is saying that is a better system and a better example. That shows how laughable it is; the member's efforts to find things to whinge about and criticise mean that he comes up with the most ludicrous analogies that make him look ridiculous to everyone in here and anyone out there, if anyone watches what the member says, and I doubt that many people do. That is the position Western Australia is in. The opposition comes in here and demands that the minister resign. That is its modus operandi.

If the Liberals and Nationals want to get any respect out there at all, because they are a group of people with very low levels of respect, they should be out there, like we are, condemning some of this crazy anti-vax activity. They should be supporting us to get people vaccinated so that we can get to high levels of vaccination, rather than asking all these questions without notice undermining the campaign. The questions members ask in here are undermining the campaign. Why do they not assist us? Some of the conduct that we have seen out there, that I have seen personally, such as people driving armoured cars up to my office and people rolling scaffolds around the streets, needs to be condemned. Some of the language they have been using, some of the calls I have heard in my office, and some of the emails and the messages that I have received are deeply threatening and intimidating. This stuff is going on and the Liberal and National opposition is, again, undermining. Why does the opposition not call a press conference and say, "We support the government. We want everyone to get vaccinated. Please, in every community across the state, go and get vaccinated"? If the opposition wants to go and do something constructive, go and do it. Then people might get a bit of respect for it.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [4.01 pm]: I rise to make a contribution to this debate. One thing about the Liberals is that they just continue to recycle. One of the things that we heard

during question time, which was incredible and phenomenal, from my perspective, was the unalloyed praise for the New South Wales health system. This is what the *Daily Telegraph* said in "Bush Summit: Pledge to 'act' on NSW health crisis" —

> NSW Premier Dom Perrottet has pledged "to act" over the state's rural health crisis, following concerns over pregnant women being given waterproof mats in case they deliver babies in cars and bush hospitals with no doctors.

This is the standard that the member for Cottesloe wants to have in Western Australia. This is what the Sydney —

Dr D.J. Honey: You are a lawyer. Do not make stuff up.

Mr S.A. MILLMAN: I am quoting from the *Daily Telegraph*. It is hardly a shining light of left-wing journalism. I will also quote from *The Sydney Morning Herald* —

> It is hard to imagine a Sydney hospital where the cooks have to care for the patients, the tea ladies check on the newborns and critically ill people are left to die without a single doctor on site. Yet this is the standard of care that people in rural and regional NSW have to put up with.

The Liberal Party opposition in Western Australia comes in here and says that is the standard of health care it wants for us. I say no. I say shame. We need facts. We need some facts to underpin this argument. New South Wales has had 78 766 COVID cases. My heart goes out to the people of New South Wales. It has had 612 deaths. It had the support from the commonwealth government and from all the other states that it needed in order to tackle the COVID pandemic. In mid-July, it received a significant boost in commonwealth COVID support payments. By mid-September, those support payments were costing the commonwealth government a billion dollars a week. Where do members think the government got the money to pay for those COVID support payments? It was from Western Australia, but no thanks to the Liberal Party, who back then sided with Clive Palmer to try to undermine our defence of our resources industry.

We would have thought that with such a massive cash injection from the commonwealth government the New South Wales government would be able to balance its books, because in Western Australia this year our budget delivers a $5.6 billion surplus. What is the situation in New South Wales—because we will let facts get in the way of the story? We will revert to facts in these debates in Parliament. The New South Wales deficit is $8.6 billion this year and its debt is forecast to grow to $104 billion by the end of the forward estimates. That is despite all the money that it has received from the commonwealth in COVID payments. That is to say nothing of the 126 000 extra doses of the Pfizer vaccine it received on 9 September.

Thousands and thousands of vaccine doses were redistributed for good reason—the decision was supported by this Parliament—to New South Wales because it was struggling so badly with the outbreak of the COVID pandemic. It was appropriate that those extra Pfizer vaccine doses went to New South Wales to help it bring its COVID outbreak under control. It was the right thing to do, but it has made the situation harder for Western Australia to get people vaccinated. As the Premier just said, that is exacerbated by an opposition that does nothing to support our efforts to try to get our population vaccinated. Despite its undermining, more than 80 per cent of the population of Western Australia has had their first dose. That is a credit to both the Premier and the Minister for Health.

As the member for Cottesloe discovered to his enduring shame during question time, we have the second-best elective surgery strategy in the country. He asked a question about elective surgery and he did not want the answer. We have the second-best elective surgery outcome in the country. But wait; there is more. Do members know what happens next? This motion criticises the Minister for Health for not making the effort to support our health system. Do members know what happens before the budget? The cabinet gets together and decides what the priorities will be. For this McGowan government undeniably, unquestionably, the priority was investment in health.

Members and the minister have already spoken about this, but let us review exactly how much is being spent on improving Western Australia's world-class health system. The health fact sheet states —

- $3.1 billion allocation to expand our health system, with $1.3 billion towards improving health infrastructure, major hospital redevelopments and expansions underway across metropolitan and regional WA.
- $960 million increase to the WA Health budget to deliver more services.
- $487 million for COVID-19 response and preparedness, including hotel quarantine and vaccination.
- $495 million record boost to the Mental Health Commission for mental health investments.

That figure does not include 200 school psychologists we are putting in to the public education system in order to improve mental health outcomes for our kids. It continues —

- 99 additional staff positions for Child and Adolescent Mental Health Service.
- Additional investment in mental health, alcohol and other drug services.

This is very important, members —

- 332 new hospital beds opening and supported by 100 new doctors and 500 new nurses
- $100 million emergency department support package which includes $35.6 million to bolster the health workforce to help alleviate demand on the health system
- Significant investment to recruit more doctors and nurses and a new recruitment drive

This budget delivers on commitments to improve services in regional WA and that is to say nothing of the new 332 new beds opening, supported by 100 new doctors and 500 new nurses, a $100 million emergency department support package, which includes a multi-pronged workforce attraction and retention strategy, and significant investment to recruit more doctors and nurses with a recruitment drive.

Division

Question put and a division taken, the Acting Speaker (Mr D.A.E. Scaife) casting his vote with the noes, with the following result —

Ayes (5)

Mr V.A. Catania	Mr R.S. Love	Mr P.J. Rundle *(Teller)*
Dr D.J. Honey	Ms L. Mettam	

Noes (41)

Mr S.N. Aubrey	Ms J.L. Hanns	Ms S.F. McGurk	Ms A. Sanderson
Mr G. Baker	Mr T.J. Healy	Mr D.R. Michael	Mr D.A.E. Scaife
Dr A.D. Buti	Mr M. Hughes	Mr S.A. Millman	Mrs J.M.C. Stojkovski
Mr J.N. Carey	Mr W.J. Johnston	Mr Y. Mubarakai	Dr K. Stratton
Ms C.M. Collins	Mr H.T. Jones	Ms L.A. Munday	Mr C.J. Tallentire
Mr R.H. Cook	Mr D.J. Kelly	Mr P. Papalia	Ms C.M. Tonkin
Ms D.G. D'Anna	Ms E.J. Kelsbie	Mr S.J. Price	Ms S.E. Winton
Mr M.J. Folkard	Ms A.E. Kent	Mr D.T. Punch	Ms C.M. Rowe *(Teller)*
Ms K.E. Giddens	Dr J. Krishnan	Mr J.R. Quigley	
Ms E.L. Hamilton	Mr P. Lilburne	Ms M.M. Quirk	
Ms M.J. Hammat	Mr M. McGowan	Ms R. Saffioti	

Question thus negatived.

INDUSTRIAL RELATIONS LEGISLATION AMENDMENT BILL 2021

Second Reading

Resumed from 11 November.

The ACTING SPEAKER: I give the call to the member for Riverton. Members, if you are going to have a conversation, please take it outside the chamber.

DR J. KRISHNAN (Riverton) [4.13 pm]: I rise today to support the Industrial Relations Legislation Amendment Bill 2021, which contains a few proposals. I will start with compliance and enforcement. An inquiry into wage theft in Western Australia proved that, yes, wage theft is happening in Western Australia. Compliance and enforcement provisions need to be reviewed on a regular basis, but, unfortunately, the last increase in penalties was more than 18 years ago.

The current penalty for failure to comply with entitlements under an award, agreement or statutory minimum conditions of employment is $2 000. This bill proposes to increase the penalty to $13 000 for an individual and $65 000 for a body corporate. There is no penalty for failure to comply with the Long Service Leave Act 1958; the proposal in this bill is to introduce penalties of $13 000 for individuals and $65 000 for a body corporate. The current penalty for failure to comply with recordkeeping obligations is $5 000. The proposal is to increase the penalty to $13 000 for an individual and $65 000 for a body corporate. The bill contains accessorial liability provisions for third parties. For example, the end user of labour hire could be held liable. This amending bill will allow industrial inspectors to give infringement notices on the spot. These measures are required to make sure that employers in Western Australia are compliant. The proposed changes will make sure that enforcement happens in a proper way.

During the election campaign, the McGowan government made a commitment to make Easter Sunday a public holiday. Not all workers work in seven-day industries. Those people work five days over Easter, but until Easter Sunday is announced as a public holiday, they will not get a penalty rate. They may get a penalty rate for working on a Sunday, but it is not as high as it would be if they worked on a public holiday. Many states have already done this; we should follow them and keep the promise we made during the election. Individual businesses will have to assess whether it is viable for them to open their business on Easter Sunday. Many industries, such as hospitality and tourism, already add a surcharge when services are provided on a Sunday. This amendment will bring about Easter Sunday as a public holiday.

I turn to equal remuneration. Over the weekend, I attended a Bizcon event at which my daughter spoke. She is 22 years of age. She has been looking after my business in the last year and was invited to speak about women in business. I should acknowledge that she was a bit nervous, given that it was her first time speaking in front of a big audience. But I will remember her closing statement for life. She said, "I hope in future we do not have a discourse about women in business and we instead discuss people in business." It touched my heart and I will remember that for a very long time. The issue of equal opportunity often comes up: why should there be a difference in the remuneration of a male or female when the work that is done is the same? There is a 22 per cent difference in the pay of females and males in Western Australia. If a female worker does the same job as a male worker, she is paid 78 per cent of what the male worker would receive. It is our duty as lawmakers to make this correction and bring about equal remuneration.

I turn to unpaid family and domestic violence leave. I have learnt a lot about domestic violence and the difficulties that follow after my association with Zonta House in my electorate, which does a fantastic job in supporting people who are affected by domestic violence. There is a lot of emotional turmoil and a lot of personal issues that need to be sorted out. It is only about them having access to leave. It is not even paid leave; it is unpaid leave to address an important issue, and that is also what this bill is about. I am totally supportive of that.

There are also amendments that will have effect on local government. The Industrial Relations Legislation Amendment Bill 2021 will enable certain employers to be declared not national system employers. There is a difference between a national system employer and a state system employer. The bill makes provisions to declare that employers are not on the national system. Upon moving to the state system, a modern award or enterprise agreement that applies to a local government under the Fair Work Act 2009 will continue to apply in the state system for a maximum nominal period of two years. That provides sufficient time to adapt to changing from the national system to the state system.

With regard to the protection of employee rights, this Labor government has always undertaken to take care of employees. Every employee in Western Australia is much better off under this government. Again, this bill will make amendments following the recommendations of the 2019 inquiry into wage theft in Western Australia. They will prohibit employers from taking "damaging action" against employees, and the definition of "damaging action" includes dismissing an employee or altering an employee's position to their disadvantage. It also prohibits employers from dismissing employees in order to engage them as contractors, and from advertising a job at a rate that is less than the minimum wage for that position. These actions will be prohibited by the actions that will be brought in under this legislation. Again, penalties will apply if employers do not comply.

Lastly, the bill removes exclusions from the definition of "employee" in the Industrial Relations Act and the Minimum Conditions of Employment Act. This is not theoretical. In 2021 the Fair Work Ombudsman successfully prosecuted Sydney businessperson Tony Lam for underpaying his Filipino nanny and domestic worker. When I say "underpaying", the amount was more than $100 000. She was paid an annual wage of $12 574. This amending legislation will bring about minimum conditions of employment and also the exclusion of people in certain categories, including nannies and domestic workers. Australia is not compliant with the International Labor Organization's Protocol of 2014 to the Forced Labour Convention, 1930. This legislation will allow the Western Australian government to be compliant. The commonwealth government twice wrote to the Minister for Industrial Relations to make this amendment so that we could comply with the protocol.

There was another incident in 2021 in which Melbourne couple Kumuthini and Kandasamy Kannan were jailed for enslaving a Tamil woman for eight years. I watched that news story with tears in my eyes for the conditions that woman endured. It was fortunate that she was still alive after such bad treatment. These amendments will bring about change to protect employees to the maximum extent.

Before I conclude, I will make some comments about stopping bullying and sexual harassment. We are aware that there is currently a committee inquiry into sexual harassment in the mining industry. We need to understand why these amendments are required. They will reduce lost time, productivity and staff turnover; result in fewer worker compensation claims; and create positive cultural changes in the workplace. Workers often do not have easy access to legal help. There are delays before they can seek help when there is bullying or harassment happening. This bill will allow those things to be ironed out to protect workers. I commend the bill to the house and thank you for the opportunity, Mr Acting Speaker.

MS C.M. COLLINS (Hillarys) [4.25 pm]: It is my honour to speak to the Industrial Relations Legislation Amendment Bill 2021. I am confident that this body of work will be seen as one of the lasting achievements of the McGowan Labor government. I would like to acknowledge Minister Johnston and Minister Dawson for their tireless work in bringing this bill to the house, and the many hours of consultation they conducted with working people across this state. The outreach for this legislation went far and wide, and I therefore also recognise all the Western Australian unions and professional associations that undertook internal discussions with their membership on how to make working life better.

We were very fortunate last week to hear from members in this house who have vast experience and expertise in the area of industrial relations. I note in particular you, Mr Acting Speaker (Mr D.A.E. Scaife), a former industrial

relations lawyer, and, of course, the member for Mirrabooka, a former secretary of UnionsWA. I am much less experienced in this area, but I, too, am a very proud member of the WA Labor Party—a party that understands the need to improve the lives of working people and create a fairer society.

When I decided to speak on this bill, I put out a call to the constituents of Hillarys to provide me with some of their worst work horror stories. In just 24 hours, my inbox was inundated with accounts of bullying, sexual harassment, understaffing, not receiving entitlements such as superannuation or annual leave, wage theft, unsafe work environments and unfair dismissals, just to name a few. The conditions in workplaces and working rights are fundamental to the aim of pursuing the equitable sharing of the commonwealth for all. The contents are clearly written on the label; it is in our very name. The Commonwealth of Australia is a societal pool of wealth that is common to all Australians, or at least it should be. As other members have pointed out, WA continues to have a wider gender pay gap than that of any other state. By eliminating inequities, unfairness and loopholes, and disallowing poor treatment of Western Australian workers, we can create an industrial landscape that rewards hard work. Simply put, if we have workplaces in which hard work is rewarded and exploitation is punished, a greater share of our society will prosper.

I would like to address some of the important areas that these reforms relate to in our efforts to create a fairer set of rules for all. Firstly, the legislation will insert new provisions to prevent bullying in the workplace. I personally believe that the word "bullying" is somewhat too suggestive of schoolyard harassment to capture the true depths of this form of abusive behaviour that evolves in adulthood in the workplace. I think every working Western Australian has seen some form of bullying or harassment at work. Toxic workplaces can have severe psychological repercussions for workers. Nobody wants to wake up in the morning and dread going to work—a place where they may forfeit their dignity and not be treated with respect by their co-workers or managers. Unfortunately for workers and the unions that represent them, it is notoriously difficult to get action against bullying in workplaces. So often the complaint is met with a counter-complaint of bullying or the persecution is channelled against the complainant. This is obviously not the way we should handle real and problematic psychological hazards in any workplace. As part of any occupational health and safety guideline, we would always take swift action if there was a spill or a sharp object, so why can we not take similar swift action against cruel, vindictive behaviour that is designed to belittle fellow co-workers and, equally, causes long-term damage and inefficient production in the workplace?

Systemic bullying is also a terrible drain on our businesses and workplaces. It leads to high staff turnover, increased illness and increased take-up of personal leave as staff often dread coming to work. These reforms are necessary because they will help employers identify and act on bullying behaviours in their workplace. They will offer a protective legal framework to address this debilitating behavioural pattern. This will encourage every workplace to examine its organisational culture and assess damaging leadership styles or outdated modes of leadership. It is estimated that work life takes up 60 per cent of most working adults' waking hours. In the twenty-first century, we must do all we can to ensure that this time is spent both productively and, more importantly, happily and free from abuse. This approach is about prioritising the psychological health of staff in every WA workplace.

The Industrial Relations Act will also be amended to provide the Western Australian Industrial Relations Commission with the power to deal with sexual harassment claims. Like many other Western Australians in their early 20s, I worked in the hospitality sector in a number of hotels, bars and restaurants. I was very much aware of the sexual harassment, both serious and casual, that permeated the industry. I experienced and witnessed managers making inappropriate comments to and inappropriate physical contact with young female staff members. The harassment was often couched as simple playfulness by over-friendly managers. However, it was based entirely on the abusive power dynamics of a poorly regulated industry consisting mainly of young and vulnerable staff working away from home and, in many cases, foreign backpackers with minimal English.

I want to recognise all the hardworking female unionists who fought so many battles to make working life better for younger women and men entering the workplace. The Sex Discrimination Act 1984 went so far as to prohibit sexual harassment in the workplace and to allow more women to succeed and achieve in their respective fields. It also created the strong tradition of the office of the Sex Discrimination Commissioner, a role that has led to years of effective work in removing discrimination and intimidation from the workplace.

The Australian Human Rights Commission undertook a body of work in 2019 to survey members of the Shop, Distributive and Allied Employees Association of WA about their experiences of sexual harassment. The rate of workplace sexual harassment in this group of workers during the last five years had been six per cent higher than that of the normal working population. This survey uncovered that 65 per cent of SDA members had experienced sexual harassment at some point in their lifetime and three out of four female SDA members had been sexually harassed. In 42 per cent of these instances, inappropriate physical contact had been initiated with a female staff member, and one in seven female workers reported that they had experienced actual or attempted rape or sexual assault at some point in their lifetime. Clearly, ongoing efforts are required at a state and federal level to make our workplaces safer. The respect at work amendments, which were brought forward this year in federal Parliament, provide for victims of sexual harassment to seek access to the Australian Human Rights Commission. This is an important and powerful avenue of assistance for vulnerable staff. This measure complements avenues that already exist for Western Australians, such as taking the complaint to WorkSafe or the Equal Opportunity Commission.

This bill will also amend the Minimum Conditions of Employment Act 1993 to provide five days of unpaid family and domestic violence leave. This will no doubt protect workers when making arrangements to escape domestic violence. A recent November 2021 analysis of workplace agreements for the family and domestic violence leave review was conducted by Kate Seymour and associates of the social work innovation research group for Flinders University. Seymour and her team found that only 43 per cent of agreements included paid FDV leave and 55 per cent of agreements included unpaid FDV leave. Their analysis shows that Australia has a long way to go, but these reforms will deliver a new standard in Western Australia to support workers who have become victims of family and domestic violence.

The bill will alter the minimum conditions of employment in Western Australia, which is absolutely necessary to ensure that employers do not force employees to pay them for their benefits or that employers do not deduct wages. These amendments will very much take action against the predatory cashback schemes. Cashback schemes are simply a fast way to paying workers below the minimum wage, while having all the legal appearance of meeting all the requirements under the law. They are exploitative—plain and simple. I have spoken about how this exploitation harms the workers, but let me take a moment to illustrate just how some of these problems harm industries and our economy.

In the report *Inquiry into wage theft in Western Australia*, there is a discussion about the industry-wide problem in horticulture of undercutting labour costs. I will paraphrase the report. The continued operation of a subset of horticulture growers who do not comply with Australian workplace standards presents a danger to the future viability of the Western Australian industry. Undercut labour costs lead to produce being sold at a lower price. Such growers exploit workers and take advantage of vulnerable groups, such as undocumented migrant workers or working holiday makers. The principle of fair competition that the efficiency of the market is based upon is damaged. Honest businesses are placed at a disadvantage and the industry therefore develops upon an inaccurate and highly precarious foundation. We really need to protect honest businesses and ensure that they are not left at a disadvantage to those who employ workers using dirty tricks. Better protection for workers will mean stronger, accurate pricing based on the true cost of production and therefore will result in resilient exports and efficient industries.

These reforms will also create stronger rules for employers to maintain proper records for their employees. This will lead to clearer and more accountable payslips that provide fairer transparency in pay. Unpaid overtime, docking pay and the exploitation of teenage staff who may know very little about their legal rights in the workplace are just some of the ways that wage theft exploits Western Australian workers. Theft is theft. Whether someone steals stock from a retail store or someone steals hard-earned wages from a working Western Australian, the treatment should be the same. Wage theft is not a minor administrative error to be hand-waved away—it is a crime. This measure is just one part of the plan to combat the insidious threat of wage theft across Western Australia and I commend the McGowan government for its actions during its first term of government to undertake the inquiry into wage theft.

I also commend the work of the former Chief Commissioner of the Western Australian Industrial Relations Commission, Tony Beech, and all Western Australian unions, which took time and effort to gather the experiences and stories of their members who had been affected by the crime of wage theft. The inquiry discovered this crime was prevalent in the retail, hospitality, cleaning and horticulture industries. It is an obvious fact that all the illegal and abusive practices highlighted and covered in this inquiry impact most profoundly on those sections of our workforce and society that are least able to afford legal representation. The inquiry found there was a real problem with compliance with existing industrial legislation. It also found both bosses and workers alike had a poor understanding of the industrial laws in place required to run a fair workplace. It highlighted that there are real areas of concern in fast food, hair and beauty, and retail, which are industries made up of young female migrant workers who speak a language other than English. This experience was linked to the reporting made by the Fair Work Ombudsman in November 2018, who found 38 per cent of businesses were still in breach of Australian workplace laws. Of note, many of these noncompliant businesses were nail salons and fast-food businesses, as mentioned before. Clearly, worker education will be very necessary to making these reforms as effective as they can be. These amendments will act on these findings of the inquiry into wage theft by delivering broader, more effective powers for public sector industrial inspectors.

To conclude, these amendments exemplify some of the best elements of the modern Labor Party. They are designed to further protect some of the most vulnerable members of our workforce and community and to close loopholes, address sexual harassment, improve fairness in accessing entitlements and so much more. They are a necessary step to creating a fairer playing field and to foster the equitable sharing of the commonwealth and prosperity of the working people in this state. I commend this bill to the house.

MR S.J. PRICE (Forrestfield — Deputy Speaker) [4.42 pm]: It is a pleasure to contribute to the debate on the Industrial Relations Legislation Amendment Bill 2021. I start by acknowledging the previous Minister for Industrial Relations for the great work he did in the last government in bringing this bill to the house back in 2020. Unfortunately, as we have all heard, it never made it through the other place, so we are back here again talking about the same issues we have previously. To be honest, hearing some of the contributions from the other side, it is a little bit like groundhog day. I am going to contribute by reading some excerpts from my contribution the last time the 2020 bill was before the house. I will give members a bit of background and history about how we

ended up here, because, quite obviously, those on the other side do not understand the amount of work that went into ensuring that a significant amount of consultation and research was undertaken to develop this bill. I will enlighten them on that.

