Parliamentary Debates
(HANSARD)

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LEGISLATIVE ASSEMBLY

Thursday, 20 June 2019

Legislative Assembly

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THE SPEAKER (Mr P.B. Watson): took the chair at 9.00 am, acknowledged country and read prayers.

HARRISDALE SENIOR HIGH SCHOOL — GIFTED AND TALENTED PROGRAM

Petition

MR Y. MUBARAKAI (Jandakot) [9.01 am]: I have a petition that has been certified as conforming with the standing orders of the Legislative Assembly. It has 1 952 signatures. The petition says —

> To the Honourable the Speaker and Members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned, say a gifted and talented program is required at Harrisdale Senior High School to make it easier for students in the south-east metropolitan area to access selective entrance programs.
>
> Now we ask the Legislative Assembly to consider implementing a gifted and talented academic program at the school.

[See petition 138.]

PAPERS TABLED

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

REFUGEE WEEK

Statement by Minister for Citizenship and Multicultural Interests

MR P. PAPALIA (Warnbro — Minister for Citizenship and Multicultural Interests) [9.03 am]: I would like to bring to the attention of the house the fact that Australia is currently celebrating Refugee Week, which runs this year from Sunday, 16 June to Saturday, 22 June. Refugee Week is Australia's peak annual activity to raise awareness about the issues affecting refugees and to focus on the positive contributions made by refugees to all levels of Australian society. First celebrated in 1986, Refugee Week coincides with World Refugee Day on 20 June, which was first coordinated by the United Nations High Commissioner for Refugees in 2001.

Western Australia is a state built on migration. From its earliest days, the successful growth of this state was founded on its First Peoples, followed by settlers from the United Kingdom and, later on, migrants from every part of the globe. This diverse heritage has made Western Australia the robust, vigorous and prosperous culturally diverse state that we enjoy today. Migrants bring with them their skills, their cultural heritage and their willingness to work together to forge a new land of opportunity. Many of these migrants have been refugees. Refugees do not arrive alone. They bring with them their passion to make a success of their lives, to build a good life for their family, and to contribute to their new homeland in every way that they can.

The theme for Refugee Week 2019 is "A world of stories". Every refugee looking for safety brings their own story of why they left home, their journey and, in some cases, finding safety in Australia. The sharing of stories is an opportunity to not only remember and honour their journey, but also enable the wider Australian community to better understand the courage and contribution that refugees make.

Refugee Week 2019 is being celebrated by a series of events across the community, including at libraries, schools, colleges and universities, non-government organisations and at the cinema and on television. Many of the events use stories and songs to celebrate the contributions that refugees have made to the development of Western Australia and this nation as a whole. To mark Refugee Week, I am pleased to announce that the McGowan government has introduced access to concession fares on public transport for asylum seekers in Perth, similar to those available to seniors, veterans, Centrelink recipients and students.

ENERGY TRANSFORMATION STRATEGY

Statement by Minister for Energy

MR W.J. JOHNSTON (Cannington — Minister for Energy) [9.05 am]: I rise to inform the house of the action the McGowan government is taking to address the challenges and seize the opportunities presented by the unprecedented transformation being experienced in our power system. This transformation is being driven by technological changes, which are leading to a greater take-up of large-scale renewables and distributed energy resources, such as small-scale solar and battery systems.

It is truly an exciting time for the electricity sector, and one that offers tremendous opportunities for Western Australia. However, change also comes with challenges. In this case, the intermittent and uncontrolled nature of large-scale

renewables and distributed energy resources is, at times, making it more difficult to manage the power system. For this reason, on 6 March I announced the "Energy Transformation Strategy: A Brighter Energy Future"—the government's work program to deliver cleaner, more affordable and more reliable electricity to consumers for years to come. The strategy has three main areas of action: first, the development of a whole-of-system plan for the south west interconnected system to guide investment in infrastructure and to inform policy, regulatory and market development decisions; second, changes to modernise the regulatory frameworks for the connection of generators to Western Power's network and the operation of the wholesale electricity market, including changes to essential system security services and the removal of barriers to connect new technologies, such as utility-scale batteries; and, finally, the development of a road map to integrate growing levels of distributed energy resources in a way that maximises benefits and reduces risks to the power system.