As we have heard, the bill came about in response to two reviews that the previous minister instigated when we were elected. The first was the ministerial review of the state industrial relations system, which was conducted by Mr Mark Ritter, SC, assisted by me. The second was the inquiry into wage theft in Western Australia, which was conducted by the former Chief Commissioner of the WA Industrial Relations Commission, Tony Beech. Both Mark Ritter and Tony Beech were very suitable, able, well-accomplished and respected members in the industrial relations community of Western Australia, so we could not have asked for two more prominent and respected people to carry out those investigations.

I will give members some information about the state jurisdiction. At the beginning of the review into the state industrial relations system that we undertook, it was a little bit difficult to identify the number of employees covered by this state jurisdiction. Some work was done by the secretariat, which I will mention later on, and it was estimated that between 21 and 36 per cent of employees in WA were covered by the state jurisdiction, which, in the scheme of things is a very significant number of workers in Western Australia covered by a very special state industrial relations system. Western Australia maintained its state industrial relations system when the federal WorkChoices legislation was introduced in 2005, and that has enabled us to ensure that we can look after people in Western Australia in the way they should be looked after, being in the jurisdiction of our own state as opposed to it being done through the commonwealth. When we started the industrial relations review, Mark Ritter was announced as the lead person conducting the inquiry. Mr Ritter is very experienced and well respected. He was admitted to the Supreme Court of WA in 1985 and the High Court in 1986. From 2005 to 2009, he was the acting president of the WA Industrial Relations Commission. Between 1995 and 1998, he was a part-time judicial registrar at the Industrial Relations Court of Australia. From that, we can tell he has had a very long and distinguished career within the industrial relations profession.

The inquiry we undertook was very comprehensive. I will give members some of the detail about that shortly to alleviate and deal with this mistruth being reported by the other side that there was a lack of consultation on this bill. There has probably never been as much consultation on any bill with the people it is relevant to as there was on this one. We have Liz and Cara, who are part of the secretariat, seated at the back there, and also Lorraine, who is not here. The amazing work they did during that inquiry was outstanding, and without their assistance and input, it would never have happened at all. To fill in some of the gaps about this lack of consultation, when we undertook the inquiry, as part of the process we published an interim report with some of the findings, considerations and recommendations we were proposing for the final report. From that, we sought submissions and produced a final report that came out in June 2018.

I will talk about the amount of consultation that took place. On 30 September 2017, the review was announced in an advertisement in *The West Australian* and *The Australian*. The terms of reference and where additional information could be obtained were outlined. There were 215 letters sent to employer associations, industrial agents, law firms, not-for-profit organisations, public sector departments, unions and other people who might have an interest in the review. There was also correspondence and meetings with Chief Commissioner Scott, Senior Commissioner Kenner and Registrar Bastian of the Western Australian Industrial Relations Commission to get some basic information and statistics. The secretariat also asked a number of stakeholders whether they would like to meet with the reviewers to discuss the terms of reference prior to finalising their written submissions. Numerous stakeholders took up this opportunity. There were 13 meetings held between 13 November 2017 and 20 December 2017. The review then received 65 sets of written submissions from bodies, institutions and individuals. In addition to stakeholder meetings, there were informal private meetings and correspondence with people who had knowledge of, or past or present involvement with, the state industrial relations system. Invitations for submissions, comments or meetings about the interim report were sent out to interested stakeholders and individuals. We then considered and analysed all the submissions and other information provided and put that into an interim report.

Once the interim report was published, it was made public. All stakeholders were informed about the interim report and provided with an opportunity to make submissions in response to some of the proposed recommendations contained in that report. In particular, prior to publication. the reviewers wrote to each person, body and organisation that had provided written submissions to the review to advise them of the publication and the opportunity to make further submissions. More meetings were held. A number of stakeholders were asked whether they would like to meet again to discuss the interim report. Eleven meetings were held as part of that process. On top of that, we then received 49 written submissions in response to the interim report. Once we published, we then asked people to make further submissions about the submissions that we had received, so there was no secrecy to it; everyone knew what was going on. We informed people of the terms of reference, called for submissions, had meetings, discussed it with them, came up with an interim report, put out the interim report, called for submissions on the interim report, and then called for further submissions on the submissions we had received for the interim report. Everyone was involved and knew exactly what was going on. As a result of that whole process, we published the final report. That makes up a significant part of what we are talking about today.

If the previous government wants to talk about industrial relations, the state system has not been improved or updated since 2002. I will quote a short section of the interim report. It states —

> On 30 June 2009 the then State Government, through the Minister for Commerce, the Hon. Troy Buswell MLA, appointed Mr Steven Amendola to conduct a review of the Western Australian Industrial Relations System. Mr Amendola prepared and submitted his "Final Report" to the Government on 30 October 2009 … There was a considerable degree of inaction following the receipt of the Amendola Report. The Amendola Report was not published by the Government until 6 December 2010. At that time, then Minister for Commerce, the Hon. Bill Marmion MLA, announced by media statement that stakeholders would be consulted about "taking the recommendations forward" and the Government "plans to introduce legislation to Parliament in 2011". This did not, however, eventuate. No legislation was introduced and on 6 July 2011 then Premier the Hon. Colin Barnett MLA said the Government was not intending to act on any of the recommendations of the Amendola Report.
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> 29. In 2012, the State Government tabled … a draft Bill for public comment. This was the Labour Relations Legislation Amendment and Repeal Bill 2012, commonly called "the Green Bill".

Although the state system was reviewed in 2009, it was not updated; hence we are talking about this bill today. When the legislation came to this place last time, I could not find a contribution from the then Leader of the Liberal Party. The only other contribution from a member of Parliament from the other side who is still here came from the member for North West Central. He said in his speech back then—I am quoting from the *Hansard* of Tuesday, 18 August 2020 —

> I rise on behalf of the Nationals WA to voice our opinion on the Industrial Relations Legislation Amendment Bill 2020 … the National Party does not support the Industrial Relations Legislation Amendment Bill 2020 …

We know where the Nationals sit. I do not believe the Nationals have changed their position yet either. The lead speaker for the opposition at the time was the member for Hillarys. Once again, the Liberal Party came in here with all these amendments that it wanted to make and which it thought would improve the legislation. Once again, quoting the *Hansard* of Tuesday, 18 August 2020, the lead speaker for the Liberals at the time said —

> Hopefully, there will be some amendments either on the notice paper tomorrow or, if they miss the notice paper, on a supplementary notice paper tomorrow. I will outline them as we go along. As we consider the bill in detail over the next few days, we have some amendments that we think will improve the bill. I will make it very clear that, if those amendments pass, we will fully support the bill passing, but our support is conditional on those amendments being passed.

We heard a very similar contribution from the Leader of the Liberal Party just recently. In the Liberal Party's view, a number of amendments need to be made and it will not support the bill until those amendments have been made. I think that is very disappointing because the Industrial Relations Legislation Amendment Bill that we are debating today is the culmination of a lot of input from a lot of people—employers and employees of organisations within Western Australia. It is very comprehensive and very well thought out and addresses a number of shortcomings in the state industrial relations legislation that we have now, as other members who have already contributed have spoken very well about.

The legislation also deals with a couple of shortcomings in the state legislation that did not meet some of the protections that were already in the federal legislation. We have brought them back into the state jurisdiction to give people the same level of coverage, which are some very important aspects of the legislation. We have heard about some of the key proposals of the bill and some of the amendments that have been made. I want to touch on one in particular that the Leader of the Liberal Party expressed a little concern about during his contribution. That relates to paragraph 170 of the explanatory memorandum. Clause 24(5) seeks to amend section 49I(2)(c) of the Industrial Relations Act. I will read section 49I of the Industrial Relations Act. If members do not know what that section is, it is one of the better sections in the act. As an ex–union official, it is the one quoted to get onto a site to inspect some sort of breach, whether it be a safety breach or some sort of employment breach. Section 49I, "Entry to investigate certain breaches", states —

> (1) An authorised representative of an organisation may enter, during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of this Act, —

The Industrial Relations Act —

> the *Long Service Leave Act* … the MCE Act, the *Occupational Safety and Health Act* … the *Mines Safety and Inspection Act* …

One of the changes we are making is to bring the Construction Industry Portable Paid Long Service Leave Act into one of these ones that can be inspected as well. It goes on —

> (2) For the purpose of investigating any such suspected breach, the authorised representative may —
>
> …
>
> (b) make copies of the entries in the employment records or documents related to the suspected breach; and

(c) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach.

That is all very important when there is an investigation of an incident on a worksite, which is what the suspected breach is. Paragraph 170 of the explanatory memorandum sets out one of the changes we seek to make through this amendment bill. Clause 24(5) of the bill will insert the material I just referred to. The explanatory memorandum states —

> … to expressly provide that, when investigating a suspected breach, an authorised representative may use electronic means to record work, material, machinery or appliances.

This was a recommendation of the ministerial review and recognises that electronic recordings may be an accurate and efficient way of investigating a suspected breach and preserving evidence as opposed to relying solely on the visual observations of an authorised representative.

As a person who has been onsite to inspect safety breaches when there has been an injury or a death at a workplace, having an accurate record of the surroundings, the evidence of what has happened and where it has happened is a much better approach than what we have. It will give authorised representatives the ability to ensure that we protect as much evidence as possible, whether it be for an OHS breach or a time and wages investigation searching for stolen wages.

[Member's time extended.]

Mr S.J. PRICE: The Leader of the Liberal Party raised concerns about the misuse of such electronic material. The act provides protections to alleviate that concern. Those protections relate back to the "authorised" person. In order to be an authorised person, a person essentially needs to have an entry permit to allow them to act on behalf of the organisation that they work for in representing the employees. Section 49J of the Industrial Relations Act, "Authorising authorised representatives", provides that the registrar of the state Industrial Relations Commission —

> … on application by the secretary of an organisation of employees to issue an authority for the purposes of this Division to a person nominated by the secretary in the application, must issue the authority.

That authority can be taken away from people who misuse their rights as an industrial representative. The act provides protections to prevent the misuse of that provision. Therefore, the positives significantly outweigh the negatives.

I will not go on for much longer, because we have discussed a lot of aspects of this bill. The final point I want to touch on is bringing local government authorities back into the state industrial relations jurisdiction, with the approval of the federal Minister for Industrial Relations, of course. That is where local governments belong. They are part of the state. They are not federal or constitutional corporations that form part of the federal WorkChoices legislation. As an ex–union official who has dealt with local governments, I know that the confusion between those who think they are in the state jurisdiction and those who think they are in the federal jurisdiction is quite significant. Bringing local governments back into the state jurisdiction will provide a level playing field and ensure that everyone has the same understanding of the legislative requirements. It will put local government back as the third tier of government in Western Australia—federal, state and local. The other good thing about that, which the member for Cockburn touched on in his contribution, is section 44 of the state Industrial Relations Act, which deals with compulsory conferences. That is a very good mechanism to deal with issues at a workplace before they get too big and too out of control.

There are a lot of benefits in maintaining a state jurisdiction. This amendment bill proposes a raft of changes, many of which we have discussed, and I do not propose to go through them again. Those changes will significantly enhance the state jurisdiction and go a long way towards protecting the rights and entitlements of workers. They will also provide clarity to employers so that they will know what is expected of them. They will also know that should they not abide by the legislation, there will be consequences. In the bill that was introduced back in 2020, the Minister for Mines and Petroleum brought in a raft of other changes to the industrial arena at the same time to enhance worker safety and ensure clarity of the obligations of employers and organisations in Western Australia.

I conclude by, once again, thanking the current minister and his staff, the former minister and his staff, and the secretariat for all the help they provided to the inquiry that I was fortunate to be part of. I also thank Tony Beech and Mark Ritter for doing a great job. One of the benefits and what I have enjoyed the most about the contributions of members on this bill was to hear the new members of the Labor Party talk about how this is what the Labor Party is all about—we are the party of the workers, we were built from the workers, we protect the workers and we understand the workers. That is unlike those on the other side, who do not quite have the same view about workers as we do. We will always protect the working people of Western Australia. This bill reflects that. This bill will not only protect the workers of Western Australia, but also help and protect the employers of Western Australia. As I said previously, it will clarify their obligations. They will be under no illusion about what they should or should not do. If it was a bit of a grey area previously, it will not be grey anymore. Everything will be very clear. This is another one of the great pieces of legislation that we have brought to the house. It has not come from the Attorney General this time, which makes it even more special! On that note, I certainly thank everyone who was involved in bringing the bill to this place and everyone who has contributed to this debate. I commend the bill to the house.

The ACTING SPEAKER (Mrs L.A. Munday): The member for South Perth—sorry, Mount Lawley!

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [5.05 pm]: I have the great privilege of representing the extraordinary, diverse and wonderful community of Mount Lawley, and I am proud to stand once again to represent them.

In speaking on the Industrial Relations Legislation Amendment Bill 2021, I want to start by making a couple of observations. The first is to thank the member for Forrestfield. During his contribution, he alluded to the enormous amount of work that was undertaken by the McGowan government over the course of the fortieth Parliament to modernise our industrial and workplace health and safety regime. There was the inquiry that the member for Forrestfield participated in, with Mark Ritter, SC, an eminent senior barrister with expertise in industrial relations. There was the inquiry undertaken by Hon Matthew Swinbourn, member for East Metropolitan Region and Parliamentary Secretary to the Attorney General, into the protection of subcontractors. There was the work health and safety inquiry that I was fortunate enough to participate in. There was also the Tony Beech inquiry into wage theft.

The reason I have to make that point at the outset is that the opposition appears to take delight in perpetuating the narrative that this McGowan government does not consult. Just because the opposition does not agree with us does not mean that we have not consulted. As the member for Forrestfield said, this particular bill was consulted on widely. People were given more than enough opportunity to make their submissions. If people are not happy with the final product, that is unfortunately how it goes. We listened to organisations. The opposition comes in here time and again and perpetuates this narrative that we do not consult. That is just a lie.

Mr P.J. Rundle interjected.

Mr S.A. MILLMAN: It is just not right. The fact of the matter is that the contribution that was made by the member for Cottesloe earlier in this debate was fundamentally wrong. We are now stuck in the situation that we have to not only legislate, but also educate. That is because you people do not know what you are talking about. You do not understand what is going on. It is exactly the same problem that the former member for Hillarys had as the lead speaker for the opposition when this bill came on in the last Parliament. The member for Cottesloe said that he wished he had had more time to prepare. Frankly, member, this bill is very similar to the bill that was introduced in the fortieth Parliament. The member for Cottesloe has had more than a year to prepare, yet he still gets it wrong. Therefore, it is with a great degree of reluctance and a fair degree of regret that I have to make a contribution to this debate.

Mr P.J. Rundle: You're a disgrace!

Mr S.A. MILLMAN: The disgrace is you! The disgrace is the opposition. All we have had is a litany of Liberal lies. The member for Cottesloe said in his contribution that he supported action to end modern slavery. He then proceeded—I do not know whether it was through ignorance or stupidity—to talk about the provisions that were specifically designed. Remember this, members: the Attorney-General's Department of the commonwealth Liberal government has provided advice to the state government that we cannot ratify the International Labour Organization's protocol on ending modern slavery unless we make all employees in Western Australia subject to our industrial relations system. It is as simple as that. This bill will achieve that, so that the commonwealth Liberal government can get in there and do the right thing by ratifying the ILO protocol to end modern slavery. The federal Labor opposition wants to end modern slavery. The federal Liberal government wants to end modern slavery. The state Labor government wants to end modern slavery. "Twiggy" Forrest wants to end modern slavery. The only people who do not want to end modern slavery are members of the Liberal and National Parties of Western Australia, because they continue to oppose this bill either through sheer bloody-mindedness or sheer stupidity.

Dr D.J. Honey: That is not true. We are not opposing the bill.

Mr S.A. MILLMAN: Why did the member vote against it?

Dr D.J. Honey: Because it was not amended the last time.

Mr S.A. MILLMAN: The member for Cottesloe's entire contribution was riddled with mistakes. Members who were here during the fortieth Parliament would have seen me contribute to numerous bills time and again. I got up and spoke about any number of issues that came before the fortieth Parliament. In this forty-first Parliament, I thought I would be able to sit back and focus my attention on some narrow portfolio matters and pare down the number of contributions I needed to make and listen to the brilliant contribution by the new member for Hillarys, who spoke eloquently about the importance of this legislation to her community, and the contribution of my former colleague and industrial lawyer, the member for Cockburn, whose erudite, thoughtful and intelligent contribution was right on point. The new member for Mirrabooka is a former union official who knows exactly what the consequences of this legislation will be.

I am really saddened that when the member for Cottesloe stood up, he said that he had listened closely to what all other members had said, but if he had, he would not have put his foot in his mouth as frequently as he did during his contribution to this debate, because he made many, many mistakes. He said —

> I have listened to the speeches of other members in this place.

Happily, he concedes—this is really important —

> I am not an expert on the existing industrial laws.

Well ain't that the truth, members! Do members know what he said? He said, "We in the Liberal Party are in favour of choice." Just do not be a woman seeking an abortion or someone with a terminal illness who wants to access voluntary assisted dying and the opportunity to die with dignity, because they will get no choice. What is hilarious is that he says local governments should have the choice—it is laughable—about whether they should be in the commonwealth system or the state system. That one line exposes his shocking ignorance of this. It is not a choice, member; it is a question of constitutional fact. The member for Cockburn said this—I do not understand why I have to repeat it, but the member for Cottesloe missed it —

Dr D.J. Honey: I am sure you will.

Mr S.A. MILLMAN: I have to because that is the only way the member will learn. Otherwise, we will be subjected to a litany of Liberal lies time and again. Every time an employee of a local government authority has his or her employment dismissed and an application is made to either the state or federal commission to determine whether they have been unfairly dismissed, the first issue that has to be ventilated is whether the local government authority is a constitutional corporation. That is not a simple question to answer. That requires evidence, research, submissions and advocacy on both sides. The people who will suffer from this bill will be the industrial lawyers who make a fortune out of representing either the local government authorities or the employees who are suing them, because that issue will be taken out of the equation. As the member for Forrestfield said, this is precisely the sort of clarity and certainty we want to bring to the industrial arena so that we can reduce the incidence of disputation. The state Liberal Party is in favour of slavery, disputation and paying more and more money to industrial lawyers. We are in favour of tackling modern slavery by making sure that our industrial relations system is up to date with everywhere else in the world and with the advice that we have received from the Liberal commonwealth government.

I found it astounding that while confessing that he was unprepared to contribute to the bill, the member for Cottesloe then relied entirely upon the submission of the Chamber of Commerce and Industry of Western Australia and said that he was representing the chamber's legitimate concerns. We are happy to listen to the Chamber of Commerce and Industry and work closely with it. I think the member for Swan Hills is a former employee of the Chamber of Commerce and Industry. Just because we disagree with it does not mean that it is all over. We listen to the legitimate concerns that organisations raise. When the Transport Workers' Union of Australia said that it was in favour of Roe 8 and Roe 9, I said that I understood its position. It is representing the interests of transport workers. I get where it is coming from, but we need to save Beeliar wetlands. When the Maritime Union of Australia said that it had concerns about the outer harbour, I understood where it was coming from and that it has to represent the interests of its members, who are dock workers, and I understand that they might be interested to know what will happen with the outer harbour. However, we have a policy that we have taken to consecutive elections that says we are committed to the outer harbour. Those organisations raised legitimate concerns on behalf of their members and those concerns fell squarely within the concerns of those organisations. When the Chamber of Commerce and Industry makes gratuitous commentary—that is its prerogative, although I do not think it is responsible—we need to call it out rather than endorse it and use it as a shield to prevent this government from tackling modern slavery.

The opposition cannot walk on both sides of the street. It cannot support the Chamber of Commerce and Industry's position—that is not legitimate because it does not represent the interests of its members; it falls outside its obligation—and at the same time say that the opposition supports the abolition of modern slavery. They are logically inconsistent positions. If all the member for Cottesloe gets from my contribution is an appreciation and understanding of that, I will be happy, because then when we get to the consideration in detail stage, we can go straight past that provision and he will understand that the amendments are necessary to give effect to the advice from the commonwealth Attorney-General's office. Sadly, I will not be holding my breath because once he goes down that rabbit hole, he cannot resist the temptation because it feeds into the false narrative he has about the role of unions in society. Because he stands for nothing, all he does is stand opposed to unions. This legislation has the support of not only workers, but also industry. We know that because of the extensive consultation that was undertaken.

I honestly thought that the member for Cottesloe would have listened more carefully to the contributions that were made before mine and would not have made the litany of mistakes that he did. I have already spoken substantively on this bill during the last debate in the fortieth Parliament. I do not propose to say anything further. I just hope that the Liberal Party will learn the lessons so that we will not be subjected to a litany of Liberal lies the next time around.

MS C.M. ROWE (Belmont) [5.17 pm]: I rise this afternoon to make a contribution to debate on the Industrial Relations Legislation Amendment Bill 2021. I take this opportunity to congratulate the work of the Minister for Mines and Petroleum for again bringing this bill to the house. I acknowledge his commitment to improve the rights of workers in our state. I wish to also acknowledge the hard work of his team, who are in the Speaker's gallery today. They have really laboured over this bill.

Fighting to protect workers is incredibly important work. As a Labor government we have always been very clear about the importance of strong protections for workers. As a proud member of the Australian Workers' Union, I wish

to acknowledge the tireless work of not only the Australian Workers' Union, but also all unions in our state. They do an enormous amount to protect the rights of workers to make sure that there are appropriate conditions and that every worker who goes to work comes home safely every day.

I would also like to put on the record that certainly the Labor members here are aware of the great history of the work done by the unions for all workers collectively across the state. If it were not for the work of unions, we would not be enjoying the benefits of paid sick leave, annual leave, long service leave, maternity leave, penalty rates and superannuation. Unions have fought long and hard to campaign for these benefits and we are all the lucky recipients of the unions' campaign to bring about those entitlements. I wish to acknowledge that in this place.

The bill before us today, the Industrial Relations Legislation Amendment Bill 2021, is about workers and, importantly, strengthening the protections for vulnerable workers, and modernising our employment laws. A critical element of this legislation is compliance and enforcement and enhancing the penalties of the IR act, which currently are deeply inadequate. I think many people would be shocked at how low some of the current penalties are. For example, for a failure to comply with long service leave provisions, there are absolutely no penalties whatsoever. Failure to comply with record-keeping obligations attracts a $5 000 fine. That can be considered quite paltry for many employers. Under this legislation, both those contraventions will result in a $13 000 fine for an individual and a $65 000 fine for a body corporate. The penalties for serious contraventions, or those that are knowingly committed and part of a systemic pattern of conduct, will be 10 times higher than they currently are. This goes a long way towards putting employers on notice. They cannot expect to exploit workers and have no consequences for such actions, or paltry fines. Industrial inspectors will also have enhanced powers to ensure compliance. For example, they can issue an on-the-spot infringement notice for contraventions. A range of new employment protections will also be introduced, including prohibiting employers from discriminating against an employee for making an inquiry into their employment conditions.