On 20 May 2019, I announced the establishment of the Energy Transformation Taskforce to deliver this work. The task force, which reports directly to me as the Minister for Energy, comprises senior representatives from key government agencies and, importantly, is led by an independent chair, Mr Stephen Edwell. Mr Edwell has extensive experience in energy sector regulation, market design, policy, and utility reform. In fact, Mr Edwell led the reform program that established our current network access framework and the wholesale electricity market operating in the SWIS. The task force will be supported by the newly established energy transformation implementation unit within the Department of Treasury, which is exclusively dedicated to the delivery of the strategy. Our plan is to complete the work program by mid-2021. To achieve this, the task force will be holding an important meeting this afternoon to determine the time frame and sequence for the delivery of each key component of the strategy. Stakeholder input and collaboration will be critical in ensuring the successful and timely implementation of this body of work. The Energy Transformation Taskforce is committed to working with industry, consumers and government stakeholders to set up Western Australia for a brighter energy future. The time for undertaking reviews of the electricity market is long gone. It is time for action. I look forward to sharing the upcoming achievements of the Energy Transformation Taskforce with the house.

TOURISM — INTERNATIONAL VISITORS

Grievance

MS L. METTAM (Vasse) [9.08 am]: My grievance is to the Minister for Tourism. I thank the minister for taking the grievance. The latest round of international visitor statistics was released yesterday, which highlighted an unprecedented 10 per cent fall in international visitor expenditure since the McGowan government was elected—the lowest level since 2012. We have seen seven consecutive quarters of zero to negative growth. For the year ending March 2019, we have seen some positive growth in visitor numbers, including holiday-makers, up nine per cent, but at the same time, declines in visiting friends and relatives, down 11 per cent; employment, down 31 per cent; and business, down four per cent. But what really matters to small businesses, tourism operators and the hospitality sector in WA is total visitor expenditure. We are seeing the lowest levels of international visitor expenditure since 2012. There may be many reasons for the dramatic fall in expenditure, which no doubt will be the subject of much analysis, but we know that in addition to spending less, international visitors are staying for shorter periods.

One interesting piece of research from the Tourism Council WA is that it found that only 13 per cent of international visitors to Perth visited an attraction during their trip, which is the lowest of any major Australian city. In highlighting this issue earlier this year, the Tourism Council WA unveiled 16 new attractions for Perth that would encourage visitors to stay longer—that is, stay longer and spend more money. These are innovative proposals—experiences such as a zip-line from Kings Park to South Perth, and thermal baths and a wave park by the Swan River. Together, these new attractions would result in an additional $165 million spent by visitors in WA and generate over 1 000 full-time equivalent jobs. These exciting projects do not require taxpayer funding but they do require multiple approvals—about 12 to 14 different approvals—from government agencies, as well as government will, to get them off the ground.

We continue to hear and read about example after example of innovative tourism ideas for WA, but businesses are struggling with red tape and bureaucracy, and hitting wall after wall when dealing with multiple government departments. An episode of *Today Tonight* titled "Swan River Red Tape", which aired six months ago, also highlighted this issue. One example was chopper pilot Brett Carmody, who left WA for New South Wales after spending four years and tens of thousands of dollars on a proposal to create a helipad on the Swan. He said, "There were several rejections, it was devastating every single time, and it just became a massive waste of time, money and man-hours."

Another case in point is Urbnsurf, a Perth-based company that had the ambitious idea to launch a surf park here in Perth, along with central Melbourne and Sydney. It first launched the concept for Tompkins Park in Melville in late 2016. Urbnsurf Melbourne is due to open in the spring of 2019—a slap in the face for WA, which could have also had its own new $30 million wave park facility as early as this year if not for the failings of the McGowan government. It is estimated that this project would have injected more than $250 million into Perth over the project's life and created more than 300 jobs and 45 full-time positions. This company cannot even get the project up in its home state.

Urbnsurf has spent 10 years seeking approvals and over half a million dollars, only to have the proposal knocked back at the very last post by the Department of Planning, Lands and Heritage. In March 2019, the department rejected a proposal by the City of Melville to utilise a portion of crown land for the project. Now there are very different opinions about whether this was the right location for the wave park, but the major issue is that it was rejected at the eleventh hour after the company had negotiated a long-term lease with the City of Melville. According to Urbnsurf, it was deeply disappointed that it had put so much time, effort and money into this to have it all end at this point. I understand the McGowan government is now working with Urbnsurf to find an alternative site, but the fact that this was not done from the beginning highlights the issues in our state. The Minister for Tourism has said that this was a decision of the Department of Planning, Lands and Heritage and was not under the tourism portfolio, but the tourism and jobs aspect must be considered.

I also mentioned the proposal for a zip-line from Kings Park. I wrote a letter to the minister about this in April 2019. In his reply, the minister stated that it was the responsibility of the Minister for Environment.