This bill also delivers on an election commitment to make Easter Sunday a public holiday. This will bring us in line with Victoria, New South Wales, Queensland and the ACT. Easter Sunday is a day of cultural and religious significance for many Western Australians, but it is not recognised as a public holiday. Therefore, employees may be required to work on this day, particularly those employees who work in hospitality or a big supermarket chain and the like. If they do work on Easter Sunday, they currently do not receive the penalty rates that they would normally experience on a public holiday. I think that is patently unfair to those workers, especially when they are oftentimes in those lower income brackets. In contrast, Easter Monday attracts higher rates, but workers who work in seven-day industries, such as those who work in restaurants and cafes and retail workers, should not be disadvantaged in comparison with those who work Monday to Friday.

Another critically important element of this bill is the power to make equal remuneration orders to reduce the gender pay gap in WA, which I feel very strongly about. This is a persistent issue. The pay gap in WA remains stubbornly high and a great concern to not only me but many members, both male and female, within Labor ranks in this place. This bill will introduce an equal remuneration jurisdiction for the Industrial Relations Commission. For those who are not aware, in WA the current gender pay gap is approximately 22 per cent, which is the highest of all states and territories. The current national gender pay gap is still unacceptable at 14 per cent, but ours here in WA is 22 per cent. That means, just to be clear, that for every dollar a man in WA earns, a woman earns 78¢.

Moving on, another important aspect of the bill is the provision of unpaid family and domestic violence leave. Domestic and family violence is a significant issue and it impacts families, most especially women, in very dramatic ways. This bill will provide five days of unpaid family and domestic violence leave a year to all employees. I think it is important that as a community, we are ensuring that people who experience family and domestic violence are supported through workplace policies and initiatives and that the trauma that they are going through is recognised and, as such, are provided with the leave that they will require. I think it is a really important step and one that I really wish to acknowledge the minister for including. We know that escaping a violent relationship is an incredibly difficult time when the woman who is the victim is incredibly vulnerable. It is a very high risk time for her, so to have time off, even though it is unpaid, is critically important. Staff experiencing family and domestic violence may also need time off to have special appointments, including doctors' appointments, but, most importantly, depending on the severity of it, obviously to re-establish their life. That can be a very dramatic time in their life. When the McGowan government was elected, we ensured that public sector workers in WA, including casual employees, who are experiencing family and domestic violence had access to up to 10 days of leave entitlements. This is a continuation along that vein.

Another area of the bill I would like to touch on is the measures to remove exclusions because certain categories of workers have no employment protections whatsoever under the current legislative framework. People who are engaged in domestic services in a private home simply have no protections from an industrial relations point of view and I think that in the modern era that is clearly unacceptable. I am really relieved to see that this will be rectified by this bill.

I acknowledge that this bill deals with some really significant and important things such as wage theft and so forth. I think that other members have done a terrific job covering those off, so I will finish my brief conclusion by talking about the bill's broadening of the WA Industrial Relations Commission's jurisdiction to consider matters

of sexual harassment and bullying incidents in the workplace. According to a survey conducted by the Australian Human Rights Commission on sexual harassment in the workplace in 2018—a couple of years ago—72 per cent of respondents who experienced sexual harassment were women, so it clearly is a gendered issue. The greatest prevalence of sexual harassment in the workforce occurs amongst women who are under 45 years of age. Of the women surveyed, 40 per cent of interviewees rated the sexual harassment experienced as "very intimidating" or "extremely intimidating" and 50 per cent rated the sexual harassment experience as "very offensive" or "extremely offensive". I want to pause and reflect on that, because it is deeply concerning that in 2021 we are still seeing that occur. That is a pretty steep number there. Disturbingly, of those who experienced sexual harassment, 50 per cent stated that the harassment continued for up to six months. That is a really long time to be harassed in any form, but especially through sexual harassment in the workplace. Another finding from this survey was that sexual harassment is prevalent across all employer sizes and persists across nearly all industries. That is simply appalling. The consequences of sexual harassment can be very serious for victims, such as affecting a person's ability simply to function at work and do their daily work tasks, but it can also lead to things such as depression and, in severe cases, post-traumatic stress disorder.

Given that sexual harassment is evidently still an everyday experience for so many women in our community, it is very troubling that so few people formally come forward. According to this survey by the Australian Human Rights Commission, only 17 per cent of the people they surveyed who experienced sexual harassment in the workplace came forward to pursue that in formal avenues. According to the findings, it was predominantly due to the cost of litigation and the time that it was anticipated to take. This bill will provide workers with an inexpensive and quick avenue, via the commission, to address sexual harassment in the workplace. I am very, very proud of the inclusion of those elements within the bill. On that note, I really do wish to commend the bill to the house. Thank you.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [5.28 pm] — in reply: I rise to conclude the second reading debate on the Industrial Relations Legislation Amendment Bill 2021. I will start by thanking the following Labor members for their contributions: the members for Mirrabooka, Victoria Park, Cockburn, Riverton, Hillarys, Forrestfield, Mount Lawley and Belmont. What I reflect on is that each of them brought a unique perspective to the discussion. The member for Mirrabooka is the former secretary of UnionsWA and a former senior official with the Australian Services Union, to which I belong. She has had a lifetime of experience in the not-for-profit sector and brings a particular perspective in that she has the most ethnically diverse electorate in Western Australia. The member for Victoria Park has a small business history and, again, she worked in the not-for-profit sector. She has an extensive background and is a highly regarded and well-respected person.

Prior to his entry to Parliament, the member for Cockburn was my solicitor, as I have commented before. He has a wealth of experience in the technical aspects of industrial relations law. The member for Riverton is a businessman who has an ethnic background. The member for Hillarys outlined issues for young people and women who are subject to harassment. The member for Forrestfield was, of course, the co-author of the report done by Mr Ritter. He is a former secretary of the Australian Workers' Union and has a lifetime of experience on the tools in the mining sector. The member for Mount Lawley was a very experienced industrial lawyer prior to entering Parliament. The member for Belmont again went through, in quite an impassioned way, the challenge of the gender pay gap in Western Australia and noted that this bill, in its own small way, will help us move down the path of narrowing that gap and assisting in giving people more options when dealing with workplace sexual harassment issues.

I pause there for a moment and make the comment that when the last Parliament dealt with the 2020 legislation, which is different from the 2021 legislation but in great regards very similar, the shadow minister at the time, Peter Katsambanis, asked me whether forum shopping was being introduced because we were putting the matter of sexual harassment in the Industrial Relations Act 1979. The point I made to him was that, in fact, we were empowering people to make their own decision about how to enforce their rights, which is not forum shopping. Of course, if their rights are enforced under this legislation, they will not have their rights enforced under another piece of legislation. This is not forum shopping; rather, it is about empowering people to make decisions for themselves.

I want to go through the discussion about modern slavery. In his contribution as the lead speaker for the opposition, the member for Cottesloe said —

> At the outset, on the nominal issue of dealing with modern slavery, obviously, on this side we are concerned no more and no less than the government that this is dealt with properly …

The member for Cottesloe actually voted against this legislation in the last Parliament. When he was presented with the opportunity to deal with modern slavery in August last year, he made his choice and he voted against the legislation. The shadow minister at the time said that the opposition was going to put up amendments on a range of issues and then said, "But if you don't agree to the package, we're going to vote against the legislation." That was the opposition's decision. The opposition said that unless we did what it told us to do with local government, it would vote to perpetuate modern slavery, and that unless we voted with it on technical matters to do with union organisers, it would vote to perpetuate modern slavery. Not only did the opposition say that it was going to do that, it did that. The member for Cottesloe came in here and voted to perpetuate modern slavery in Western Australia.

The member for Cottesloe discussed modern slavery on a number of occasions during his second reading contribution on this bill. Having said that he supported action on modern slavery, he referred to comments from the Chamber of Commerce and Industry of Western Australia. He said —

> It also raised the issue of domestic workers. It explains —

He then quoted from the CCI —

> 23. The Bill seeks to remove the current exemption under section 7(1) of the Industrial Relations Act **(IR Act)** which excludes "*any person engaged in domestic service in a private home*" as an employee.

I tried to make a point to the member for Cottesloe and he said —

> I did understand that, but, equally, perhaps the chamber saw it as a greater good. Lots of people in this place make comments about things that are not specifically within their bailiwick.

That is to say that he understood why the Chamber of Commerce and Industry would say these things, even though it was not representing the interests of its members. He went on to say —

> Nevertheless, the chamber —

That being the CCI —

> has raised that as an issue and it raises some legitimate concerns in the document.

Let me make it clear: the provision to change the definition of "employee" to remove the exemption is the process that is being used to remove modern slavery in Western Australia. That is the provision that will achieve the outcome. When the member for Cottesloe came in here and quoted the Chamber of Commerce and Industry, it was obvious that he simply did not understand any of the words on the piece of paper from which he was reading. That is why all the former union officials and others involved, such as the member for Mount Lawley, who were in the chamber at the time were aghast at what he said, because he was actually arguing against what he said he was going to do. He said that he supported getting rid of modern slavery and then he quoted the Chamber of Commerce and Industry and argued against that provision. The member for Cottesloe said that he wants to be educated. I hope he understands how embarrassing that was for him—not for anybody else in the chamber. He came in here and quoted a document that said that we should not remove modern slavery from Western Australia. He quoted the CCI's alleged position.

I want to make this clear about the alleged position of the Chamber of Commerce and Industry. I invite any chairman of any listed company that is a member of the Chamber of Commerce and Industry of Western Australia to write to me to say that they endorse the CCI's submission. I do not believe that any listed company in Western Australia would support the CCI's submission. I believe that it is a fancy of the executive of the chamber and that the submission does not represent the views of its members. It is doing exactly what it claims unions do—that is, not acting on behalf of or in the interests of its members. As I said, I invite any listed company chairman to write to me and tell me I am wrong, because I do not believe a single company listed on the Australian stock exchange believes that we should not end modern slavery. It is bizarre that the CCI continues to perpetuate the ridiculous position that Western Australia should not outlaw modern slavery and therefore prevent the commonwealth government from ratifying the relevant International Labour Organization conventions or whatever the proper word is. It is not a convention; it is a protocol to the convention.

I make it clear that after the legislation passed this chamber, it went to the upper chamber in August 2020. I think 45 or 50 bills were pending in the upper house because of the work-to-rule by the shop stewards up there, led by the chief shop steward at the time, Hon Nick Goiran, who refused to do anything other than work-to-rule. As a former union official, I admire work-to-rules, but one cannot argue that those members had proper understanding of these bills. Let me make it clear: I made four separate offers, all of which were rejected by the Liberal opposition. The first one was that if the opposition agreed to let the bill go through straightaway, I would move the amendments that I had proposed here during consideration in detail. The Liberal Party said no, so when the member for Cottesloe asked me during his contribution the other day why I did not bring in those amendments, the point is that they were rejected by the Liberal Party.

I made a peace offering to the Liberal Party, and it said no. I then said, "All right; given that the real motivation is that you don't want to deal with local government, we will bring that back after the election if we are elected, so if you move to remove that provision and accept the amendments that we discussed, will you let the bill through?" Remember, there were hardly any days left and we did not want a repeat of what the opposition did to the Work Health and Safety Bill—clogging up progress with unnecessary delay through work-to-rule. We asked, "If we do these things, will you let it through straightaway?" The opposition said no; it rejected that. I said, "All right. How about we just deal with the modern slavery arrangements to bring ourselves into compliance with the demands of the commonwealth government and raise the age for the commissioner's retirement to 70 so that Commissioner Scott will not be forced out of the commission?" It rejected that as well. I then went back and said, "Look, how about we just deal with Commissioner Scott? Forget everything else and just let Commissioner Scott stay on."

Let me make something clear about Pamela Scott. She came to the Western Australian Industrial Relations Commission from the Chamber of Commerce and Industry of Western Australia. In fact, she was the manager of the Retail Traders' Association of WA; when I was an employee of the Shop, Distributive and Allied Employees Association of WA, she was the negotiator on the other side of the table from me. This is not a person who came out of my back pocket; this is a great technician of the industrial relations world who beat me as many times as I won an argument. She is a formidable person; she is not some Labor stooge. I was trying to keep her on at the commission because she was doing a fabulous job. My fourth position was: "Given you've rejected everything else, how about we just let Commissioner Scott stay?" The Liberal Party rejected that as well, because it was interested only in work-to-rule. If it is written in the agreement, that is all it does.

I want to now pivot to local government. The member for Cottesloe talked a bit about local government, as we did the last time we debated similar legislation. He said —

> We know that the great majority of local governments fall under the commonwealth jurisdiction …

That is actually not correct, and that is the whole point. They are not constitutional corporations, and therefore they cannot be bound by an award or an order of the Fair Work Commission, because the Fair Work Commission derives its power and authority from the corporations power of the commonwealth Constitution. That is different from what happened with the Australian Industrial Relations Commission or the previous Australian Conciliation and Arbitration Commission. Those commissions drew their power from the industrial dispute provisions of the Constitution. That is a separate power. As a former union official, I can remember—I am sure the member for Forrestfield has had the same experience—roping employers into a federal award. In the 1990s, with the first, second and third wave of industrial relations changes, we were trying to create a federal award to cover retail shops in Western Australia, and the South Australian branch was trying to do the same, so we cooperated in trying to create the dispute. We actually had the industrial dispute found, but, unfortunately, the commissioner issued the interim award arising from the dispute finding. If she had just waited and allowed us to have a hearing, we would have kept it. That was knocked off by the courts because it was not properly procedural. We never asked her to do it; it was very annoying, because we got one bit done, but we could not get the other thing done before the federal change of government, and we were done.

Anyway, that is another story. The point here is that we all remember that we had to make those claims to support a 20 or 30-year award, so some of the claims were ambitious, if I can put it that way. It was a technical process to create an industrial dispute across state lines, and that is what happened for local government. Local government had regularly been covered by federal awards, but that was under the disputes power, not the corporations power. Local governments are not corporations. If they were corporations, they could not charge rates. Rates are charged under the taxing power, and corporations cannot tax. It is fundamental. This is not a discussion; it is just a simple fact. I do not know why the executives of the Western Australian Local Government Association oppose moving to the state system. They are fixated on that.

During the last election campaign, I met with WALGA—both elected reps and some of the executive—and I said, "Listen, you get any local government to come and tell me they're opposed to this and I'll listen to them." When we debated the bill in August last year, I gave the same invitation. Just before we had the debate in August last year, I met with four councils: Gosnells, Canning, Armadale and Serpentine–Jarrahdale. I met with their CEOs and either their mayors or presidents, depending on which one it was, and not one of them raised this issue with me.

No local government has ever raised this issue with us. I understand that WALGA has, but it is not explaining that to its members. I have seen the stuff it puts out to its members. It is simply technically wrong. It claims that there will be higher wage costs. How will there be higher wage costs? There is a transition provision that WALGA helped design. A task force, of which WALGA was a member, designed the transitional provisions. Tell me how it will increase costs. That is just wrong; it is just not correct. There is also a claim that there was a lack of discussion. The member for Forrestfield outlined in detail—I do not need to go over it again—the unbelievable level of discussion that has happened here. There have been two separate inquiries, working parties and engagement with organisations. The idea that there has not been any discussion is just fanciful.

Not only that, but we did the first and second readings of the 2020 bill at the start of August last year, and then we had the debate. We then had an election campaign during which we made further industrial relations commitments, including —

Mr S.A. Millman: It was 25 June.

Mr W.J. JOHNSTON: The second reading was on 25 June; there we go. There was months and months of discussion and negotiation, and that was after introducing the bill. We then made further industrial relations commitments during the election campaign, and number one at the top of the list was the reintroduction of this legislation. The idea that people were not consulted is just fanciful.

This is not directly related to the bill, but I note also that the member for Cottesloe complained about not having any resources. The staffing resources of the Leader of the Opposition's office are exactly the same now as they were when we were in opposition. Not only that, but between 2013 and 2017, when I was shadow minister, there were 21 of us;

in the last Parliament, there was 19 members of the opposition. We had only 11 members in the upper house, and the opposition had more, so it actually had more members of Parliament in the last Parliament than we had in the one before that. Do not talk to me about resources; I know exactly what it is like to be in opposition. What the member has to do is work. I acknowledge that he is not the shadow minister, and I do not criticise him for not being across the detail, but he cannot tell me that the Liberal Party does not have the resources to do what it needs to do.

The member also stated —

> I am interested in whether any analysis has been done on the impact that these proposed changes will have on jobs and the economy.

I am indebted to the department, which pointed out that analysis has been done on that topic. I want to also refer to something else. The department undertook a regulatory assessment of the proposals in the bill that are seen as having a significant economic impact. Those included the question of Easter Sunday public holidays, for which there is an estimated wage aggregate of $28.88 million; the ability for the WAIRC to make an equal remuneration order, for which there is no immediate financial impact, contingent on an order being made, and we do know whether that will happen; and the removal of exclusions of certain categories of employees, which is simply not possible to quantify. That document is available on the department's website to download and read.

Mr S.A. Millman: So transparency as well.

Mr W.J. JOHNSTON: Transparency indeed.

I want to draw members' attention to the Nobel prize for economic sciences that was granted this year to an American economist called David Card. The reason he is famous is that in 1992 he did the first academic analysis of the impact of raising the minimum wage. He and his colleague Alan Krueger sought to evaluate the impact of the minimum wage increase for New Jersey and eastern Pennsylvania. It was during the period of Bush Senior's presidency. The federal minimum wage had not been increased since the election of Ronald Reagan in 1980. New Jersey increased its minimum wage, so there were two communities on either side of the state boundary that were effectively the same, but one with a minimum wage of $US4.25 and one with a minimum wage of $US5.05. They studied 410 fast-food restaurants in New Jersey and eastern Pennsylvania before and after the minimum wage rise in New Jersey. They chose the fast-food industry for a number of reasons: it is the leading employer in the area of low-wage workers, it complies with minimum wage regulations and is expected to raise wages only in response to a rise in the minimum wage, and the job requirements and products of fast-food restaurants are relatively homogenous, making it easier to obtain reliable measures of employment wages and product prices. This research showed that there was no evidence that the rise in New Jersey's minimum wage reduced employment in the fast-food restaurants in the state. In fact, despite the increase in the minimum wage, full-time equivalent employment actually increased in New Jersey relative to the employment levels in Pennsylvania. The whole point is that the only academic research anywhere in the world that looked at real-life cases, not some mathematical model, shows that increasing the minimum wage leads to more employment. I know that a lot of employer associations do not like that conclusion, but I point out that Professor Card has been awarded the Nobel prize for economic sciences for that research, as well as his lifetime of research in other areas.

Dr D.J. Honey: I just have a comment on the point that I was making. I did not express concern about the impact on wages. My concern was that if there were onerous provisions, it would discourage households from taking on casual employees.

Mr W.J. JOHNSTON: But there are no onerous provisions. There is a misunderstanding of what is being provided for in the bill. The argument from the Chamber of Commerce and Industry of Western Australia is that people might not hire people to work at their house if they have to keep employment records. But they have to keep employment records today; otherwise, how do they know how much superannuation to pay or how much tax to pay to the Australian Taxation Office? How can they prove that the person received a particular payment? They need records because they have to protect themselves under their existing obligations as an employer. The chamber of commerce gets confused on this issue. It asks: how does the person know whether they are an employer or are engaging a subcontractor? That question does not relate to this bill. We are not creating employment relationships. We are recognising employment relationships. The employment relationship already exists or it does not, depending on the control test, which is well understood in industrial law. The chamber of commerce says that an individual might not understand the control test; that is true, but that is true today. Whether someone is an employee or a subcontractor will not change under this legislation. Under this legislation, we are extending protections to those people who are employees. We are not creating an employment relationship. The employment relationship does or does not exist today. That is not what this bill deals with. This bill will remove the exemption that currently applies to people who are employees for industrial rights. That is what we are doing. Whether or not they are an employee will not change, and that is why the chamber of commerce's submission is so pointless. I do not get why an organisation as big as it is does not understand the fundamental facts of industrial law today. Not one person covered by that provision is currently a member of the chamber of commerce, because they are not eligible to join the chamber of commerce. The chamber of commerce has no legal ability to represent those people because it can represent only the people covered by its constitution, and its constitution cannot cover people who are not in industry, and these people are not in industry.

The member for Cottesloe also talked about the penalties in the bill. He said —

> If my reading of the bill is correct, the penalties have not just been brought in line with modern-day penalties, they are potentially many, many times greater than what would be considered to be modern equivalent penalties under, say, federal legislation.

I just want to make a point here. We are not introducing minimum penalties; we are introducing maximum penalties. It will be the magistrates who decide what is fair and equitable in the circumstances. That is for them to decide, not for me to decide, and we are not trying to deal with that.

The member also discussed the right of entry for inspectors. He said —

> In particular, clause 65 will amend section 98 of the Industrial Relations Act 1979 to allow industrial inspectors the power to enter someone's private home.

We went over this in great detail last year. The industrial inspectorate already has the power to enter a home if industry is being conducted. The example we talked about last time followed on from a case in the northern suburbs. Let us imagine that someone puts 10 sewing machines in their double-car garage and they pay people to do sewing in their garage. That is industry. The inspectorate has today—not will have after this legislation passes—a right of entry. We are rephrasing the existing right, and we have to because we are introducing a different right. The rephrasing is not a new power. We debated this for hours last time. It is not new. We are providing a new provision for when the inspectorate needs to go into a home, not for somebody engaged in industry but for somebody who is currently not covered by the industrial relations arrangement but from now on will be—so, for domestic service. Then we circumscribe the circumstance in which the inspectorate can enter the home, so there is no automatic right of entry. There is a procedure for the right of entry. That is what we are providing for. We are not changing the existing right of entry; we are simply changing the phrasing because we are introducing a second power, which is the right of entry when it is not industry but it is domestic service, and then we have to set out the circumstance. We had a long debate last year about the question of emergency and I made that offer, but it was rejected by the Liberal Party. The member quoted me in his speech. He said —

> … the minister of the day said —
>
> > … when the bill goes between the houses I will be proposing an amendment to clarify the provision in proposed section 98(3A)(b) to place an obligation on the commission to act only in exceptional circumstances.

Let me make it clear: I never thought it was needed. If that was a genuine complaint and the Liberal Party was going to support the legislation, I would have made that amendment. The member will have to ask the new minister what his perspective is, but I do not see any reason that we need to amend the bill; it is not needed. The provision as presented is fine and I would not encourage the new minister to make any amendment, particularly because the Liberal Party said no to the amendment. It was not the Labor Party that rejected the amendment; it was the Liberal Party that rejected the amendment, so it is a bit rich to demand one now.

The member also said that no reconciliation had been provided to the Liberal Party about the difference between the 105 clauses in last year's bill and the 129 clauses in this year's bill. Actually, it was; it was provided to the shadow minister.

Dr D.J. Honey: When was that, minister, because I actually asked him just before I spoke?