I understand and appreciate the minister's announcement in May 2019 of a tourism case framework. The minister's media statement said —

> "This new case management approach will ensure projects don't get bogged down in red tape and will help reduce bureaucratic delays.
>
> …
>
> "It's also about ensuring that Western Australia offers a range of tourist attractions that encourage people to stay longer and spend more while they are visiting the State.

I was initially very encouraged by this announcement, but the minister's comments during budget estimates that the new tourism framework is simply a "concierge service" that will "elevate the few projects that are deemed significant enough to be a priority of the state in getting them approved and underway" concern me. This will do little to address the experiences of the many smaller businesses and operators who seek to diversify our state's tourism offerings, yet continue to experience knockbacks and red tape.

Minister, this is why I am raising this grievance today. My questions to the minister are: What projects currently before the state government will be assessed under the new tourism framework? How will the tourism framework assist smaller operators with innovative ideas? Finally, the big question is: what is the McGowan government doing to ensure that WA does not miss out on any further tourism attractions, big and small proposals, that have the potential to create jobs and drive tourism growth and spend?

In an article in *The West Australian*, Tourism Council WA chief executive Evan Hall stated —

> "Regulatory agencies should take into account the broad community support for these attractions, and the jobs they will create, when assessing proposed new attractions."

I put these questions to the minister in relation to the tourism framework, and I thank the minister again for the grievance.

MR P. PAPALIA (Warnbro — Minister for Tourism) [9.15 am]: Member, grievances are not supposed to be a re-run of failed questions in Parliament. When the member's questions fail during question time, a grievance is not an opportunity for the member to write out questions and repeat false claims and misinformation that she failed to convey during question time. The idea of a grievance is to actually raise a reasonable matter in order to get a response from the minister. I am going to reply, in the same way I did during question time, to the member's stupid statement about the international visitor spend.

Mr Z.R.F. Kirkup interjected.

The ACTING SPEAKER: Member for Dawesville!

Mr P. PAPALIA: If the international visitor spend were the only visitor spend going on in Western Australia, the member's claim regarding the amount spent in Western Australia, as revealed in the recent Tourism Research Australia analysis, might be reasonable, but it is not the only spend. As the member knows, during 2018 we had the largest number of visitors to Western Australia in history. The spend in Western Australia increased across all categories of visitors, including travellers inside Western Australia, by $830 million between last year and this year. The premise of the member's entire grievance is ridiculous and false.

As I said, grievances are not an opportunity to revisit a failed question time and try to get it right this time by writing it out and having a bit longer. The member has a little cheer squad sitting next to her. It is a very small cheer squad.

Ms L. Mettam interjected.

The ACTING SPEAKER: Member for Vasse!

Mr P. PAPALIA: With respect to attractions, I was on Rottnest Island yesterday. We were turning the sod on the second major infrastructure improvement on Rottnest Island since we took office. This one was the expansion and renewal of Hotel Rottnest. It was very interesting to talk to the Prendivilles about how long they have been waiting to get that project underway. There were seven years of inaction under the former government. It is seven years since the proposal was put to the former government. Four tourism ministers had been responsible for Rottnest Island, but not one of them was capable of making a decision regarding that project. That is why it did not go anywhere. There were four ministers, including the former Premier and the current Leader of the Opposition, but none were capable of making a decision about the expansion and renewal of the Rottnest Island hotel.

What happened when we took office? Premier McGowan said to me, "Get people answers. If proponents are waiting for answers on that island, get them answers." I talked to the executive director of the Rottnest Island Authority and said, "Give them an answer. It does not have to be yes—whatever is appropriate—but give them answers. We will make a decision", and we did. That is why the ecotourism park opened late last year. That is also why we turned the sod on Hotel Rottnest yesterday. That is a $40 million development on Rottnest Island. Neither of those projects could happen under the previous government because it had ministers incapable of making decisions.

As explained to the member for Vasse during estimates, the case management framework is a significant initiative. It was supported absolutely by the Tourism Council Western Australia. Evan Hall, whom the member referred to earlier, put out a media release applauding the initiative by government. The framework will help proponents of new tourism businesses that are deemed to potentially have a significant impact on the state's tourism industry navigate the relevant government approval processes. We do not get rid of approval processes or governance obligations. We live in a First World country where we do not get to just knock over trees, destroy environments and do whatever we want. That is a good thing. That is why people come from everywhere else around the world to visit Western Australia. We have the most beautiful pristine environment in the world protected by governance. It does not mean that we get rid of governance, but a concierge service helps small businesses in particular navigate their way through the process of getting their project up and running. Some of them will not be approved. That does not mean red tape is the reason; it means they did not get approved.