Mr W.J. JOHNSTON: It was on 9 November 2021. I am happy to table that when we get to consideration in detail. I think I can do that—nobody at the back of the chamber is saying anything bad to me.

In terms of the union right of entry, yes, we are providing a right for union officials to use contemporary equipment to record what happens when they go on site. I do not know why that is objectionable. The member for North West Central made lots of commentary about things that are happening at the moment with the use of recordings. I make the point that that is irrelevant to this bill because that is happening now and we have not passed the legislation. Whatever the member is complaining about is not related to this provision. This provision is about authorising the collection of data in a twenty-first-century manner. They are already entitled to collect the data, but at the moment they cannot use recording methods. When the member says that they might video a trade secret, at the moment they could draw a picture of a trade secret, they could describe a trade secret or they could memorise it off by heart.

Sitting suspended from 6.00 to 7.00 pm

Mr W.J. JOHNSTON: I will not speak for much longer, because I am not allowed to, but I want to turn to the question of long service leave. The Long Service Leave Act currently applies to casual and seasonal employees. That is not a new decision because of this legislation. I am advised by the Department of Mines, Industry Regulation and Safety that there have been express provisions for casual employees and long service leave entitlements in the private sector award since April 1958. That was also the case in the long service leave general order of 1977 and in the Long Service Leave Act when the general order was repealed in 2006. This amendment specifies that the term "employee" includes casuals or seasonal employees so that the common misconception that they are not covered is removed. It will not create a provision; it is simply clarifying it.

On the hours of work, I am shocked that the Chamber of Commerce and Industry of Western Australia apparently does not understand how long service leave arrangements are calculated. An employee's entitlement to leave is based on their ordinary hours of work. If their average hours of work are very low, then their entitlement is very low, but that is the case today. It is not a new provision. Nothing in this bill means paying employees for more hours than they work. If someone works an average of whatever hours over a period, the eight and two-thirds of a week is calculated on their average hours. As a former union official, I can tell members that I often had trouble establishing exactly what those average hours were because employers might not have kept accurate records. Sometimes employers offered to pay higher average hours because it was easier for them than going through the rigmarole of doing the back calculation of the average number of hours. It is not a new provision and I am not sure why the CCI thinks it will create a new provision. We will deal with that further if there are more questions.

In his contribution, the member for Cottesloe suggested that if somebody works six weeks each year, they will receive the same long service leave entitlement as someone who works full-time. That is simply not correct. It is not correct under the existing provision and it will not be correct under future provisions. If a seasonal employee with continuous service over 10 years works for six weeks each year and they work for 40 hours a week during that six-week period, it would be averaged over that number of hours. It is not that they are suddenly full-time for the calculation of their long service leave. That is not correct now and it will not be correct in the future.

With those words, I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1 put and passed.

Clause 2: Commencement —

Dr D.J. HONEY: On the commencement date for the bill, I listened to the minister's second reading reply and I appreciate that, unlike some of his colleagues, he was temperate and made a genuine effort to try to explain some of my concerns. As the minister would know, a concern I have with the bill—not that I think it is a bad thing—is that the penalties have increased significantly. That can make it much more serious if there is a breach of the provisions of the bill. I heard what the minister said about the fact that many of the reporting requirements already apply, but I would be very surprised if many households in my electorate maintained detailed records for casual employment within their homes for people who do domestic duties, such as gardening and the like.

Regarding the proclamation of the act, given that any noncompliance will be a significantly more serious matter and that there could be more focus on this area, will there be any general community education? I appreciate what the minister has said, that yes, people should be doing this, but I suspect most people are unaware of it. Will there be some general education for the community and some time for employers to get up to speed with those requirements so that good-meaning people do not inadvertently end up incurring potential prosecution and penalties under the act?

Mr W.J. JOHNSTON: Thank you for the question. Before I answer, one thing I forgot to do during my reply to the second reading debate was table the documents provided to Hon Nick Goiran through his electorate officer on 9 November 2021. I table those documents.

[See papers 804 to 807.]

Mr W.J. JOHNSTON: Yes, there will be a public education campaign, to the extent that we are able to, to make sure that people are aware of the changed circumstance. One of the reasons that we need to change the definition of employees is that there is now a larger cohort of people being directly employed by householders, and that is people providing services to National Disability Insurance Scheme participants. We will also be working with other bodies to help us get the word out. In the documents that I just tabled that were provided to the Liberal Party last week, as I said, was a copy of the prosecutions policy. That was something the Liberal Party asked for in the briefing. We want to make it clear what our prosecutions policy is, because this legislation is not intended to be used as a weapon. It is designed to provide proper protection for employees; it is not designed to be a weapon against employers.

Clause put and passed.

Clauses 3 and 4 put and passed.

Clause 5: Section 7 amended —

Dr D.J. HONEY: I jump to page 4 of the bill and the definition of "employer". Perhaps the minister can give me some indulgence on this particular question, in case I fall foul of not being in the right area. During his reply to the second reading, the minister talked a little about the types of work that make someone an employer. I think the minister knows where I am coming from. I understand the point that he makes, that if someone has set up a small

factory in their garage, clearly they fall within the scope of an employer, and I fully understand that. But the area that I think people would be less clear on is the type of work that is done by house cleaners, babysitters, part-time workers or casual employees working as gardeners and the like. Will this legislation mean that ordinary householders employing those people are employers? I ask this having heard what the minister said, and for the sake of clarity, it is all those types of relationships.

Mr W.J. JOHNSTON: I think the member is asking the wrong question. He is asking: what is an employer? An employer is somebody who engages an employee. The real question is: what is an employee? The point I make is that an employee is —

> (a) a person who is employed by an employer to do work for hire or reward, including as an apprentice; or
>
> (b) a person whose usual status is that of an employee;

The reason that is the definition is that it is a long-held and understood definition based on what is called the "control test". As the Chamber of Commerce and Industry of Western Australia can explain, the control test is well established. It has been around for 40 years. It is the idea of a person who is able to direct somebody in the performance of their duties, as opposed to a subcontractor who is engaged to do work but they are then in control of the way that they execute their duties. I am not a lawyer; I am not giving a legal opinion.

Mr S.A. Millman: The best most recent case is a High Court decision of Hollis v Vabu. The case involved a delivery rider. The court held that the employer exercised control over the way in which he performed his work and held that he was an employee accordingly.

Mr W.J. JOHNSTON: The problem here is that the chamber of commerce and others say, "Why don't you provide a clear definition?" It is a clear definition. I understand that some people do not understand it, but that does not mean it is not a clear definition. Basically, if a person is engaging someone directly for themselves, they are an employee, and if it is through an agency it is not a problem, but if a person is engaging someone who determines how to exercise their own obligations, they are a subcontractor. Again, I am not giving a legal opinion, but the courts have determined this over a long period. It is not in dispute. Just because an individual might not understand it does not mean that it is confusing. They are two separate issues.

Clause put and passed.

Clauses 6 and 7 put and passed.

Clause 8: Section 20 amended —

Dr D.J. HONEY: I am seeking clarity about clause 8, which is on page 11. The purpose of those proposed subsections is to provide a distinction between the hierarchy of the roles of commissioner and industrial magistrate. Why is that required in the bill?

Mr W.J. JOHNSTON: The explanatory memorandum explains what is intended here. It states that proposed sections 20(3) and (4) will —

> (a) provide that the remuneration of a commissioner concurrently appointed as an industrial magistrate is the higher of that provided under s 20(2) of the IR Act or clause 5(2) of Schedule 1 to the *Magistrates Court Act* …
>
> (b) enable the Chief Commissioner to approve additional paid sick leave to a concurrently appointed commissioner in exceptional circumstances …

That is consistent with the powers under the other act. It continues —

> Clause 8 also inserts new s 20(5) to provide that a commissioner appointed as an industrial magistrate may hold the office of commissioner and industrial magistrate at the same time, but not otherwise.

That is subject to a further clause that we will deal with later.

Dr D.J. HONEY: That was pretty well as it read in the clause. What I did not understand was the purpose of that. Why is that required? I understand the sick leave part—that is fine.

Mr W.J. JOHNSTON: For the first time ever, this will allow commissioners, if they are qualified, to be concurrently employed as industrial magistrates. A series of criteria will need to be met for a commissioner to be appointed as a magistrate. I am not qualified to be a magistrate so if I were a magistrate, I could not be appointed as a magistrate, but a number of commissioners have legal qualifications and experience that would allow them to be appointed as a magistrate. Because the industrial magistracy enforces not only the state act but also rights under the Fair Work Act, it is a busy jurisdiction. That workload is going to increase as more duties under the work health and safety legislation come through. We want to increase the pool of available people, and given that the case load of the commission is not as large as it used to be, there is potential capacity to appoint eligible commissioners as magistrates. Concurrently, appointed commissioners will be entitled to the same emoluments—the same salary—as a magistrate, including remuneration. The Solicitor-General provided advice to the government that as a matter of judicial independence,

any person appointed as an industrial magistrate should be paid at the same rate as a magistrate. This provision deals with the advice the Solicitor-General gave us to make sure that we would not be in breach of the rules around judicial independence. But we are not going to pay them twice. A magistrate is paid more than a commissioner or senior commissioner, so they will receive the higher rate. If they are chief commissioner, the magistrate rate is lower so they will get the higher remuneration.

Clause put and passed.

Clauses 9 and 10 put and passed.

Clause 11: Section 23A amended —

Dr D.J. HONEY: Proposed section 23A(2) determines whether the dismissal of an employee is harsh. Proposed section 23A(2)(b) states —

> whether, at the time of the dismissal, the employee was employed in a private home to provide services directly to the employer or a member of the employer's family or household.

Could the minister explain what difference that will make in a determination? How will that make a difference? What is the likely impact of that?

Mr W.J. JOHNSTON: This provision was subject to extensive discussion in consideration in detail in August last year. I encourage the member to read that debate when he has time. I am sure it will be very enlightening for him.

Dr D.J. Honey: Like reading the Aboriginal heritage bill.

Mr W.J. JOHNSTON: Yes; that is good.

This is being included in an existing provision. At the moment, what is in paragraph (a) is already in the act; proposed paragraph (b) is being inserted. The section must be restructured because there will be two placitums rather than one. This section has been well litigated and it is understood that this is quite a high bar. Courts and tribunals have already dealt with what is in paragraph (a)(i) and (ii). Plenty of case law explains why it is effectively, not impossible, but very difficult to get reinstatement under this provision. Proposed paragraph (b) is for people who are currently employees but not covered by industrial arrangements; they will now be covered by industrial arrangements. We have to have the unfair dismissal provision because people cannot be dismissed on a harsh, oppressive or unfair basis, which is within the state jurisdiction. There cannot not be an arrangement; it has to be circumscribed. This is the way in which it is done. Obviously, the commission, in determining a case, will have to have regard to the fact that at the time of dismissal, an employee was employed in a private home to provide services directly to the employer or to a member of the employer's family or household. This will make it much harder to successfully sue for harsh, oppressive or unfair dismissal. This is a very significant protection for the employer. That is natural, because, obviously, it would be only in very, very exceptional circumstances that the commission would exercise its authority to reinstate, which is its principal authority under the state act.

Dr D.J. HONEY: To clarify, I assume that that is in recognition of the fact that it is obviously a more intimate relationship in that personal setting and, therefore, it recognises there needs to be good a relationship between employees and employers.

Mr W.J. Johnston: That is right.

Clause put and passed.

Clause 12 put and passed.

Clause 13: Section 29 amended —

Dr D.J. HONEY: I am sure the minister will tell me that I should know this already—I assume this will be a short answer on the minister's part—but this covers an employee who may be a member of a union but also could be a member of a union. That being the case, when an employee could be a member of union, that entitles the commission or the inspector, but also a union official of the union that the employee could be covered by. It refers, at proposed paragraph (b)(ii), to —

> an organisation in which employees to be covered by the order are eligible to be enrolled as members;

In terms of coverage, I want clarity about whether this includes workplaces and, at least for the member, not only someone who is a member of a union, but also someone who could be a member of a relevant union, and that that would entitle inspection by that union.

Mr W.J. JOHNSTON: The question is misdirected because section 29 is about how to get matters to the commission. This gives the head of power to take new matters to the commission. It is not, otherwise, changing anything in the act. It is about what a person will be entitled to take to the commission. That is set out in section 29. All this is doing is including new things that they will be entitled to do.

Clause put and passed.

Clauses 14 to 36 put and passed.

Clause 37: Section 71A amended —

Dr D.J. HONEY: I am on page 16 of the bill. This clause has to do with private sector awards and the variations of the commission's own motivations. I am interested in what scope that will cover. I am trying to get a sense of when the commission will need to intervene in a matter and vary the scope of a private sector award of its own motion. I am trying to understand when that would occur.

Mr W.J. Johnston: I think you might be on the wrong clause.

Dr D.J. HONEY: Section 37D?

Mr W.J. Johnston: No.

Dr D.J. HONEY: This is not clause 16? Bugger!

Mr W.J. Johnston: I don't know. Can we rescind that vote?

Dr D.J. HONEY: The minister can do what he likes.

Mr W.J. Johnston: We can't go back.

Dr D.J. HONEY: That's okay. Bloody hell!

Mr W.J. Johnston: Perhaps we can recommit the clause at the end, can't we?

Dr D.J. HONEY: No.

Mr W.J. Johnston: Member, if you sit down, I will just make a comment and then you can do something.

Dr D.J. HONEY: Yes.

Mr W.J. JOHNSTON: I understand, because we have done this previously, that at the end of the debate, we can recommit the clause. I will be really generous and say I am happy to recommit clause 16 to allow the member to ask the question because I do not want to have an argument that we denied the member an opportunity to hold us to account. I understand from the Clerk nodding at me that we have to proceed, but we can come back to the clause at the end by recommitting it.

Clause put and passed.

Clauses 38 to 46 put and passed.

Clause 47: Section 83 amended —

Dr D.J. HONEY: The minister will recall that I raised the issue of penalties in my contribution to the second reading debate. The contention was put forward by others that there was a difference between the federal award and the state award; that is, under the federal award there was agreement that if someone committed the same offence over time, the fine would simply be the maximum penalty for a single offence and it would not be aggregated by day. The concern was that under the state award, the person could be subject to that offence as if it were a new offence occurring every day. On page 60, it shows that in the case of a body corporate, the pecuniary penalty is $650 000. It also refers to "not a serious contravention", but I will not go through them exhaustively. I want to understand whether under the state act those penalties could accrue on a daily basis and we could end up with multiples of the same penalty over a period or whether it is a similar provision, as I understand it, to that under the commonwealth law in that if it were one offence that continued over a period, it would be subject to that one maximum penalty.

Mr W.J. JOHNSTON: No, there is not a daily penalty under this provision. If a person breaches a court order, there might be a daily penalty, but this provision does not provide for a daily penalty. It provides a penalty for each offence. The person bringing the prosecution would have to prove each offence. I can tell the member that that is not easy because they have to provide the evidence for each offence and it gets very complicated. Having done time and wages checks and prosecutions, I know it is extremely complex. Remember that the applicant, whether it is the union doing enforcement or the inspectorate, has to prove everything. The employer does not have to prove anything; it is the applicant who has to prove things. It is true that the federal act provides—I think it is called the course of conduct provision—that if a person does the same thing 20 times, they have one conviction for the 20 offences. That is not in this provision. However, in the end, the magistrate has to decide what is fair. We are providing maximum penalties; we are not providing minimum penalties, so we are giving the magistracy the tools to make a decision to penalise people when the magistrate believes that is appropriate. We are not directing magistrates to make any decision, so if the magistrate believed there was complete disregard of the harm being caused, of course, they could give a very, very large penalty, but it does not mean they must give a very, very large penalty; it will allow them to do that.

Dr D.J. HONEY: Just to clarify, under proposed section 83(6)(4A)(a)(i), the penalty for a serious contravention is $650 000. I would have thought that indicated for a set of events, which is just really a continuation, regardless of whether it is a mistake or deliberate, the maximum penalty will be $650 000. The concern is, to take an extreme example, that if it occurred over 10 days, so it was seen to be 10 contraventions over the 10 days, there could be a penalty of up to $6.5 million. I understand that the minister said that these are maximum penalties. I am wondering whether that amount is a possibility under these amendments.

Mr W.J. JOHNSTON: Although the bill does not contain a course of conduct provision, the Industrial Magistrates Court applies common-law course of conduct principles in the setting of penalties, as set out in the appeal decision of Janine Callan v Garth Smith 2021, 101 WAIG 1155. Common law provides the Industrial Magistrate with flexibility to have regard to a wide range of factors in order to arrive at a penalty that is appropriate in the individual case. I want to emphasise that it is not about the length of time that the conduct occurred; it is the occasion of the conduct. Let us assume we are talking about a worker who has been underpaid. They get paid weekly and have been underpaid every week for a year. That is potentially 52 contraventions. The applicant, whether it is the union or the inspectorate, would have to prove each offence separately. Just because it is proven for one week, does not mean it is proven for the next week. They have to provide evidence of the second contravention. If in the case of a body corporate having made a serious contravention, there is provision for a pecuniary penalty of $650 000. There is a series of elements there. The applicant has to prove the contravention and then show it was serious and then the magistrate will make a decision based on the maximum penalty. If it is not a serious contravention, the maximum penalty will be $65 000, not $650 000, but they will still have to do the same thing; they will have to prove the contravention. In this case, they would not have to prove it is serious, but the magistrate would have to decide whether it is worthy of the maximum penalty. We expect that in the same way as there is a variation in the penalties that are provided now, there will continue to be a variation in the penalties provided in respect of the evidence that is presented.

Mr S.A. Millman: As a matter of practice, there is often a separate hearing of penalties after the case.

Mr W.J. JOHNSTON: Indeed; that is quite common for all jurisdictions. The Industrial Magistrate would say, "These facts have been proved. Now I will hear submissions on penalties." That is the way the system works and it will continue to work in the same way.

Clause put and passed.

Clauses 48 to 50 put and passed.

Clause 51: Section 83E amended —

Dr D.J. HONEY: In clause 51, in the definitions, proposed section 83E(1B) states —

> A person is ***involved in*** a contravention of a civil penalty provision if, and only if, the person —

I move down to subsection (c) —

> is in any way, by act or omission …

I guess the concern is that seems to be extremely broad in bringing a person into contravention. I guess it is really around the definition of "is in any way". Perhaps, by way of example or otherwise, the minister could define that.

Mr W.J. Johnston: Sorry, I am having trouble finding it.

Dr D.J. HONEY: It is line 27 on page 64.

Mr W.J. JOHNSTON: All right, yes. I mean, the words mean what the words say. What it says is "in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention". It has to be "knowingly". Without being a lawyer, I bet it is very difficult to prove "knowingly".

Dr D.J. HONEY: I thank the minister for that clarification. That clause includes that the contravention has to be done knowingly. I know the minister has just said that; I just want to confirm that it must be knowingly in the way that that clause reads?

Mr W.J. JOHNSTON: Yes. I mean, an example might be a case in which someone deliberately ignores something. If the prosecution could prove that they have knowingly done it, they could be convicted. But, I mean, that is a very high bar.

Clause put and passed.

Clause 52: Sections 83EA and 83EB inserted —

Dr D.J. HONEY: Minister, at line 14 on page 66, proposed section 83EA(2) states —

> A contravention by a person is a ***serious contravention*** …

I am wondering whether it is possible to give an example—I can read the words on that page—of what would be a serious contravention for the purposes of that section.

Mr W.J. JOHNSTON: Unfortunately, we are only too aware of high-profile cases like that of 7-Eleven, which involved systematic wage exploitation and cashback schemes across the 7-Eleven network as well as the falsification of employment records. Other recent high-profile cases have included the Caltex and Domino's Pizza franchises. Since October 2019, industrial inspectors from the Department of Mines, Industry Regulation and Safety have been conducting a proactive compliance campaign in the hospitality industry involving physical workplace inspections of

cafes and restaurants. Of the 234 businesses inspected between October 2019 and June 2021, around 80 per cent were noncompliant with their employment obligations. The department recovered just over $650 000 in underpayments for 865 employees. Clearly, that is very concerning.

Dr D.J. HONEY: I thank the minister for that explanation. I know that is an example of a serious contravention, but is that the sort of scale of contravention the minister would expect to fall under this provision, or could it be something that is relatively much more minor than that? I appreciate the minister cannot give definitive answers; just by way of reference.

Mr W.J. JOHNSTON: I am advised that under the similar provisions in the federal Fair Work Act, there has only been a very small number of successful prosecutions. That act covers the whole country and many, many more workplaces than the state act covers. Again, this is not expected to be a commonly used provision. It is a bit like when I dealt with the work health and safety legislation and we were putting industrial manslaughter legislation in; one would hope that it never gets used.

Clause put and passed.

Clauses 53 to 64 put and passed.

Clause 65: Section 98 amended —

Dr D.J. HONEY: I refer to the requesting of records. Clause 65(1)(b) refers to "any record accessible from a computer". Obviously, if someone is looking at a very small business or a private residence, a computer may contain all sorts of private information and private matters. What is the scope of accessing those records? Will it be union officials or inspectors coming in to access those records? Is it simply a request for records on a computer? I just want to understand the nature of that, please.

Mr W.J. JOHNSTON: Firstly, this clause relates to inspectors, not union officials. It is putting in additional powers for the inspectorate. I make it clear that this is about industrial locations, so it may be a home, but it is also an industrial location. I gave the example whereby a bunch of sewing machines were in the garage; that is an industrial location. Yes, it is a home, but it is an industrial location. It also could be that the records of the business might be kept at the home, because, obviously, if an employer keeps their business records at their home, then the inspectors need to get access to those business records. It is not the inspectorate's decision that the employer stores business records at their home; it is the employer that makes that decision. The inspectors have to have the power to access those records. If it is not an industrial location—if it is, say, a National Disability Insurance Scheme participant who employs somebody directly to give them assistance—then that is not an industrial location and these provisions are not the relevant ones. There is a separate procedure for that that involves 24 hours' notice or going through the commission to get approval. This is about industrial locations, but it includes homes because some businesses store their records at home. In respect of the right to get access to the information, obviously, this clause provides the power for a public servant to get access to the information that they need. It is not a fishing expedition power; it is for the records that they require.

Dr D.J. HONEY: I thank the minister. I think that explains that. If we go to page 91 in the same clause, proposed section 98(3)(fa) refers to —

> post at an industrial location, in a place where it may be viewed by employees at the location, a notice containing information regarding any of the following —

What duration will that notice have to stay? For example, I anticipate or at least I understand the idea of this is that potential employees and other people will know that an employer has contravened the law in some manner or other, at least. Is that time bound? Does the notice have to stay for a period of months, weeks or years? Is it required for as long as that employer exists? Obviously, if the employer does not display it, they are committing an offence. But I would imagine that it would not be like machinery inspection certificates that are up on the wall—the employer would not have to have it there for all time.

Mr W.J. JOHNSTON: Again, this is a power for the industrial inspectorate. It will have its own procedures and policies to deal with those sorts of matters of detail. This clause gives the inspector the head of power to post the notice. It was a specific recommendation of the wage theft inquiry by Tony Beech and it is to make sure that there is accountability for the behaviour of employers to their employees.

Dr D.J. HONEY: Thank you very much, minister. But am I to understand that the minister is saying there would then be a regulation governing how long that notice has to be there? Would it simply be a policy or do we really not know?

Mr W.J. JOHNSTON: Again, it is a head of power for the inspectorate. As I said before, the inspectorate will have policies and procedures. Like the prosecution policy, which is available to people, these policies and procedures will continue to be available to the community.

Clause put and passed.

Clause 66: Section 98A inserted —

Dr D.J. HONEY: Minister, I refer to page 93, line 14 and down from there. The minister would know that one of the concerns that I raised in my second reading contribution was how information will be protected, and he has answered that in part. This proposed section refers to the industrial inspector, but I am wondering: is this a guarantee that that information will not be otherwise disclosed to anyone else? I must say that I could not find the relevant proposed subsection in relation to a union official, but perhaps the minister can direct me, or he can do whatever he likes obviously. However, I assume that the subsection has the same requirements in that a union official who accesses information cannot use that information for purposes other than inspection and perhaps prosecution. Otherwise, that information has to be kept confidential. Can the minister confirm that that is the case?

Mr W.J. JOHNSTON: Firstly, I can say that this provision relates to inspectors; it is not a provision that relates to anybody else. Proposed section 98A(1)(a) states it is for "an industrial inspector" or as in (b), "a person assisting an industrial inspector". An example might be a translator. Proposed subsection (2) provides the obligations for keeping the information confidential. It specifies the specific circumstance in which the information that has been obtained can be used, and provides for a penalty if that obligation is not complied with. Of course, there might also be other disciplinary action that could be taken against an inspector as well. Therefore, this clause is about the inspectorate and its rights and obligations.

Dr D.J. HONEY: Are there similar or parallel controls to those controls that are listed here in relation to a union official who obtains information from a workplace?

Mr W.J. JOHNSTON: This is not the provision that relates to union officials; this is the provision that relates to industrial inspectors. Industrial inspectors are more like the police than union officials are. Industrial inspectors act on behalf of the Crown to enforce the laws of Western Australia in an industrial area, and so, obviously, their powers are much greater than those that are given to union officials. Because their powers are more extensive than union officials' powers, this provision also has to be a proper protection for the broader community. This provision is a proper protection for the misuse of information gained by a servant of the Crown in the exercise of their extensive powers given to them by the people of the state to enforce the laws of the state.

Clause put and passed.

Clauses 67 to 80 put and passed.

Clause 81: Act amended —

Dr D.J. HONEY: Minister, this clause is a general provision around long service leave. I listened to the minister's second reading reply speech in relation to this in which he made it clear that this clause brings casual workers into the purview of the Long Service Leave Act—if I understand that that is what the minister said. The minister made it clear that if there were continuing employment, the assertion made by the Chamber of Commerce and Industry of Western Australia was that—I know the minister responded to this before—periods that intervened between employment would count towards long service leave provisions. The CCI interpreted that to mean that it would, in fact, be an additive time as if a person were employed. In the second reading speech, the minister made clear that the only time that would count towards accruing long service leave would be the time that the person was actually working, not the intervening period. Therefore, if I understand this correctly, although a person may accrue long service leave after working for 10 years, the long service leave that they would accrue would be calculated only on the days they were working and not the intervening period. I just wondered if the minister could confirm that, please?

Mr W.J. JOHNSTON: The member uses the interesting words "intervening period", but as a person is continuously employed, there is no intervening period. Of course they have not done hours, so when the average hours are calculated, clearly the average will be very low because they did not work on those days—but the employment is continuous. This goes to the heart of the question: what is a casual? I can tell members a story from my good old days about a warehouse in North Fremantle where a group of women used to work putting labels on baby clothes. They used to work for 12 or 13 weeks in the lead-up to Christmas and they would not work again until the following year, but they were always continuously employed. They were paid casual rates under the shop and warehouse award. They were still employed. They were not being called into work, but they had continuous employment, so that is an example of what we are talking about. There has to be continuous employment. The chamber of commerce says that if a person is a casual, they are not employed on the days that they are not at work. That is a moot question, and is a matter that is being considered extensively, including recently by the High Court. The CCI's interpretation of what employment looks like between shifts is an interesting question. I am not convinced that its understanding of the law is exactly the same as everybody else's understanding of the law. Indeed, under the Fair Work Act, federally, the High Court's decision has had an incredibly significant impact on employment, and now employers are going to all these efforts to overcome the decision of the High Court. The point I am making is that a person has to get the long service leave after the continuous employment. The question of what is continuous employment is an interesting one.

Dr D.J. HONEY: Can the minister confirm the comment he made in his second reading speech earlier that this provision will not in fact change how long service leave is calculated and will simply bring this class of employee into the Long Service Leave Act?

Mr W.J. JOHNSTON: That is correct. The advice I have from the department is that the amendment to specify the term "employee" to include a casual or seasonal employee was made because it is a common misconception that these employees are not currently covered by the LSL act. That is exactly what it will do. It will not create an entitlement; it will just remove the confusion for some employers who think that it does not apply when in fact it does. I am also advised that this is in line with every other state.

Clause put and passed.

Clauses 82 to 99 put and passed.

Clause 100: Section 3 amended —

Dr D.J. HONEY: I refer to clause 100 on page 163 and the changes to the definition of "employee", and in particular pieceworkers—that is, people who work in orchards and other places where they are paid for the number of pieces of fruit, or the like, that they collect. Does this amendment mean that that type of employment condition will not be legal? If it were under a state award, would it in fact eliminate the ability of horticulturists, for example, to contract pieceworkers? Will that type of employment contract disappear and will they have to pay them some minimum hourly condition or will it still exist?

Mr W.J. JOHNSTON: This provision is about the Minimum Conditions of Employment Act. People who work, say, as fruit pickers are already covered by an award, and the award applies. This provision is only for those who are award-free. We are just bringing the Minimum Conditions of Employment Act into line with obligations under the modern slavery provisions, because we cannot have people excluded from those arrangements. It would not apply in the case that the member referred to. Of course, there is action in the Fair Work Commission on people who might have been seen as not covered by an hourly rate of pay, but that is a separate issue and unrelated to this legislation. This provision is for those people who are award-free and protected only by the Minimum Conditions of Employment Act. It is a consequential amendment to extend the anti-slavery provision to those people because they have to be covered by a minimum hourly rate of pay.

Dr D.J. HONEY: To clarify: is it the minister's understanding that the majority of seasonal workers employed in legitimate horticultural businesses around the state will not be impacted, if you like, by this provision because they are already working under a federal award?

Mr W.J. JOHNSTON: Firstly, the overwhelming majority of people in the horticultural industry are proprietary limited companies and therefore covered by the Fair Work Act, so all those people are eliminated. Then we get to the question of the small number of businesses that are not "Pty Ltd". They will most likely be covered by an award. The award conditions would apply for that tiny number of people who are providing piece rates to people who are award-free, and we have to regularise their employment by applying minimum hourly rates of pay, and that is what this provision will do.

Dr D.J. HONEY: This question may go over to clause 101: will the provision impact on people who are working on commission, for example, or in some other way, or is that a totally different arrangement?

Mr W.J. JOHNSTON: Let us take the example of a real estate agent; that is a classic one that people talk about. This provision will apply a minimum rate of pay to them.

Dr D.J. Honey interjected.

Mr W.J. JOHNSTON: Yes, that is true.

I have not met a real estate agent who does not get at least the minimum rate of pay.

Dr D.J. Honey: It might be a very poor one.

Mr W.J. JOHNSTON: They would be. If the member thinks about it, this is a statutory minimum, which is below the award rate for almost every occupation one can imagine. In fact, I cannot imagine an award rate that is the state minimum wage. There are probably a couple of awards that have not kept up to that, but basically any functional award will be significantly higher than the minimum conditions of employment. Yes, one could come up with a hypothetical case of somebody getting a piece rate but does not get the minimum hourly rate. Guess what? We want them to get the minimum hourly rate. It is not a sin to say that people should get paid the statutory minimum rate of pay.

Mr S.A. Millman: In fact, if you listen to the Nobel prize laureate, it is a virtue.

Mr W.J. JOHNSTON: It is a virtue. Indeed, to go further, that is actually part of us becoming compliant with the modern slavery provisions. It is one of those changes that we need to do that. We have to have everybody covered by the minimum conditions.

Clause put and passed.

Clauses 101 to 108 put and passed.

Clause 109: Part 3 Division 2 inserted —

Dr D.J. HONEY: I refer to proposed section 17 under part 3 division 2, "Minimum pay for employee with disability". Proposed section 17(2) states —

> Except as provided in subsection (3), the minimum amount payable for each week worked by the employee is an amount not less than the amount in effect at that time under the IR Act … regardless of the number of hours worked by the employee during the relevant week.

I think I understand the intent of that subsection but I would like it clarified. A concern has been raised. Does that mean they will get paid a minimum weekly wage regardless of how many hours they work, or are they paid only for the number of hours they work in a week but they must be paid a minimum wage?

Mr W.J. JOHNSTON: The current arrangement is that that amount is $90 a week, so it is not a very significant amount of money. This provision reflects the federal arrangements for people in similar circumstances.

Dr D.J. HONEY: Is that regardless of the amount of time they actually work in that way, minister? Would that minimum pay be paid regardless of the number of hours that they work in that week?

Mr W.J. JOHNSTON: Yes, that is correct.

Clause put and passed.

Clauses 110 to 122 put and passed.

Clause 123: Section 3 amended —

Dr D.J. HONEY: Could the minister clarify the likely impact of this public holiday provision? I know some members have concerns about it. As I said in my contribution to the second reading debate, I think there are some important days that should be regarded as public holidays. This will probably put me at odds with some colleagues and others! In any case, can the minister clarify the impact that he believes this provision will have?

Mr W.J. JOHNSTON: I am advised by the Department of Mines, Industry Regulation and Safety that the estimated total aggregate wage cost is around $28.88 million, covering both the private and public sectors. I make the point that although it may be a cost to some, it is a benefit to others. It is not a cost to the economy. It is zero cost to the economy, because if a higher amount is paid by employers to employees, by definition, those employees have more than they would otherwise have had.

Clause put and passed.

Clauses 124 to 129 put and passed.

Title put and passed.

Dr D.J. HONEY: It was my fault, but the minister has been kind enough to allow us to reconsider sections.

Mr W.J. JOHNSTON: To prove what a nice person I am, I will move that clause 16 of the bill be reconsidered in detail.

Dr D.J. Honey: Minister, I want to deal with clause 25, because we skipped over all those other clauses.

Mr W.J. JOHNSTON: I want to make sure this is what the member wants: he does not want to reconsider clause 16?

Dr D.J. Honey: No.

Reconsideration in Detail — Motion

On motion by **Mr W.J. Johnston (Minister for Mines and Petroleum)** resolved —

> That clause 25 of the Industrial Relations Legislation Amendment Bill 2021 be reconsidered in detail.

Reconsideration in Detail

Clause 25: Section 49K replaced —

Dr D.J. HONEY: I am grateful for the minister's indulgence in this matter. This clause will delete section 49K and insert new section 49K, "No entry to premises used for habitation". I want to look at this a little bit just to clarify home access. On page 28 of the bill, the new section reads —

> (1) Except as provided in subsection (3), an authorised representative does not have authority under this Division to enter any part of premises principally used for habitation by an employer or a member of the employer's household (***habitation premises***).
>
> (2) An authorised representative may apply to the Commission for an order permitting the authorised representative to enter habitation premises under section 49I(1).
>
> (3) The Commission may make the order only if it is satisfied that exceptional circumstances exist warranting the making of the order.

I appreciate there is a hurdle, but if that hurdle is met, can any part of the house be entered if it is believed to be relevant?

Mr W.J. JOHNSTON: The clause means what it says: an authorised representative does not have authority to enter any part of premises principally used for habitation by an employer or member of the employer's household. They cannot go in. However, an authorised representative may apply to the commission for an order permitting the entry. That can occur only if the commission makes the order, and the commission can only make the order if it thinks exceptional circumstances warrant making the order. Again, this was extensively discussed in August last year.

This clause contains a number of protections. The commission must make the decision; therefore, it has to go through the procedures that apply, which means it has to have a hearing. That means that the person whose house it is has the right to be heard before the order can be made. It is not as though the commission can simply issue the order; there has to be a procedure to issue the order. The employer can go along and say, "Don't come into my place because of X, Y and Z." The commission might decide that is perfectly reasonable. The discussion we had in August last year was that maybe the representative only wanted to get access to a document, so the employer could say, "I can bring the document to the commission." If that were the case, the commission would not issue the order. It is only issued if the order is needed to do whatever it is that needs to be done, and then only if an exceptional circumstance warrants the order. The commission has to be convinced that, without the order, something bad will occur.

Just to give the member an example, let us say a person is employed directly for a National Disability Insurance Scheme participant, and the person says that every time they go into the shower at the house, their feet buzz because there is a short in the electrical system, but the employer says that is not true. That might be an example of when the commission will give an order, because then it can go in and look and say whether it is true. I am just giving an example. Maybe the commission would say that it would not do that, but it will get an EnergySafety inspector to have a look. The commission would have to decide that the situation is exceptional to justify the order. It is not a power just to do something; it is an authorisation for the commission to take an action after it has considered the facts. That is a very, very high bar.

The member should read the long debate on this we had with Peter Katsambanis in 2020. I do not understand why people would say that the commission should not be empowered to do something when it is needed. But it is only when it is needed; it is not an automatic right. The commission has to decide that it is worth it and it is only worth it because of exceptional circumstances. For example, the taking of a document clearly will not be an exceptional circumstance, because the commission could issue an order saying that the employer needs to provide the document at a particular location. This is for exceptional circumstances. Having appeared in the commission for many years, I trust the commissioners to use common sense and their value judgement in making these decisions.

Dr D.J. HONEY: I thank the minister for the example. The minister said the householder would be able to represent themselves or otherwise in relation to that order being procured. Is it the case that the owner of the residence—whoever they might be—would always be aware that someone has applied for an order to enter their house, so it could not be a surprise? Someone could not turn up with an order from the court without the owner of the premises being aware beforehand.

Mr W.J. JOHNSTON: Firstly, there is an ex parte arrangement for the inspectorate if there is a reason, but that is completely unrelated. As I said at the time, the inspectorate needs that arrangement. If there is evidence of slavery, for example, they would not want to go to the slaver and say, "By the way, tomorrow we're going to come and look." The inspectorate needs the power to do that, but not union officials. Section 32 of the principal act is the provision that relates to how the commission operates and that makes it clear that the employer would have to be notified of the application, notified of the hearing and then represented at the hearing. Let us assume that the employer did not turn up. The commission would not just issue the order. It would go through the procedure because it is an exceptional power, so there has to be exceptional circumstances, not ordinary circumstances. Yes, the commission will ensure that the employer has their rights respected.

Clause put and passed.

The ACTING SPEAKER (Ms M.M. Quirk): That concludes reconsideration in detail.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [8.21 pm]: I move —

That the bill be now read a third time.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [8.22 pm]: First of all, I want to thank the minister for the very kind and gracious way in which he handled the consideration in detail stage and his reply to the second reading debate on the Industrial Relations Legislation Amendment Bill 2021. That is not something that has necessarily been demonstrated by all his parliamentary colleagues. The Attorney General was flawless in his response to this bill, without any criticism! Thank you very much, minister. I am also very grateful to his advisers, who have to wait around and get bored by us doing our work here. Thank you very much for that. This legislation is a significant change for the state, as I have said. I noticed some mocking from around the chamber on the modern slavery provisions. Clearly, no-one in this chamber supports slavery, but the ability for inspectors and, in particular,

union officials to enter private residences has been a major concern. I think the minister has clarified the scope of that, but it is still possible. That can be very intimidating for people. The great majority of union officials, as I have said, conduct themselves responsibly. There are those who conduct themselves irresponsibly. I am reassured that a reasonable hurdle will prevent that from occurring willy-nilly; nevertheless, it can still be an apprehension.

There are real concerns, which have been raised here, around householders being aware that they will fall under the provisions of this bill. It will substantially increase penalties and some significant penalties will be available. I appreciate the minister's comments on someone conducting a full-scale business in a private residence. All of us would think that should be regulated and discouraged. Perhaps if it is discouraged, it might be a good thing, but when people are employing gardeners, cleaners and the like, I suspect in the great majority of households in Perth, the householders are unaware that they are considered employers and that they have all these requirements. I am not sure whether this has been tested but, I suspect, based on what I know of the households that I have been to, very few of them could produce records. They might be able to construct them but they would not be able to produce them. It is especially important that the government makes the requirements clear to all householders. It would be a shame if people who are acting in good faith and believe they are doing the right thing were inadvertently caught under the provisions that require record keeping and the like. As employers, they will fall under the new provisions in this act with potential substantial penalties. I suspect in many cases people may be employed under private arrangements. It is not part of an award; it is simply a private arrangement, but they could be in contravention of this act. That would be done with the full knowledge and consent of both parties. If people are happy with such an arrangement, it is not a matter of abuse. Nevertheless, I appreciate there is a serious side to that. There is abuse, which this bill seeks to stamp out. That is very worthwhile. I will end my contribution on that note.

MR W.J. JOHNSTON (Cannington — Minister for Mines and Petroleum) [8.26 pm] — in reply: To close the debate for the second time, even though we did the exact same thing in August last year, firstly, I want to thank the staff of the Department of Mines, Industry Regulation and Safety. Secondly, I thank John Welch from Minister Dawson's office. I also thank Minister Dawson. I want to say how pleased I was that he asked me to handle this bill. Having had a lifetime of engagement with the industrial relations system, it is great to have this opportunity.

I want to reflect on something the member for Cottesloe just said. I have a guy who comes and mows my lawn, but he is a contractor. If we look him up on the internet, it says "Blah Blah Mowing Service". He comes to my house, brings his own kit, mows the lawn, then he goes home. We do not, at the minute, have a cleaning lady—I wish we did. The cleaning lady we used to use was through an agency. We paid the agency, not the cleaner. Actually, most people who engage services in their homes will not be covered by these provisions. On a small number of occasions—for example, if someone directly employs a nanny—it will be appropriate that the employee gets the benefit. We should always be concerned about employers, but this provision is about employees.

The member for Riverton talked about the case of a Tamil woman who was held hostage in Melbourne. I quoted a case last year about the prosecution for modern slavery of a couple in Sydney. Sadly, these things occur. At the moment, Western Australia is the only state that actually permits that behaviour. Despite the Chamber of Commerce and Industry's argument against the reform, no thinking person would oppose it. The question then is: what are the circumstances? I accept that there is a debate on that, but I believe, as I did last year, that this legislation has a good balance between the ability to protect workers and the need to respect householders. I believe this bill provides that balance. I am very pleased to support the bill and commend it to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Consideration in Detail

Resumed from 10 November.

Clause 24: Display of insignia of identified organisation in public place —

Debate was interrupted after the clause had been partly considered.

Mr R.S. LOVE: We are considering the very interesting part of this legislation whereby the Attorney General is seeking to restrict the display of tattoos and other logos on persons. It is quite a novel approach to take this path. I am not sure that it is done anywhere else, where people have to cover a tattoo et cetera. Perhaps the Attorney General can explain whether he believes this clause will survive challenge because it might not be considered reasonable to stop people from expressing themselves et cetera. If the Attorney General can talk generally about that, I will then ask him a couple of questions.

Mr J.R. QUIGLEY: I wish to make several points. Firstly, prior to the election, the Western Australia Police Force—specifically, the Commissioner of Police and the deputy commissioner—publicly requested laws that outlaw patches, and sought the views of parties going into the election. They made it very clear. These laws against insignia are the government's direct response to a request from the Western Australia Police Force.

Secondly, a couple of other states ban colour patches. No other state bans tattoos, but we are not talking about any tattoo; we are talking about a tattoo that is an insignia or body marking that "comprises or includes insignia of an identified organisation and is left uncovered in a manner that insignia of an identified organisation would be visible to another person in a public place". That includes, as set out in the definitions, the numeral "1" followed by the per centum mark, be it in a diamond or not.

As to the member's question of whether it will survive challenge, before being presented to the Parliament, this law was run by the Solicitor-General to look for any obvious areas of challenge. These insignia are tied back to the named organisations. It is not an impediment on their implied freedom of discussion or discourse because it is reasonable and proportionate, for the reasons I have given. The government is confident, on advice, that it will survive challenge.

Mr R.S. LOVE: Most of the discussion we have had up until now has applied to persons who might be subject to orders et cetera because of their behaviour in the past. This matter is not related to the behaviour of a person in the past, whether a relevant person is defined by the bill; it is any person who is displaying insignia that is deemed to represent one of the organisations named in the legislation. Potentially, other organisations may be named or prescribed in the legislation itself. It becomes a little interesting when we consider that although we have a list of organisations, there is not an exhaustive list of the insignia. There will be some level of interpretation or change over time of what represents a particular outlaw motorcycle gang now and what it might represent in the future.

Given that people getting tattoos is quite a serious undertaking—it is pretty much a lifetime thing to have a tattoo—what potential is there for people to be innocently caught up in this? They do not have to be a relevant person or anyone in particular; they could be Joe Bloggs walking down the street with the same tattoo on their forearm that they have had since they were in the Navy in 1973 or whatever and they suddenly find themselves caught up in a dispute and are asked to cover up. Will there be any level of discretion if it is clear that a person is totally innocent of any association with a motorcycle gang et cetera? The Attorney General indicated that he is onto that, so I will let him go.

Mr J.R. QUIGLEY: The member raised a very important point, and I thank him for doing so. As I said, this matter has been looked at closely by the Solicitor-General, who tried to cover all those scenarios. The member may find reference to that issue a little further on in the legislation under clause 26, "Defences to charge of displaying insignia of identified organisation in public place". Subclause (3) addresses the point that the member raised. It states —

> It is a defence to a charge of an offence under section 25(2) —

That is the instant section we are now examining —

> to prove that the accused did not know that the accused was displaying insignia of an identified organisation.

The defence to the member's concern is set out in the statute.

Mr R.S. LOVE: Clause 24(1)(b)(ii) states —

> is left uncovered in a manner that insignia of an identified organisation would be visible to another person in the public place.

Is there a continuum? The Attorney General mentioned that people may have to wear foundation and make-up et cetera to cover their insignia. Is there a point when the make-up wears off and they are suddenly captured by the legislation? How does this provision operate in reality? If a person already has the insignia, the legislation will require them to cover it. If the rain comes down and, inadvertently, their cover slips or their make-up comes off, will they automatically be caught up in an offence?

Mr J.R. QUIGLEY: Yes.

Clause put and passed.

Clause 25: Offence of displaying insignia of identified organisation in public place —

Mr R.S. LOVE: I want to ask the Attorney General about the exemption for persons under the age of 18 years and why that has been put in the bill. Clause 25(3) states —

> Subsection (2) does not apply to an individual who has not reached 18 years of age.

I understand that there is a legal age whereby people can have tattoos performed legally; is that correct? At what age is that? Why, if it is not 18 years of age, would that be different from the age in the legislation?