The Urbnsurf proposal reached the minister who was responsible for making the decision only about three weeks before he made the decision. He made the decision rapidly. That other process was not his process; it involved a lot of the other processes related to local government and obligations around other governance. The reason a decision was made is fully justified. It was made by the minister and he made it in a timely fashion once he received the proposal. As I understand it, that minister is no longer responsible but another minister is assisting that proponent and it is very happy with the assistance it is receiving to find a new location.

We are assisting with one of the other proposals the member referred to. The hot springs proposal is receiving assistance via the case management framework, but it had received assistance before that. I will not give the member all the other projects because they are being considered and supported by the case management framework. The proponents of those know who they are and they are being supported. Many other projects will be supported anyway. They will receive assistance. These are the ones that are deemed to be strategically significant. It is a good and positive thing. There are not thousands of projects mired in red tape. I am sorry, member; it is just not a thing.

HEALTH — RESEARCH AND INNOVATION

Grievance

MR S.A. MILLMAN (Mount Lawley) [9.22 am]: My grievance is to the Minister for Health. The McGowan government was elected in 2017 with a clear platform. We were elected because WA jobs were our number one priority, we wanted a health system that puts patients first and we wanted to prepare our kids for the jobs of the future. Minister, my grievance concerns our efforts at innovation in the health sector. We know that to fix the significant debt and deficit legacy that was left to us by the profligate and financially negligent Liberal–National government will take a long time. We know that to fix that legacy, we need to diversify our economy. We know that we are world leaders in medical and health research and innovation. I think we can diversify and grow our economy by focusing our attention on these fields of endeavour.

I want to start by touching on the nature of work. We know that automation and disruption are having a significant impact on traditional modes and methods of work. Dr Frances Flanagan is a University of Sydney fellow in the discipline of work and organisational studies. Her research concerns the crucial and changing role that work has played as a source of social cohesion, identity and belonging in the context of ongoing changes to employment relationships, technology and the environment. I should also add that she is a friend of mine from when we studied together at the University of Western Australia. In a 2017 essay entitled "A Consensus for Care", she had this to say —

> How might our perception of the future of work change if we looked on the 'white space' differently? Whether we recognise it or not, the job of maintaining the biological processes of the earth will be a major dimension of human activity in a low-carbon, highly automated world. This applies to the work

> of looking after human bodies as much as it does to the stewardship of ocean, sky and land. As we rethink and refashion our forms of agriculture, transport, mining, forestry, energy and chemical industries into low-carbon equivalents adequate to sustain life within planetary boundaries, labour will remain a constant. Aged and disability carers, early childhood educators and nurses—low-carbon occupations all—will endure through the thousands of micro-revolutions wrought by automation. No doubt many self-styled innovators will make the attempt to substitute them for robots, tone deaf to how inextricable human relationships are for such jobs. All of us want to be seen and heard by another human being in the moments of vulnerability that constitute the basis for these forms of work. No one wants to die in the company of a robot.
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> …
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> In the absence of societal consensus, it can be easy to resort to despair in the face of an ailing system. But we're far from empty handed. We can start with the givens, the timeless things that will inevitably be present in the future, rather than an overwhelming focus on what we are going to lack. We know that there will be children, and they will crave belonging, love and learning. Citizens of all ages will all seek togetherness, connection to each other and to the generations before and after. We will express ourselves through culture, endeavouring to make sense of our uniqueness as human beings and our shared cultural inheritance. Some of our bodies will work imperfectly from birth, some will become diseased. All of them will get old.

It can be distilled from what Dr Flanagan says that jobs in our health and caring sectors will continue to grow. But I think we are on the cusp of an exciting time in what those jobs will look like. Although mundane and repetitive tasks will be amenable to automation, the more human aspects will only grow. Innovation in health will free up time and capacity for our caring professionals to focus, with empathy and compassion, on patients not paperwork.

Minister, Israel has been described as the "start-up nation". It is at the forefront of medical innovation and technological change. A unique constellation of circumstances has given rise to an ecosystem that is well positioned and well equipped to act as an incubator for this innovation and change. Outstanding research is coupled with an entrepreneurial spirit backed by a supportive government that plays an active role as facilitator. I think there are a great many things that can be learnt from the start-up nation, which is why I was so pleased to join the minister —

Mr Z.R.F. Kirkup interjected.