Mr J.R. QUIGLEY: To be frank, I am not aware of any rule that says that there is an age under which a person cannot have a tattoo. I am aware, of course, of the way in which the Department of Communities and the courts look at things—that by the time a child gets to 14 years of age, they are starting to exhibit their own free will. But this legislation is designed to disrupt organised crime. We are not in the business of criminalising young children or any child who might wear a T-shirt that has "Hells Angels" on it. They are clearly not a member of the Hells Angels. We do not want children convicted of this. The police asked us to introduce this law to tell us that the people they are aiming this at are the adult members of outlaw motorcycle gangs and those several organised crime gangs named in the act.

Mr R.S. LOVE: This may come in the next clause about defence. I know we do not like hypotheticals in this place, but supposing a 17-year-old has a Hells Angels tattoo or some other tattoo on their body somewhere. They will not be caught by the offence when they have it applied to their body today, but on the day that they turn 18, they will be caught by the offence. Is that an intended or unintended consequence of this legislation; and, if it is unintended, will they be given licence to display that for the rest of their life without consequence?

Mr J.R. QUIGLEY: No, no, no. It is to apply only to someone, or an accused person, who displays the insignia and has attained the age of 18 years. If a child under the age of 18 years has body markings or is wearing apparel with insignia, there will be no offence. If they have the tattoo placed on their body, are displaying an insignia and are under the age of 18 years, there will be no offence. But on their eighteenth birthday, they would be ill-advised to go into public without covering up that tattoo because it will be an offence even though the body marking was made before their eighteenth birthday.

Mr R.S. LOVE: I want to ask about the sections that relate to bodies corporate in this provision. Subclauses (4) to (6) reference a body corporate and that a body corporate could be subject to an offence. How could a body corporate be subject to this particular offence? Will it be in the sense that they may be the owner of the premises of the organisation? Will it potentially be that the organisation itself is using a particular logo that is of concern or is it simply that it is displayed on the premises?

Mr J.R. QUIGLEY: No. In the organised crime world, it is not uncommon for organised criminals to place their assets in bodies corporate. I am not going to name the organisations now, but we do know that many outlaw motorcycle gangs have one or more bodies corporate attached to them. To give the member an example, if the clubhouse—that is what they call them; I call them dens of iniquity—is in the name of a body corporate, and there are markings on the premises of "Coffin Cheaters", "Hells Angels" or whatever, the body corporate will be liable to a fine of up to $60 000 if the elements of the offence can be proved. We know that these organisations do have premises, and if they do display the names of outlaw motorcycle gangs on these premises, the body corporate will be liable for up to a $60 000 fine.

Clause put and passed.

Clause 26: Defences to charge of displaying insignia of identified organisation in public place —

Mr R.S. LOVE: We recently spoke about clause 26 in terms of it being the defence provision. There are lists of various things—defences to the charge of displaying insignia of identified organisation in a public place. I am talking here about clause 26(1), which states —

> It is a defence to a charge of an offence under section 25(2) to prove that the display was —
>
> …
>
> (iii) the performance of a legal practitioner's functions or the receipt of legal advice;

I am wondering how that would occur. Would it simply be in some sort of court document or process? I am wondering why there is a need to make a particular exemption for performance of a legal practitioner's function or the receipt of that advice.

Mr J.R. QUIGLEY: The insignia, be it on apparel or in photographs, might be delivered to a lawyer as part of an evidential brief. They may display that in a courtroom or other place, or in public; but if it is part of their legal duties, it will be exempt from being an offence.

Mr R.S. LOVE: Clause 26(1)(b) talks about "in the circumstances, reasonable for that purpose." I am just wondering whether that is a defined legal term. Is there an existing legal term that reflects that?

Mr J.R. QUIGLEY: No, because it is not a defined term; it is used in law regularly. Section 24 of the Criminal Code—I am going off the top of my head as to the section number—is honest and reasonable, but a mistaken belief in fact. If I point a gun at the member and discharge it and it kills him, I might have a defence.

A classic case is what occurred in that *Rust* movie in America—the member knows the one I am talking about. Someone said that there was a cold gun. The actor took it and discharged the gun and someone died. He might say, "I honestly believed the gun was empty," and it was reasonable in all the circumstances to hold that belief. Section 24 of the Criminal Code embraces that defence. But, at the end of day, there is both a subjective and an objective test: Did the person actually honestly believe something? Was it a mistaken fact subjectively, but objectively, looked at by the reasonable person, was that a reasonable belief to hold? If the actor took the gun, was not told anything, believed it to be empty and discharged it, was it reasonable for him to hold the belief without either checking the gun or being told it was empty? Probably it is not. Therefore, "reasonableness" is not defined as such; an objective test will be applied by the court.

Mr R.S. LOVE: Clause 26(3), which I think the Attorney General outlined before, states —

> It is a defence to a charge of an offence under section 25(2) to prove that the accused did not know that the accused was displaying insignia of an identified organisation.

If someone has a physical marking on their body, a tattoo that is difficult to remove, on learning that there is a prohibition against the display of this insignia, even though the person quite innocently had it applied to their body or may have been wearing it for years, will there be a duty on that person to either cover it up or remove it, or will their innocence provide for it to be a defence for time immemorial?

Mr J.R. QUIGLEY: Once a person becomes aware that the covering of their tattoo insignia has faded—the foundation cream has rubbed off, come off in the surf or whatever—and they know it is there, under this clause, there is what we call a reverse onus of proof. Someone has to be proven guilty beyond a reasonable doubt and the prosecution will always carry that burden. However, in law, there are circumstances in which the defence creates a reverse onus. This is one of those situations in which the reverse onus will apply and the accused will have to prove that they did not know that they were displaying the insignia or identification of a prohibited organisation. They carry the burden of proving it.

However, at law, in a criminal trial, when a defendant carries the burden of proof, it is to the lesser standard. The person who is charged will have to satisfy the court on the balance of probabilities, not beyond reasonable doubt, that he did not know at that point that he was displaying insignia. That would usually, in nearly every circumstance, require the accused to go into evidence at trial to discharge the burden. When I say "go into evidence at trial", I mean go into the witness box, swear, "I didn't know I was displaying an insignia", in a manner that convinces the magistrate that on the balance of probabilities he is innocent; he did not know he was displaying it.

Mr R.S. LOVE: Thank you for that. It was not quite what I was getting at. What if the person genuinely had no idea that their tattoo was prohibited, bearing in mind there is not an exhaustive list of prohibited tattoos; there are only those that are thought to be related to a particular organisation and although the organisations are defined, the insignia are not? There could well be cases when people do not know. Once it has been brought to their attention that the insignia is prohibited, even though they might have it on their arm, their face or wherever, as a tattoo, will they then be required to cover it, even though when they first got it done, it was not necessarily done due to associating with a particular group? Will they fall under the same requirement to cover up or to remove the tattoo?

Mr J.R. QUIGLEY: Yes, that is correct. Just for the *Hansard*, because the question went on for a little while—I do not want to criticise the question at all—as I understood the question, a person might have got a tattoo some time ago. This legislation —

Mr R.S. Love: I had one go and had another because you didn't get the nub of it.

Mr J.R. QUIGLEY: Sorry?

Mr R.S. Love: I asked it twice.

Mr J.R. QUIGLEY: That is okay; I am in no way critical. I did not want my "yes" to be less than clear, as the member's question was. The answer is yes. If a person had tattoo markings on their body prior to the commencement of this legislation, there will be no offence. Even though the tattoo was applied prior to commencement, it will become an offence to display it after commencement of this bill. I hope that clarifies it.

Mr R.S. Love: Yes.

Clause put and passed.

Clause 27: Issue of insignia removal notice —

Mr R.S. LOVE: This is about the removal notice that people will be given. It relates only to a relevant place, not to a person's body. We are not expecting someone to take a potato peeler to someone's arm —

Mr J.R. Quigley: To cut off their arm!

Mr R.S. LOVE: No. We are talking about the removal of an insignia from a shop, a house or a shed or whatever is being displayed. The Attorney General mentioned that he felt this clause on the insignia is rigorous and would not fall foul of a legal challenge. Can the Attorney General outline whether these types of removal notices are available in other jurisdictions and whether they have stood up to challenge?

Mr J.R. QUIGLEY: No; I am not aware of another jurisdiction having this provision. As I said in my second reading speech, these will be the toughest and most far-reaching provisions in the nation. However, the structure of this, member, is taken from the Corruption, Crime and Misconduct Act, which has within it anti-fortification provisions under which people can be served with a notice to take down fortifications—remove their reinforced gates et cetera. The ability for the authorities to issue anti-fortification notices under the CCM act has not ever been struck down by the courts. The structure of this is the same as that but rather than it be a notice to take down a reinforced gate, it is to take down the insignia.

Clause put and passed.

Clauses 28 to 33 put and passed.

Clause 34: Police powers relating to insignia removal notice —

Mr R.S. LOVE: Clause 34 refers to police powers relating to insignia removal notice. Clause 34(5) states —

> The Commissioner of Police may recover from the owner of the relevant place costs incurred by the Commissioner under this section in a court of competent jurisdiction as a debt due to the State.

I am just wondering what sort of costs that would cover. Is it all the legal costs? Is it the physical cost of going out and dealing with insignia at a relevant place? What does that entail and how would that be pursued?

Mr J.R. QUIGLEY: For example, if there is a banner sign above club premises saying "XYZ motorcycle club", the police would not get up a ladder and take it down themselves; they would get a contractor with a cherry picker to get up there, unscrew the sign and take it down.

Mr R.S. LOVE: It is the physical cost of the removal, not the legal cost?

Mr J.R. QUIGLEY: No, the cost of the removal becomes a debt recoverable. It is exactly the same way as the police can recover as a debt the cost of removing an anti-fortification under the Corruption, Crime and Misconduct Act. If they do not remove the gate, the police can call in a contractor to remove the gate. This refers to the costs incurred in physically removing the sign.

Clause put and passed.

Clause 35: No compensation under this Part —

Mr R.S. LOVE: Clause 35, "No compensation under this Part", states —

> (1) The provisions of this Part do not entitle any person to compensation.
>
> (2) Nothing in subsection (1) prevents claims in tort in relation to a place other than those in respect of which an insignia removal notice is given.

Again, I must point out my lack of legal training. Clause 35(2) seems to contradict clause 35(1). Clause 35(2) suggests that there might be some claim in tort in relation to a place —

Mr J.R. Quigley: Other than.

Mr R.S. LOVE: — other than those in respect of which an insignia removal notice is given. Perhaps the Attorney General could explain what the operation of this clause actually means, and whether he is aware of any other legislation that contains a clause about compensation that is written in this way, whereby it refers to tort, and how the government or the court would resolve a dispute on that?

Mr J.R. QUIGLEY: Certainly. I thank the member for the question. I have been fascinated at home, as I eat my breakfast, watching people build a two-storey house next door. The equipment really swings around a lot. I think: crikey, I hope they do not hit my house or the neighbour on the other side! This is aimed at that. If the contractors were taking down a notice, for example, and their cherry picker damaged the property next door, which is not the place over which the insignia removal notice was given. Even though the police or their contractors at the time would be operating under law, under section 34, they could damage a neighbouring property. We call tort a civil wrong. That property owner could introduce proceedings to recover damages for the civil wrong, not being the place upon which the insignia was attached.

Mr R.S. LOVE: Thank you for the explanation.

Clause put and passed.

Clause 36: Issue of dispersal notice —

Mr R.S. LOVE: Clause 36 is the issue of the dispersal notice, which is a written notice in respect of a person who has reached the age of 18 and the police officer reasonably suspects is a member of an identified organisation who has consorted or is consorting in a public place with another person who has reached 18 years of age and is a member of an identified organisation, and a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting. This is all about gangs consorting, rather than other persons who might have been relevant persons under the act. It will not catch people who are involved with drugs, sex offenders and the like; it is only with regard to members of named organisations in the schedules of this act. Is that correct?

Mr J.R. QUIGLEY: Once again, I thank the member. Yes, because clause 36(b)(i) states that the person is a member of an identified organisation, and has consorted or is consorting with a member of an identified organisation. The member is quite right; it is between those two people. I will just quickly say the purpose of this. Consorting notices are different because the police officer has to get a commander or above to issue the notice and has to show that the two people have committed serious offences. The member will remember all the criteria that we discussed in consideration in detail last week. A dispersal notice does not require all that proof; it just requires reasonable suspicion that both of them are members of an organisation and that they are together. This is to give the police the capacity to break up those big rides. We will come to this in a moment, but clause 39(2) states that because a dispersal notice requires no proof of indictable offences or the intention to commit further indictable offences, the notice lasts only

seven days. It does not last three years like an anti-consorting notice. If a mob has gathered, the police can quickly break up the mob without having to prove all those criteria. If a national ride comes through, member, the police can ask them to disperse. If they go down to Norseman and they are consorting again, they can get arrested. We have to give the police some grip on these people when they encounter them.

Mr R.S. LOVE: Is there a requirement for a police officer to be a certain grade or rank to issue a dispersal notice, or could any police officer issue that notice? We will talk a bit further about the actual serving of the notice later.

Mr J.R. QUIGLEY: This is different from a consorting notice. The constable who intercepts them might be a traffic constable out on the Eyre Highway or anywhere. If the constable who intercepts them forms a reasonable suspicion that they are a member of an identified organisation and so is the other person, they just issue the notice. It has to be on reasonable suspicion, so within the police department or the police force the constable can ring up the organised crime squad, which is available 24/7. I will just interpolate here: one of my concerns with banning insignia—this is when I was a bit naive, last year or the year before—was that if they did not have the insignia, how would we know who were the gang members. The police disabused me of that and said, "We know all the gang members, all their nominees, all their associates. Don't worry about that, Attorney; we know all of those people." If a policeman intercepts someone on a ride and suspects that they are a member of an organisation, he can do a licence check and get straight on the blower, ring up organised crime and they will say, "Yes, he's a member." That will form the basis of a reasonable suspicion. The officer can hit the two gentlemen with a dispersal notice that will last seven days. A person can apply to the Commissioner of Police for review if he thinks he has unfairly copped one.

Mr R.S. LOVE: Does this power exist elsewhere in jurisdictions that the Attorney General is aware of? How confident is the Attorney General—what legal advice has he sought?—that this particular power, given that it may be novel, depending on the first part of the question, will actually stand up to any legal challenges?

Mr J.R. QUIGLEY: One does one's best and I have taken advice from the best Solicitor-General in Australia, who says that if we limit it to seven days, we will hold against any challenge because it is a reasonable constraint on these bikie runs. There is provision for review before the Commissioner of Police and it follows the statutory precedent, if you like, of move-on notices, which constables hand out regularly to people in Northbridge and other places—probably not quite as regularly as I would like to see them handed out. But the police can hand out move-on notices; this is not dissimilar, except with the police move-on notice, people do not have the ability to go to the Commissioner of Police to ask for it to be reviewed. Here, they have that safety net and they can always go to the commissioner and ask him to review whether it was unfair.

Mr R.S. LOVE: I want to quickly ask about the effect of paragraph (c), which states —

> a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

I assume that if there were an existing dispersal notice, another one would not be resubmitted and some other action would be undertaken, such as an arrest. What about the situation in which it may be a slightly different group of persons who are represented in the current group? If there is a dispersal notice for that particular restricted person consorting with other members of a particular gang, do they have to be the same members of that particular group; and, if not, what happens then?

Mr J.R. QUIGLEY: The answer is no, they do not have to be the same members of the same gang. It is just as long as they are suspected of being a member of the gang themselves and they are with a person who the police reasonably suspect is a member of another identified gang. This here is the caveat. The bill states that the notice can be issued in accordance with paragraphs (a) and (b) and then it has the conjunctive "and" —

> (c) a dispersal notice has not already been issued in respect of the restricted person for the suspected consorting.

Therefore, in relation to that one contact, they get one dispersal notice. At the end of seven days, the police can hit them with another one. The police can keep doing this.

I am sorry. When I say "issue another one", I do not mean they will just revive the existing one. The police can issue them with a disbursement notice. At the end of seven days, if on the eighth day they see him consorting with another gang member, they can issue another disbursement notice and they can keep this process going. But each one of those disbursement notices will be valid for only a seven-day period.

Mr R.S. LOVE: It might be covered a little bit later on—are we all good?

Mr J.R. QUIGLEY: I have to make a correction of a solicitor's tongue. Sorry, Hansard. I said "disbursement notice". Of course, that is a solicitor's tongue—I need my disbursements paid! I meant to say dispersal notice, not disbursement notice. I am sorry.

Mr R.S. LOVE: I am just struggling to understand this. A police officer comes to a group of people on a run and issues a notice in respect of a restricted person. So if there were 10 persons on motorbikes, all together in a suspicious circumstance, does each person receive a notice or just one of the persons? Also, the Attorney General did not

really convince me that this would mean that they could not talk to another group of persons who were also of a particular organisation at a later date, within the seven days, if they were a completely different group of persons from the first group mentioned.

Mr J.R. QUIGLEY: The member is on the money. If I could answer in this way: if there are 10 people and the police officer believes, or reasonably suspects, that they are all members of identified organisations, they give one a notice and they have to name the other nine—well, they do not have to, but if they want to prime the notice, they want to name all nine because otherwise down the track they could be talking to number eight who was not on the notice. For the person who is consorting, the notice should name the people they should not consort with, but for them to be charged, they would have to receive a dispersal notice naming everybody else, because a person can only be charged if they are the recipient of the notice. But the notice will name other people whom the person is not to consort with and whom they are presently consorting with, so not someone who is away or not someone who is a member of the club but is in Perth when the person is out on the highway. The notice is just a dispersal of those people who have gathered together in a group in public.

Mr R.S. LOVE: Is a "restricted person" any person who is a member of an identified organisation? Is that the simple definition of a "restricted person"?

Mr J.R. QUIGLEY: We have to hark back to clause 21, which states that an "identified organisation means an organisation named in schedule 2". They are the 46-odd ones that I have named. Then two definitions below that, it states —

> ***member***, of an identified organisation, means a person —
>
> (a) who has been accepted as a member of the organisation, whether informally or through a process set by the organisation; or
>
> (b) who identifies in any way as belonging to the organisation; or

He might have markings on his body that indicate that he is a member of the organisation. It continues —

> (c) whose conduct in relation to the organisation would reasonably lead another person to consider the person to be a member of the organisation;

Therefore, it is a pretty wide capture.

Clause put and passed.

Clauses 37 to 42 put and passed.

Clause 43: Defences to charge of consorting contrary to dispersal notice —

Mr R.S. LOVE: Subclause (2)(a)(i) to (ix) lists the defences, including engaging in a lawful occupation. If two people are both members of a bikie gang and happen to work in the same coffee shop or hairdressing salon or whatever it is that they do—manicurists whatever they may be; I am trying not to stereotypically define them as construction workers or something else, as it could be a range of occupations —

Mr J.R. Quigley: Or parliamentarians!

Mr R.S. LOVE: Maybe not those, but perhaps.

How will this provision not be simply manipulated by the organisations? We know that some organisations have semi-legitimate businesses that people can be involved in. How will that be —

Mr J.R. Quigley: Tow truck operators.

Mr R.S. LOVE: It could be a whole range of things. I am not going to go into them all, but we know there are organisations that have branched out to other businesses. It seems to me that this defence could be used in a range of circumstances to avoid the legislation. Can the Attorney General explain how he sees that that will not become a problem in the enforcement of this legislation and thereby render this provision, or preceding provisions, quite useless?

Mr J.R. QUIGLEY: Clause 43 repeats clause 18 on consorting notices, which we discussed last week. That does not directly answer the member's question but I will come to it. The defences set out in clause 43 to dispersal notices are the same as the defences to anti-consorting notices. In relation to the member's specific question, take the example of a tow truck firm that is running half a dozen tow trucks. One of its drivers is a member of an identified restricted organisation and he has a sidekick who is also a member. I take the member to subclause 43(2)(b), which states, "was necessary in the circumstances". The driver would have to prove it was necessary that he was with the other member of the organisation. Why was he not with the other truckie? Why did the driver have to be with the driver who he knew was a member? The driver who is a member of the organisation who chooses to be with another member of the organisation will be charged if there is a dispersal notice live in relation to both of them. People have to show that it is necessary—I had no choice; I had to be there—because otherwise we may run into constitutional problems. If the person has to be there, it was necessary.

One defence is attendance at an educational institution. Who would want to take these people away from getting a better education? They might want to go to TAFE to learn something to do with employment, but is it necessary for them to sit next to each other in the lecture theatre? Could the process be properly engaged in with one sitting in the front row and one sitting in the back row so they cannot talk criminal business?

Clause put and passed.

Clause 44: Police powers relating to issue and service of dispersal notices —

Mr R.S. LOVE: Clause 44(2)(a) to (e) talks about what a police officer, who suspects on reasonable grounds that someone is a relevant person, may do and lists a number of actions that they may ask them to do. Are these actions not already enforced through existing legislation—for instance, through move-on notices and that sort of thing? Is it necessary to have that provision in this legislation?

Mr J.R. QUIGLEY: No, they are not, member, because the person has not been charged with an offence. For example, under the Criminal Investigation Act, police have no powers if the person has not been charged with an indictable offence or any other offence that would require them to accompany them to a police station. When the officer's book of dispersal notices is on his desk, he can say, "You come with me." They have that power. Short of a power of arrest or direction under the Criminal Investigation Act, police do not have that power. Under the Traffic Act, they can require a person to stop. Under the Criminal Code, they cannot require a person to stop unless they are calling upon them to stop in the course of a pursuit for committing an indictable offence, not just any offence. Even the requirement for a citizen to provide police with their name and address is not at large. Police must have a reasonable belief that they are investigating an offence, and then they can require the person to proffer their name and address. But under this provision, they will not have to worry about whether there is reasonable suspicion that the person has committed an offence; they can just demand their details if they believe they are a member of a named organisation and they want to issue a dispersal notice—simple.

I draw the member's attention to paragraphs (d) and (e) in particular. They can require the person to remain at the police station for up to two hours. That is what you call custody. This is custody without an arrest. Police could say, "You will stay here, sunshine, and you will wait for up to two hours while we get our hands on dispersal notice forms, because you are going to be served." That is what paragraph (d) says —

> require the person to remain at a police station or other place for as long as is reasonably necessary, but no longer than 2 hours, to issue or serve on the person the notice;

There is no equivalent provision in other legislation.

Clause put and passed.

Clause 45: Police powers in relation to dispersal notices that have been served and issued —

Mr R.S. LOVE: There are a couple of things in clause 45, Attorney General. Clause 45(1)(c) specifies —

> to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.

Can the Attorney General explain why 24 hours was chosen to be the limit to that "reasonable period"?

Mr J.R. QUIGLEY: I refer to a police officer who comes across two people and believes on reasonable grounds that a person is consorting with a named person in a public place—that is, someone who has been named on an existing dispersal notice. The person is the subject of a dispersal notice, so when the police come across that person, they may require the person to leave the place specified by the officer. That is like a move-on notice to get away from the other person—get out of this bar, nightclub or classroom—or to go a reasonable distance from the place or part of the place specified by the officer. If the police are at a hotel and they see two people they reasonably suspect, under a dispersal notice, they can say, "Get out of this bar and go to another part of the hotel—just get away from him." This is all aimed at breaking up immediate associations, where they could be talking about criminal offences. The member took me to subclause (1)(c), which reads —

> to comply with a requirement of the officer under paragraph (a) or (b) for a reasonable period specified by the officer that does not exceed 24 hours.

All the police officer will be doing is seeking to break up the immediate company. If the police want them to stay permanently apart for years, they will go to their commander and get an anti-consorting notice. This clause is a rapid response. They go to a hotel, see two people who they reasonably suspect yadda yadda yadda and they say, "You! Get out of the front bar and go out the back to the beer garden", or something like that: "You do not go near this person for 24 hours." By limiting the dispersal notice to such a tight period, we further reduce any likelihood of this matter succumbing to a constitutional challenge. That is because of the very limited interference with the person—it is for only 24 hours.

Mr R.S. LOVE: Subclause (2) points the police officer to the defence provisions in clause 43 and suggests that if the officer is satisfied that the circumstances referred to in the clause would give the person a defence to a charge under clause 42(1), then clause 45(1) will not apply. Could the Attorney General explain how that will work in the

field? An officer will have to assess whether it is reasonable in the circumstances that the motorcycle gang members are sitting in a tow truck together before they exercise these dispersal notice powers. What is the criteria for, or the thinking behind, how the police officer will assess the situation on the ground? Will that, of itself, lead to a situation in which particular police officers may be encouraged to be lenient with some of these notices in all circumstances, because they will say that it was clear they were working together as tow truck operators and not hatching up some crime or occupying a space contrary to a dispersal notice?

Mr J.R. QUIGLEY: Clause 45 obviously says that if a person has a defence under clause 43, they could not be guilty and will not have committed an offence.

Mr R.S. Love: If the officer feels that, they will not exercise their police powers.

Mr J.R. QUIGLEY: After the dispersal notice is issued, they will not exercise their police powers if the officer believes they have a valid defence under clause 43. I refer the member to clause 43(1) and (2), which both end with the caveat that the contact has to be "reasonable in the circumstances" in the case of family members or "necessary in the circumstances" in relation to occupation. If the police officer sights the tow truck driver and feels that the person had no other option but to be in that particular tow truck with that particular driver, the police will likely conclude that the person has a defence under clause 43(2)(b) that it "was necessary in the circumstances" for him to be there, so they will not exercise their police powers. Similarly, if they enter a wedding celebration and there are family members present who are restricted persons, it is up to the police to decide whether the proximity of the two people, being members of a restricted organisation, "was reasonably necessary" or they could have stayed further apart. It is a judgement call. Obviously, we do not want the police putting the community to the expense of charging people and going to court when there is an obvious defence to the charge. As I said before, it will be up to the accused person to discharge the burden of proof to prove they were a family member and it was reasonable in the circumstances; and, in the case of the tow truck driver, which relates to an occupation, that it was absolutely necessary to be in that person's company.

Clause put and passed.

Clauses 46 and 47 put and passed.

Clause 48: Parliamentary Commissioner to monitor exercise of powers —

Mr R.S. LOVE: Under this clause, the Parliamentary Commissioner for Administrative Investigations, commonly known as the Ombudsman, will monitor the exercise of powers under the legislation. The Attorney General briefly touched on this in the second reading speech, but could he explain why he chose this path rather than having the Corruption and Crime Commission oversee the exercise of these powers?

Mr J.R. QUIGLEY: During the drafting of the bill, consideration was given as to which oversight body—the Corruption and Crime Commission or the parliamentary commissioner—would be best placed to undertake the monitoring function of the bill. The government's view is that the parliamentary commissioner is the more appropriate oversight body to undertake this role. The monitoring role is set out in part 4 of the bill and the primary function of the parliamentary commissioner will be to scrutinise the powers conferred on the police under the unlawful consorting scheme. In carrying out this role, the parliamentary commissioner must scrutinise police records. The member will notice that under clause 53, there has to be a register of dispersal notices. The parliamentary commissioner will go back to the record of notices to see whether police powers are being exercised appropriately. Of course, the parliamentary commissioner will have to put in a report each year, and the minister will table that report each year. This will ward against the abuse of these powers, as happened in New South Wales when consorting laws were first introduced over there and any officer could issue an anti-consorting notice. They were issued mainly against not organised criminals but low-hanging fruit—poor Indigenous people who had committed two break-ins and indictable offences were hit with an anti-consorting notice. Thousands of these were issued. They were issued against young people who were not members of organisations. They were issued against poor people who were hanging out together. They were issued against Indigenous people in great numbers. They all felt this would be a cute idea to break up the associations of these people. This legislation is aimed at something far more serious—that is, organised crime. That is why there had to be two indictable offences for an anti-consorting notice.

The other matter that weighted against the Corruption and Crime Commission was that the CCC's primary obligation is the investigation of serious misconduct or criminality. Serious misconduct is defined under the CCC legislation as an offence carrying more than two years' imprisonment. If my memory serves me correctly, the member for Moore is on the committee for the oversight of the CCC, so he would know that with the crime and misconduct function, together with the unexplained wealth function, the CCC has quite a lot on its plate. The Ombudsman will not be investigating any wrongdoing, but checking the records to make sure they are being used appropriately and that thousands or even hundreds of people from regional areas do not become subject to this provision. That was never this Parliament's intention. The Minister for Police will be the minister accountable for bringing forward this report.

Mr R.S. LOVE: The Attorney General mentioned the roles of the Corruption and Crime Commission. He did not mention that it has a role in investigating organised crime, under the act. It seems curious to me that, when we are

dealing under this legislation, in part not in full, with organised crime or organisations that have links to various activities that would be characterised in that way, the decision was made to ignore the CCC in these circumstances. Was consultation carried out with the Corruption and Crime Commissioner in coming to this decision? Who was consulted, or was it purely a decision made by the Attorney General, his department and cabinet?

Mr J.R. QUIGLEY: Thought was given to it more than consultation with the Corruption and Crime Commissioner. I take the member's point about serious crime, organised crime and the function of the CCC. It is to investigate those criminals. This provision is aimed at monitoring police conduct rather than the criminals. This is to make sure that police notices are issued in an orthodox way, that the register is kept, and who the subject of these notices are. It is an oversight of the police; it is not looking at serious misconduct. However, under section 28 of the Corruption, Crime and Misconduct Act, if, during the course of this monitoring, the Ombudsman comes to suspect that there is serious misconduct afoot—something that carries more than two years—it would be sent to the CCC for investigation. For example, in monitoring the police's documentation—this is a way out–there example because it is quarter to 10 at night but I am not casting aspersions on the police—if the Ombudsman came along and said that the police had altered a notice or fraudulently issued a notice, that would be serious misconduct. That particular notice would be sent to the CCC for investigation of serious misconduct. The function is to monitor the police issue of these notices because that was not happening initially in New South Wales. There were thousands of notices. It is not to investigate the police. If it was to investigate the police, it would be sent to the CCC. It is just to monitor the process, including how many notices have been issued et cetera. I am repeating myself because it is late, but if, in the course of that, they come across some serious misconduct, they will flick it over to the CCC.

Mr R.S. LOVE: I thank the Attorney General for the answer. In fact, a very large part of the CCC's activities are actually monitoring police activities in a whole range of ways, so again I find it a little strange that this path has been taken. Two organisations are now playing a part in monitoring the roles of police; the parliamentary commissioner and the CCC are both monitoring aspects of police performance and duties. It is interesting that it has occurred. I accept the reason that the Attorney General has given, which was basically that the government made that decision, but on the face of it, this seems to be quite a strange choice. What extra resources will the parliamentary commissioner need to be able to undertake this activity?

Mr J.R. QUIGLEY: We all know from reading the paper what an active ICAC New South Wales has. We have just seen a Liberal Premier resign because of an Independent Commission Against Corruption inquiry. We know what a powerful ICAC it has. New South Wales, which had this anti-consorting law first, chose the Ombudsman. The Ombudsman put in a report exposing the thousands of consorting notices, which is far from what the Parliament intended. We chose the parliamentary commissioner. During the course of the preparation of the bill, there was consultation with the Parliamentary Commissioner for Administrative Investigations, otherwise known as the Ombudsman. He has his own budget and makes his own submission to ERC, through me, of course, as the Attorney General and obviously subject to scrutiny during estimates. The parliamentary commissioner, we believe at this time, has adequate resources and if he does not, he will ask for more.

Dr D.J. HONEY: One of the comments the Attorney General made in response to the Deputy Leader of the Opposition was that the Corruption and Crime Commission is very busy and may not have the resources to carry out these powers. What resources does the parliamentary commissioner have to carry out these activities? I would have thought that her office is extremely busy as well. Will any additional resources be provided to that office?

Mr W.J. Johnston: The parliamentary inspector is a man.

Mr J.R. QUIGLEY: I was just going to say that but I did not want to interrupt the member. I have a couple of little points. Firstly, the parliamentary commissioner at the moment—the Ombudsman—is a man, Mr Chris Field, who appears here at estimates. Secondly, I do not agree that I said the CCC did not have the resources to do it. I said that, to my recollection, the CCC's function is to investigate serious misconduct. In this function, no-one is suggesting it is looking at serious misconduct. It is just looking to see how many notices have been issued and against what sort of people the notices been issued against. The member for Cottesloe and other members of this chamber, when this report is tabled by the Ombudsman, will be able to see whether the intention of this Parliament, as expressed in this chamber this evening, is being honoured or abused.

Dr D.J. HONEY: The Attorney General made the comment, in response to an earlier question by the Deputy Leader of the Opposition, that the CCC was busy doing other things, or words to that effect. I assume that enforcing this bill will take some resources. Will the parliamentary commissioner have additional resources to carry out this function or will the parliamentary commissioner be expected to carry out that work with the resources that he already has?

Mr J.R. QUIGLEY: In relation to the first comment, I never said at any stage that the CCC could not look at it because of a resource issue. I said that it is busy working on serious organised crime and unexplained wealth. We want it to concentrate on the main game. The Ombudsman will merely oversight the process to make sure it is not being abused.

As for resources at the Ombudsman's office, the Ombudsman was consulted during the preparation of the bill and indicated that at this stage he has sufficient resources. If more resources are required, I will take it to the

Expenditure Review Committee and we will see the outcome in the budget. The opposition will also have the opportunity to examine the Ombudsman in estimates next May or June to see whether he has sufficient resources to do this.

Clause put and passed.

Clauses 49 to 52 put and passed.

Clause 53: Commissioner of Police to report on use of police powers to Parliamentary Commissioner —

Mr R.S. LOVE: This clause identifies that the Commissioner of Police must keep a record of various things and report on the use of police powers to the parliamentary commissioner. It refers to a register that must be kept. Will that register be open to public scrutiny or just to the parliamentary inspector? Will the register be available continually, how quickly must it be updated and how often will the parliamentary commissioner be expected to acquaint himself of what is on the register?

Mr J.R. QUIGLEY: There will be an IT solution for this register. The police have allocated $290 000 to start building the register. All police powers under this act, be they dispersal notices or anti-consorting notices, have to be recorded in the register. Police will know what their duties are in relation to these notices. At the end of their shift, police will type into the register what they have done with the notices. This will not be open to the public. This is part of police intel. It will be available on an ongoing basis to the parliamentary commissioner and reported on to this Parliament by the Minister for Police.

Clause put and passed.

Clauses 54 to 56 put and passed.

Clause 57: Protection from personal liability —

Mr R.S. LOVE: There is a bit of legal jumble on the back of this clause. Can the Attorney General outline whether these protections for personal liability could be open to challenge in a court? How would the Attorney General see that being resolved if the court were to recommend changes to these protections?

Mr J.R. QUIGLEY: This clause almost mirrors the provisions in section 137 of the Police Act which provides that if an officer is acting in good faith in the performance of their police duties, not in the performance of other duties, they will be protected. This was litigated in quite recent times in the case of Cunningham and Atoms, the two law professors who were repeatedly tasered outside the Esplanade Hotel. They came along as good Samaritans to help someone who had fallen drunk, I think—he may have been pushed—into a bush outside the Esplanade Hotel. Cunningham and Atoms were coming home after having a meal, I believe. They helped the fellow out of the bush and, in the process, were set upon by police. They were arrested, put in a paddy wagon and tasered for their troubles. When it went to court, the officer gave evidence that Cunningham and Atoms were in trouble. During cross-examination of the officer, CCTV footage from a business, which was obtained by the defendant, was produced to show that the first officer's story was perjury. The police prosecutor immediately dropped the prosecution. Cunningham and Atoms then introduced proceedings for the tort of assault, false arrest and false imprisonment. We all know that they were awarded over $1 million because they could overcome the bar of saying that it was not in good faith. In fact, section 137 of the Police Act refers to when an act is done without corruption or malice; in other words, done without bad faith. Clause 57 will really offer the officers the same protections under this bill as they would have under the Police Act.

Mr R.S. LOVE: Clause 57(4) refers to premises where there might be insignia and the removal of the insignia. We spoke about the situation whereby another building might be damaged by removing something from a swinging crane or something along those lines. Does this mean that the officer who authorised the action is liable in tort to a personal claim? I would have thought that would have been something aimed at the organisation. This clause reads as though the officer himself or herself is potentially liable to a claim in the performance of their duties. Can the Attorney General explain exactly how this will operate?

Mr J.R. QUIGLEY: I certainly can. If an officer acting in good faith employs an agent to remove a sign with a cherry picker and something next door is damaged, there will be no prohibition against the next-door neighbour recovering damages to his building merely on the basis that the officer was acting in good faith. As to the department's liability, this is an area of some contention because it involves vicarious liability.

Mr R.S. Love: The police officer is not personally responsible?

Mr J.R. QUIGLEY: An action might be brought against the police officer in the course of their duty, but I have no doubt that any sensible plaintiff would also plead the department, because they would not know what money the officer would have. The pleading would say, "Officer X, first defendant; police department, second defendant", but the plaintiff would not have to show that the officer was acting in bad faith.

Mr R.S. LOVE: Why is it not clear that the officer is not personally liable, because, from what the Attorney General is saying, they could be jointly sued along with the department, or the department might become liable if the officer is found to be liable? Why not make it clear that the agency is the person or the entity that is liable rather than the officer in the simple performance of their duties?

Mr J.R. QUIGLEY: If they have done it without malice, without corruption, they are not liable in tort to the person or business that they were aiming at—that is, a member of a relevant organisation. But, nothing requires or prevents a third party, whose premises have been damaged, from recovering damages. There are competing cases as to whether the department is vicariously liable; in other words, in some cases it could be said that the officer, as the holder of independent office of constable, is not an employee. There are others that say that in the twenty-first century the police officer should be regarded as an employee.

Clause put and passed.

Clauses 58 to 61 put and passed.

Clause 62: Review of Act —

Mr R.S. LOVE: This section refers to the review of the act. Subclause (3) states —

> The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Why would it take 12 months for the review to be undertaken? Would that be a normal period of time in which to undertake a review and to report back to Parliament?

Mr J.R. QUIGLEY: One reasonably expects that it will take less than 12 months given the nature of the register that has to be kept. However, if irregularities on the register require further investigation, it might take longer than 12 months to review the operation of the act. We did not want to put down, say, six months and for the review to not be completed in those six months, because the minister would be in defiance of the legislation for not tabling a report within six months. The important thing is that there is a statutory requirement for review to commence three years after. This should please members of the other house who love review clauses and usually put them in at three years. There we have it. I often put them in at five years and the other place amends them to try to get it down to three years. I say, "Okay, we'll go with three years and give them a reasonable time to prepare the report", because the report will be on not just what the police did on this or that occasion; the report will have to completely review the operations of the gang crime squad, the organised crime squad and all the people who avail themselves of the use of this particular legislative device—that is, consorting and dispersal notices.

Clause put and passed.

Clause 63 put and passed.

Clause 64: Schedule 2 amended —

Mr R.S. LOVE: This clause is under the headings "Part 6 — Other Acts amended", "Division 1 — *Community Protection (Offender Reporting) Act 2004* amended". Clause 64 states —

> **Schedule 2 amended**
>
> In Schedule 2:
>
> (a) delete the item relating to …

The preamble of the explanatory memorandum states —

> This clause amends Schedule 2 of the *Community Protection (Offender Reporting) Act 2004* by deleting reference to the offence at section 557K(4) of The Criminal Code and replacing it with reference to the offence of consorting contrary to a consorting notice in clause 17(1) of the Bill. This reflects the removal of the offence of consorting between convicted child sex offenders from The Criminal Code and insertion into the unlawful consorting scheme in this Bill.

What will be the staging of this in terms of the application of this measure? Offence provisions under section 557K of the Criminal Code will fall away and be replaced with a reference to "consorting contrary to a consorting notice in clause 17(1) of this Bill". Can the Attorney General explain the timing of these changes and whether every offence mentioned, which is known under this particular provision, will move automatically to the other provision—clause 17(1)?

Mr J.R. QUIGLEY: This amendment is to ensure that anti-consorting notices and convictions for anti-consorting notices under this bill will be a reportable offence under the Community Protection (Offender Reporting) Act 2004. Under 557K of the Criminal Code, the breaches are reportable offences. We want to make sure that under this Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill, the new anti-consorting offences are reportable offences. We want to make sure that the new scheme in this legislation is also a reportable offence under the Community Protection (Offender Reporting) Act 2004.

Clause put and passed.

Clause 65 put and passed.

Clause 66: Section 557J deleted —

Mr R.S. LOVE: This refers to other acts, and will amend the Criminal Code by the deletion of section 557J. Can the Attorney General explain why it is necessary, strictly speaking, to remove 557J from the Criminal Code? Will this bill provide an adequate catch-all provision to ensure that drug traffickers, who will not be mentioned any more due to deleting section 557J, will be kept from consorting?

Mr J.R. QUIGLEY: We are bringing all anti-consorting provisions together under the one legislation, which is before the chamber at the moment, the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. The member will be aware that anti-consorting notices issued under that have to be put onto a register—we have been through all that—which the Parliamentary Commissioner for Administrative Investigations can examine. In relation to section 557J, the police have not kept a register of drug traffickers. I think that is further up the chain. The courts have not advised the police of every declaration, so there is no register of drug traffickers. There is no anti-consorting notice in relation to drug traffickers—none. We are brightening up the system by bringing it into this legislation. I thank the member for his question because this will strengthen the proceedings in relation to sections 557J and 557K. The anti-consorting notices are now much stronger.

Clause put and passed.

Clause 67: Section 557K amended —

Mr R.S. LOVE: This will amend section 557K of the Criminal Code. Can the Attorney General outline how many people have been charged under section 557K of the Criminal Code within the last year? Will this number differ due to the amendments proposed in this clause?

Mr J.R. Quigley: I distracted myself then. I only need the last part of the question again.

Mr R.S. LOVE: How will this change in legislation impact the number of people affected by the restrictions?

Mr J.R. QUIGLEY: I think we went through this before. I recall that since 2016, in the last five years, there have been only 20 attempted prosecutions—only 20 in five years, which comes out at four a year. When we figure the number of sex offenders there are in Western Australia, four a year is a very, very small number. Of those 20 in five years, only eight were convicted because of the requirements of section 557K. We are now down to fewer than two convictions a year, with over 3 500 registered sex offenders in Western Australia. There have been fewer than two convictions a year for consorting. I am glad the member asked this question because it once again gives me the opportunity to disabuse the member's alliance partner, the Liberal Party, for its utterly misleading, irresponsible and disgusting attack on the new anti-consorting legislation by saying that this will weaken the regime against child sexual offenders, republished today by the Leader of the Liberal Party. I notice that the highly misleading and dishonest little video that he put out today received only one "like" and one re-tweet. I assume it was someone in his office who wrote the damn thing. This is very important. I have said before: where the Liberal Party and the Leader of the Liberal Party fall into error is when they say that this bill will be scrutinised by Hon Nick Goiran in the other place. There is where they will go wrong. Hon Nick Goiran is someone who serially—in other words, repeatedly—misstates the law regularly. I do not say that lightly. I said that the other day in relation to the Ministerial Expert Committee on Electoral Reform when Hon Nick Goiran asked: where is the statutory source of power? Ministers can get anyone in to advise them, they do not need a statutory source of power. Hon Nick Goiran said that the whole MEC report was ultra vires because it was functus officio. This is not functus, this is him becoming bumptious. That was absolutely ridiculous.

We will look at section 557K and see where the Liberal Party and the member for Cottesloe have totally misled the public in saying that the new legislation will weaken the regime against anti-consorting notices for child sexual offenders and, might I say, member for Cottesloe, and to the chamber, changes brought about at the request of police to give them more muscle against child sexual offenders. Section 557K states in part —

> (1) In this section, unless the contrary intention appears —
>
> ***child*** means a person under 18 years of age;
>
> ***child care centre*** means …

I refer now to section 557K(4), which the Liberal Party cites time and again. If it keeps on citing it, its numbers might be reduced from two to one! It could take a nosedive. Let us have a look at the law. Section 557K(4) of the Criminal Code states —

> A person who is a child sex offender and who, having been warned by a police officer …

The police do not need to give a warning before issuing an anti-consorting notice.

Mr P. PAPALIA: I would love to hear more from the Attorney General.

Mr J.R. QUIGLEY: We go back to clause 9(1) of this bill. Is the member for Cottesloe listening or is he playing on his computer there? Clause 9, "Issue of unlawful consorting notice", states —

> (1) An authorised officer may issue a notice (an ***unlawful consorting notice***) in respect of a person (a ***restricted offender***) if —

It goes through those —

> … who —
>
> (i) has consorted, or is consorting, with another relevant offender; or
>
> (ii) the officer suspects on reasonable grounds is likely to consort with another relevant offender;

The first way that we are giving more strength to anti-consorting notices in relation to child sex offenders is that there will no longer be a necessity, member for Cottesloe, for the prosecution to prove that on a prior occasion to the issue of an anti-consorting notice under section 557K, the person has first been warned by a police officer. They do not have to do that. We are into them earlier in the process. I will go on in section 557K(4). The police officer has to warn the person —

> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged …

They have to go through all this warning process. That is what the Liberal Party wants to stick with. This convoluted process does not give the police bite on the child sex offenders straightaway, like clause 9 of this bill does. No, member for Cottesloe. I tell the member for Cottesloe what: he should take the *Hansard*, read it closely, and then he will be able to give Hon Nick Goiran a legal lesson. He will be able to go and say, "Hon Nick Goiran, do you realise that the police no longer have to issue a warning to a child sex offender before they can issue an anti-consorting notice? Did you know that?" Hon Nick Goiran will say, "No, I didn't know that! I was too busy stacking branches. I can't do everything!"

The police must warn the person that the other person is also a child sex offender, and that consorting with that person may lead to them being charged. They have to do all this. I will go on. It may lead to the person being charged who habitually consorts with the other person. Then the police have to go to the next stage. They cannot just hit them because they are in their company and consorting. No, we have made it stronger. I know the Liberal Party wants this old section, which is weak against child sex offenders. I know that, because it keeps on putting out these misleading videos saying "Keep it with 557K; keep it hopeless against child sex offenders!" That is what it is saying; that is its subliminal message. I cannot wait for the member for Cottesloe to get to his feet when I sit down in one minute and 58 seconds and explain himself. The police have to prove not just that they were in company with that person, but that they were habitually consorting. What does that mean, member for Cottesloe? You have not put that on your video! It means time and again, they are consorting before we can prosecute them. We do not have to do this under the new consorting legislation. No wonder the police wanted this new legislation!

I know what the member for Cottesloe is about. He has no policies in this space. He has tried for years to try to bring in some laws to repress the outlaw motorcycle gangs. There he is, sitting at his desk sombrely saying, "We were all for disrupting bikies, make no mistake", on his video this afternoon. He said "We're all for disrupting bikies, but did you realise that the Labor legislation weakens anti-consorting notices against child sex offenders?" That is what I call a tableau of lies. Someone in my party asked me: what is a tableau? A tableau is a montage of disagreeable things, and lie after lie after lie by the Liberal Party is most disagreeable. You have 27 seconds to prepare your response to this, member for Cottesloe. Twenty-three—smarten up! Sharpen that pencil. In 21 seconds, I will sit down, and the member for Cottesloe can tell this chamber why section 557K is stronger than clause 9 in the new anti-consorting notices, like he misleads the public. He has to do it in five, four, three, two, one. Over to the member for Cottesloe.

Dr D.J. HONEY: Thank you very much. I am pleased to respond to the Attorney General. If we look at division 2 of the bill, titled "Unlawful consorting notices", and we look at the issue of an unlawful consorting notice, clause 9(1) states —

> An authorised officer may issue a notice (an ***unlawful consorting notice***) in respect of a person (a ***restricted offender***) if —
>
> (a) the person has reached 18 years of age; and
>
> (b) the person is a relevant offender who —
>
> (i) has consorted, or is consorting, with another relevant offender; or
>
> (ii) the officer suspects on reasonable grounds is likely to consort with another relevant offender; and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

The point I made to the Attorney General in my second reading contribution was very straightforward.

Mr J.R. Quigley: Wrong, but straightforward.

Dr D.J. HONEY: You bang on and on and on; you can listen for a little while. If we go to section 557K(4) of the Criminal Code, we see there —

> A person who is a child sex offender and who, having been warned by a police officer —
>
> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged with an offence under this section …

Then it goes on to refer to "habitually consorts". That section means that if a police officer sees two child sex offenders consorting, that officer can immediately go up to those people and warn them that they need to stop. That is what they can do. Under the Attorney General's law, they cannot do that immediately. They have to go through clause 9(b)(i), "has consorted, or is consorting", and then —

> and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

We know there are hurdles to that as well, and we know that the officer will be held accountable for that decision by a more senior officer. The simple truth is—the Attorney General can respond to this—that under the existing law, an officer can immediately go up to these people. They do not have to have any suspicion whatsoever—none whatsoever. They do not have to have formed any view in their mind. They simply have to know or suspect that those two people are known child sex offenders, or, in this case, is a child sex offender. If the person is a known child sex offender, the police officer can go up and say, "You must not do this; you must stop it now." It does not require any of those other factors. That is what it is doing. It is putting a hurdle in the way of the police officers being able to simply go up and say, "We do not want child sex offenders consorting at all." They do not have to meet the requirement —

> and
>
> (c) the officer considers that it is appropriate to issue the notice in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

How the Attorney General can say that is not a greater hurdle is utterly beyond me. He bangs on, carries on and makes his offensive comments in this place about me and others. The simple truth is that there is no test applied at all. The only test is that the officer knows that they are two child sex offenders, whereas the regulation that the Attorney General is putting in will put an additional hurdle in the way of that. That is what we are saying, and that is why the Attorney General's comments are disingenuous.

Mr J.R. QUIGLEY: Either the member is absolutely misleading this chamber by saying that there is no other test in section 557K, or he cannot read. Either way, I am so angry at the way the Liberal Party tries to mislead this community and tries to undermine this important legislation. I cannot ask you to read it again. You have had a go. They must not have very good literacy down your way in Cottesloe. The opening words of 557K(4) are that a person who is a child sex offender who has been warned by a police officer that the other person is a child sex offender—here comes the test—and that consorting with the other person may lead to the person being charged with an offence under this section. He forms a belief that there is going to be an offence. What can he do when he forms the belief that a person is going to commit an offence? Warn him: "Don't do it, sunshine!" That is all he can do. But I know Liberal Party members think that a warning is enough—well, we do not. Hit them with an anti-consorting notice. If they breach the anti-consorting notice, they will get 12 months in prison or a $24 000 fine.

For you to say that the police do not have to form a view that any other offence is going to be committed is just absolutely wrong. You are confecting an argument to deliberately undermine this legislation. You are two-faced! You say to the camera, on video, "We're for legislation that disrupts bikies." Your word was "bikers". But, you say that this new legislation undermines consorting notices in relation to child sex offenders—you could not be more wrong! Do you think that the police requested this because they wanted to go easy on child sex offenders? Give us a rest! This is going to become law. It is going to become better law and I accept that you will remain in ignorance of it, but that is why there are only two of you here.

Dr D.J. HONEY: You can be as offensive as you like, Attorney General. You specialise in being offensive in this place and making offensive comments. It undermines your credibility in this place. The simple reality is if a police officer —

Mr J.R. Quigley: You're wrong!

Dr D.J. HONEY: You should learn to read.

If a police officer sees two child sex offenders together, that police officer can immediately go up and warn those two people that they will commit an offence —

Mr J.R. Quigley: Wrong!

Dr D.J. HONEY: — if they continue to consort. That is not wrong because that is what the bill states.

Mr J.R. Quigley: He's got it wrong.

Dr D.J. HONEY: That is what the bill states; it is not wrong. As we go further on, the Attorney General is hanging his hat on the issuing of the notice, and, as I have made very, very clear in this place, in the great majority of cases, and in the great majority of police work, the ability to warn people stops people from committing an offence. The great majority of policing is not prosecuting people; it is warning people that they cannot do something. In fact, it does not have to be an either/or. In this bill, the Attorney General could have said that a police officer can simply go up, without forming any view whatsoever about the intent of those child sex offenders, and tell those two people not to consort. The Attorney General could also have included the new provisions in the way that a consorting notice is issued. They are not mutually exclusive. A police officer does not have to form an opinion that those two people are about to commit an offence.

Clause 9 states —

> and
>
> (c) the officer considers that it is appropriate to issue the notice —

Point of Order

Ms M.M. QUIRK: I have sat here with some patience for some time, but I do believe that the member for Cottesloe is repeating himself ad nauseam. I refer to standing order 97. Repeating the same argument is not overly helpful, frankly, to any of us.

The DEPUTY SPEAKER: Thank you, member. Yes, there is no point of order. But the —

Mr J.R. Quigley: Look, I'm just going to —

The DEPUTY SPEAKER: No, Attorney General. The Leader of the Liberal Party still has the call.

Mr J.R. Quigley: I didn't realise he had the call. I thought he sat down.

The DEPUTY SPEAKER: No. He is just about getting towards the end of it.

Debate Resumed

Dr D.J. HONEY: I sat for the point of order, as I should. Thank you very much, Deputy Speaker.

Clause 9 includes the "and", but I will not read through the whole paragraph lest I bore the member for Landsdale. The simple truth is that it is a higher test for the officer to engage and disrupt those two individuals. The Attorney General can say that the officer may do it, but they have to do it, and that is the straightforward point. At the moment, an officer has to have no opinion other than knowing that two child sex offenders are meeting.

Mr J.R. QUIGLEY: I am going to get the *Hansard* of the member's last contribution. I am going to have my staff—what do you call it when you put plastic on it?—laminate it, and I am going to put it in my drawer. The next time the member comes to this Parliament over dangerous sex offenders and judges letting them out and all that, I am going to read back to him his view of what the management of child sex offenders is; that is, it is sufficient to give them a warning—a little finger wagging and a warning. Do not come back into this chamber again and criticise the judiciary. Do not come back into this chamber again, like your limp-wristed performances when you come in here and you criticise the judiciary for the harsh treatment of child sex offenders, when you say the majority of child sex offenders just need a warning. You are living in the land of nod—just need a warning!

I am going to conclude my contribution. I am not going to make a further contribution after this because of the hour of the night, but I am going to read the very high praise for this legislation that I received from a lawyer. The then shadow Attorney General, the Liberal, Hon Michael Mischin, during debate on this in the other place, said that the proposed scheme goes much further than the existing laws and corrects some of the problems with the current regime. The only existing laws in relation to consorting are sections 557J and 557K. He said the proposed scheme goes much further than the existing law and will "correct some of the problems with the current regime"—that is, correcting the problems with section 557K. Mr Mischin went on —

> The regime that is proposed by the government seems to be a sensible one …

He was a prosecutor before he came to the Parliament, was he not?

Dr D.J. Honey: He was.

Mr J.R. QUIGLEY: Yes, well, he seems to be a sensible one. Noting that the expanded scope of people that the new consorting laws offence applies to, Mr Mischin said that the legislation will have a very broad and good effect. He got up there and he praised this legislation and said that it was very good. So what was your response? You put him at number 6 on the ticket so he could not show his face in the Parliament again.

The DEPUTY SPEAKER: Thank you, Attorney General. Leader of the Liberal Party, I will just give you a little bit of guidance. This is not going to be the same as the previous two contributions or I will sit you down. Thank you.

Dr D.J. HONEY: No, it is not going to be the same as the previous contribution.

Attorney General, I have not contended at any stage that there should not be prosecutions of child sex offenders, and for you to say that to this place —

Mr J.R. Quigley: You said it already!

Dr D.J. HONEY: — is misleading in the least. What I have said very clearly is: the ability of officers to warn them simply gives officers an additional arsenal to do that.

Mr J.R. Quigley interjected.

Dr D.J. HONEY: You can verbal all you like. You can be personally insulting all you like, but you are misleading this Parliament and the people inside it.

Clause put and passed.

Clause 68: Schedule 1 clause 4 inserted —

Mr R.S. LOVE: I will just add a bit of a circuit-breaker for a minute because this a very complex discussion that deals with the difficult nature of certain sex offenders. The discussion that we have heard up to date is because we want to see an outcome that makes it more difficult for these types of people to cause problems. This is why am concerned, Attorney General. Clause 68, "Schedule 1 clause 4 inserted", deals with transitional provisions for the Criminal Law (Unlawful Consorting and Prohibited Insignia) Act. New clause 4(2) of schedule 1 says —

> A police officer cannot give a warning under section 557K(4) of this Code during the transitional period.

Can the Attorney General explain to me why he said earlier in debate on clause 1 that section 557K(4) would still be in operation, yet in this particular circumstance we see that it is impossible for a police officer to give a warning under that section of the Criminal Code during the transitional period when it still exists in law?

Mr J.R. QUIGLEY: Those who have already received a warning could still be prosecuted during the transitional period. A warning under section 557K will go on during the transitional period. However, no new notices can be issued under section 557K; they are going to run out at the end of three years, unless new notices are issued under the new act. At the start I was right: after we pass the legislation, section 557K will be alive, and those who have already been subject to it can be prosecuted under it, but no new warnings can issue. But if a warning is issued and a person continues habitual consorting after the commencement of this act, they can be prosecuted under section 557K provisions. However, no new 557K warning can be made; it would have to be a section 9 notice, which is tougher, stronger and more certain.

Clause put and passed.

Schedule 1 put and passed.

Schedule 2: Identified organisations —

Mr R.S. LOVE: This is a list of the identified organisations that will be captured under the act. Can the Attorney General explain how future organisations, or changes to the list, will be captured? For instance, if a new bikie gang enters the scene, changes to this legislation will need to go through Parliament. That seems to be quite a difficult process, given the demands of time and the fact that there might not be a sitting for some time. How will this legislation operate to ensure that organisations do not somehow just add a hyphen or something else to their name so that they are no longer an identified organisation?

Mr J.R. QUIGLEY: It is a matter of statutory interpretation. If an identified organisation changes its name but has the same or similar members, the same or similar structure and engages in the same or similar activities as the named organisation in schedule 2, it will be considered to be the same organisation. Adding an extra "L" to "Hells" will not change it; the organisation will still be captured. In circumstances in which a truly new organisation forms—that is, new members, a new structure and a new constitution—and there is evidence to support the basis of including the new organisation, such as having the same characteristics described in the *Report by way of justification of the provisions of part 3 of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, which has been tabled, there will need to be an amendment to schedule 2 to include the new organisation. The reason for this is that we might have a government of a different complexion or stripe—I am not now talking Liberal or Labor—that wants to include an organisation of a political nature. We could not have them being roped in without the authority of this Parliament. A new organisation could be included only if and when this Parliament agreed to include a new organisation. But an organisation that has merely changed its name to try to evade the legislation will still be the same organisation if it is made up of the same or similar members, has the same or similar structure and engages in the same sort of activity, like outlaw motorcycle gangs do, and it will be captured by this legislation as it stands. I would hate, for example, a political party, a trade union organisation or a business organisation to slip into this harsh regime without the authority of this Parliament, and I am sure it will never be given.

Mr R.S. Love: I think governments have tried before.

Mr J.R. QUIGLEY: They have. Sir Robert Menzies tried it with the Communist Party. He failed.

The government is trying to shut the door so that it is only organised criminals who will be the subject of this legislation.

Dr D.J. HONEY: On that, Attorney General, if it is done by way of regulation, could that be subsequently disallowable if it was a regulation change, so that Parliament would still have some oversight of it if another organisation was included or an organisation excluded?

Mr J.R. QUIGLEY: That is quite true, member. I did think about that. As the member knows, something is tabled in the other place, and then I think a member has 21 days to move a disallowance motion, so they have to be vigilant. Something could get tabled and with things going on, it could be missed, so it could become a proscribed organisation by default almost. What if a political party, like the Communist Party—well, there is no Communist Party anymore.

Dr D.J. Honey: It's changed its name.

Mr J.R. QUIGLEY: What? Has it become the Liberal Party?

Seriously, it could include people in here. It is the harshest legislation. Some of those vegans who demonstrate for animal welfare et cetera have a voice and something to say, so long as they do not trespass and interfere with businesses. We would not want them included because it could sort of fetter their implied freedom of speech on a political matter. We wanted it to be more deliberative so that members would have to come into this chamber and justify why a new organisation should be subject to the harshest anti-consorting regime in Australia.

Mr R.S. LOVE: The list contains 46 organisations that are named in the justification report from the police.

Mr J.R. Quigley: And the Australian Crime Commission.

Mr R.S. LOVE: Yes. A process led to their inclusion on the list and therefore their inclusion in the schedule. If there was a change and an organisation was added, would the Attorney General anticipate that there would be a similar justification process? Would that have to be put before the Parliament for that organisation to be included in a similar way to the report that was presented in the lead-up to this legislation?

Mr J.R. QUIGLEY: In a word, yes. The reason is Unions NSW v New South Wales, whereby the High Court said if we have a fetter on political free speech, we have to justify it and it has to be reasonable and proportionate. If we brought another organisation within the ambit of this legislation, we would not want it to be challenged constitutionally. It first must pass muster in this chamber that members are satisfied there has been a discussion about these organisations, which there has been, and that the Parliament considers it reasonable and appropriate. Just indulge me for a moment while I count. I have counted down this list because I was interested to read a four-page spread in Saturday's *The West Australian* that depicted outlaw motorcycle gangs as a family loving self-help group for older white Australian males who liked to ride motorbikes and have a beer. But when I look at the document that was put before the Parliament, I see that nothing could be further from the truth than what was depicted. The organisations referred to in that article—Coffin Cheaters, Comanchero, Hells Angels, Lone Wolf, Mongols and Rebels—have between them racked up 47 major convictions for offences involving drugs, firearms, burglary and assault. They are not just a self-help group, are they? They are entrenched criminals. I counted 47 convictions after briefly looking at that briefly. We would not want to include any organisation in this legislation that was not shown to be an entrenched criminal organisation.

Schedule 2 put and passed.

Title put and passed.

House adjourned at 10.53 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

GOLD CORPORATION — 2021–22 STATE BUDGET

237. Mr R.S. Love to the Minister for Mines and Petroleum:

I refer to Budget Paper 2, Volume 1, page 192, and I ask:

(a) When did the One-Future Program begin;

(b) When did the Enterprise Resource Planning (ERP) system upgrade begin;

(c) What was the original Budget for the ERP;

(d) What was the original completion date for the ERP;

(e) What is the total amount spent on the ERP to 30 June 2021;

(f) How does the One-Future Program vary from the previous ERP program? (Separate project scopes, budgets);

(g) Can the total cost for the ERP please be provided via a year by year breakdown of expenditure on the Enterprise Resource Planning (ERP) system:

  (i) 2014–2015;

  (ii) 2015–2016;

  (iii) 2016–2017;

  (iv) 2017–2018;

  (v) 2018–2019;

  (vi) 2019–2020; and

  (vii) 2020–2021;

(h) Which consultants are being used to support the roll out of this project;

(i) Which External consultants or providers have been contracted to deliver the project;

(j) What is the cost breakdown within the total ERP project Budget that has gone to external consultants or Project Management contractors;

(k) What is the total cost within the One-Future Budget that has gone to external consultants/project management contractors;

(l) What software platform is being used in the interim to support the e-commerce, front end customer focused needs of Gold Corporation;

(m) When was this system originally installed;

(n) Do any of the Board, CEO or senior staff have historical or pre-existing relationships, professional or personal with these firms who have been consulting on the project;

(o) With regards to the 2020–2021 Gold Corporation Annual Report and the One-Future project steering committee, I ask who sits on the project steering committee to ensure this project stays on track and on budget;

(p) Can you confirm the One Future Committee has been meeting since May 2016;

(q) How much of the original project scope set out for the ERP in 2015 has been delivered by 30 June 2021; and

(r) Can you please outline by year the breakdown of the Asset Investment Program of Perth Mint since 2014–15?

Mr W.J. Johnston replied:

(a) The One-Future Program began in August 2016.

(b) The ERP Replacement project began in July 2013.

(c) $7 000 000

(d) This project was first included in the 2013–14 Budget Process. At that point it was expected to be completed during the 2016–17 year.

(e) $2 962 000

(f) The ERP Replacement project was initially envisioned as a one-to-one replacement of the Corporation's ERP. As the project progressed it became apparent that a significantly broader scope was required, most notably including the addition of a new website instead of trying to integrate the existing websites into a new ERP. The One-Future Program thus represents this broader project of which the ERP forms a part.

(g) In thousands of dollars:

(i) 2014–2015;	57
(ii) 2015–2016;	1,685
(iii) 2016–2017;	268
(iv) 2017–2018;	–
(v) 2018–2019;	–
(vi) 2019–2020; and	–
(vii) 2020–2021;	–

(h) Numerous consultants have been used in various capacities. The three largest vendors by spend are (in alphabetical order); Churchill Consulting (Project Manager); Microsoft (ERP Provider); and PwC (ERP Implementation Partner).

(i) See response to (h) above.

(j) 96% of project spend related to external consultants given the specialised nature of the work being performed.

(k) 91% of project spend relates to external consultants given the specialised nature of the work being performed.

(l) The Corporation is utilising its existing ERP (Axapta 3) and existing websites.

(m) Axapta 3 was implemented in 2004 and the websites are of a similar age.

(n) The Corporation's Board and senior staff includes former employees of firms that have performed work on the project. All parties have been engaged on an arm's-length basis and all senior staff and Board members are subject to appropriate Conflict of Interest policies.

(o) Please refer to Gold Corporation's 2020–21 Annual Report.

(p) The committee was established in May 2016 and has met on a regular basis since July 2016.

(q) It is impossible to quantify this given the heavily integrated nature of the finished product.

(r) See table below:

	2014/15	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**
Plant & Equipment Replacement Program	4,205	4,620	6,723	5,460	6,691	10,270	5,858
Computer Software Replacement Program	2,216	514	501	1,058	603	348	550
ERP Replacement Project	57	1,685	268	–	–	–	–
One-Future Program	–	–	5,350	3,806	5,366	9,209	14,338
Silver Blank Production Facility	16,500	–	–	–	–	–	–
Total	**22,978**	**6,819**	**12,842**	**10,324**	**12,660**	**19,827**	**20,746**

GOLD CORPORATION — 2021–22 STATE BUDGET

238. Mr R.S. Love to the Minister for Mines and Petroleum; Energy; Corrective Services:

I refer to Budget Paper 2, Volume 1, page 192, and I ask:

(a) Can you please outline the history and project scope of the Silver Minting Mass Production Plant project;

(b) When did the Silver Minting Mass Production Plant start;

(c) What was the original project Budget;

(d) What was the total expenditure spent to deliver this project; and

(e) How heavily utilised is this asset today?

Mr W.J. Johnston replied:

(a) The Silver Blank Production Facility was commissioned to increase the Corporation's silver blanking capacity so that the Corporation could better capitalise on frequent demand spikes in the market for silver coins. Overflow capacity is important because in times of extraordinary demand capacity constraints can be encountered.

(b) The project was approved in the November 2012 Board meeting and work begun shortly thereafter.

(c) This project was first included in the 2013–14 Budget process with a budget of $16 800 000. This included a building extension and associated infrastructure component of $7 000 000 and an equipment component of $9 800 000.

(d) The building extensions required to house the facility cost $7 119 000 and the equipment itself cost $9 712 000 resulting in a total cost of $16 831 000.

(e) The asset is heavily utilised as required.

GOLD CORPORATION — 2021–22 STATE BUDGET

239. Mr R.S. Love to the Minister for Mines and Petroleum; Energy; Corrective Services:

I refer to Budget Paper 2, Volume 1, page 192, and I ask:

(a) Can you please provide an outline of the Precious Metals Vault;

(b) What was the original Precious Metals Vault project Budget;

(c) What was the total expenditure spent to deliver this project; and

(d) How heavily utilised is this asset today?

Mr W.J. Johnston replied:

(a)–(d) There has been no capital expenditure on a Precious Metals Vault during the term of the McGowan Government. Budget Paper 2, Volume 1, page 192 does not refer to a Precious Metals Vault. It is unclear what the Member refers to.

GOLD CORPORATION — 2021–22 STATE BUDGET

240. Mr R.S. Love to the Minister for Mines and Petroleum; Energy; Corrective Services:

I refer to Budget Paper 2, Volume 1, page 192, and I ask:

(a) Have you, the Chair or the CEO met with the Premier at any point since March 2017 to discuss the Enterprise Resource Planning (ERP) or other project delivery challenges associated with Perth Mint / Gold Corporation;

(b) When was the current Gold Corporation CEO appointed to the role;

(c) How many senior staff have left the organisation in the tenure of the current CEO; and

(d) Have there been any complaints related to workplace bullying or inappropriate workplace behaviour lodged against you during that period?

Mr W.J. Johnston replied:

(a) I have not met with the Premier about these matters.

(b) 1 July 2015

(c) The CEO resigned on Friday 8 October 2021. There was one employee initiated departure during this CEO's term.

(d) I have not had any complaints lodged against me.