The ACTING SPEAKER (Ms M.M. Quirk): Member for Dawesville!

Mr S.A. MILLMAN: — on the Australia–Israel Chamber of Commerce delegation. Western Australia shares with Israel both an entrepreneurial spirit and a tradition of outstanding medical innovation. The calibre of delegates on the trip was a testament to both these attributes. For me, it was an honour to travel with, learn from and exchange ideas with people like the WA Chief Scientist, Peter Klinken; former WA Chief Scientist and current chair of the board of the Royal Perth Hospital Medical Research Foundation, Lyn Beazley; the CEO of the RPH MRF, Jocelyn Young; another colleague from UWA, Michael Winlo, who is now CEO of Linear Clinical Research; Professor Kevin Pfleger, the director of the WA Life Sciences Innovation Hub at UWA; Rebecca Tomkinson from the Royal Flying Doctor Service; Associate Professor Paul Bailey from St John Ambulance WA and also the emergency department at St John of God Murdoch Hospital; and numerous academics and industry representatives, of whom there are too many to name.

For me it was an illuminating experience to travel to Haifa, Tel Aviv and Jerusalem and to visit venues such as Razor Labs, the Rambam health campus, the Technion, Diagnostic Robotics, Zebra Medical Vision and the ARC Innovation Center at the Sheba Medical Center. It was a great privilege to hear from experts like Dovi Maisel, vice president of operations at United Hatzalah in Jerusalem; Dr Kira Radinsky from Diagnostic Robotics; Michael Zolotov, chief technology officer of Razor Labs; and Alon Ben-David, a senior journalist and defence correspondent.

Mr Z.R.F. Kirkup interjected.

The ACTING SPEAKER: Member for Dawesville, I call you to order for the first time.

Mr S.A. MILLMAN: As I mentioned in my member's statement last week, I am deeply grateful to Mark Majzner, the delegation director; Paul Israel, the executive director of the Israel–Australia Chamber of Commerce; and John Cluer, the CEO of the Australia–Israel Chamber of Commerce.

I also look forward to the minister's report on this delegation and what he gained from this incredible experience. Minister, I genuinely believe that as a government, WA jobs need to be our number one priority. To drive growth in jobs, we need to diversify our economy. I genuinely believe we must have a world-class health system that puts patients first. However, to ensure that we are able to maintain that, we have to be at the cutting edge of innovation. I ardently hope, as a father of two young children, that we can continue to prepare our kids for the jobs of the

future. In the wise words of Dr Flanagan, the job of maintaining the biological processes of the earth will be a major dimension of human activity in a low-carbon, highly automated world. My grievance to the minister is this: When it comes to twenty-first century medical innovation, what can the McGowan government do to meet these three vital goals of diversifying our economy to ensure that WA jobs remain our number one priority? What can we do to ensure that we maintain a world-class health system that puts patients first? What can we do to prepare our kids for the jobs of the future?

MR R.H. COOK (Kwinana — Minister for Health) [9.29 am]: That was an extraordinary summation by the member for Mount Lawley of the trip. I appreciate the opportunity to respond to his grievance this morning. I will in due course provide a formal report to the Parliament on the recent delegations that I led to Israel and to the BIO International Convention in Philadelphia. In just the last month the Premier and I were at the Harry Perkins Institute of Medical Research. We launched, as a result of one of our budget announcements, our intention around the Future Health Research and Innovation Fund to create a sovereign wealth fund that will fund medical research and innovation into the future. I made the observation at that time that we were standing in a precinct at Harry Perkins—which, of course, includes Linear Clinical Research and, across the road, the Telethon Kids Institute—which had generated over 1 000 jobs. I need to impress upon both the Parliament and the government the importance that biotechnology, medical research and innovation plays as part of our diversification of the economy package. Hopefully, I do not have to take everyone to places like Israel to convince them of that, but it is pleasing that the member for Mount Lawley has heard that message loud and clear. I thank him for the information he provided from the Bankwest Curtin Economic Centre *Focus on Industry* series "To Health and Happiness" in December, which nails the issues around what an important job creator medical research and innovation is. Our intention around the Future Health Research and Innovation Fund is to do, essentially, four things: one is to improve health care. That is obviously front and centre of everything I do as the Minister for Health in the McGowan government; namely, to put patients first. The government believes also that it is important that if we create a vibrant research and innovation ecosystem in Western Australia, we will attract the best and brightest clinicians, researchers and innovators, which will ultimately continue to improve our overall health system. We can diversify the economy and get away from a "dig it and grow it" mentality, which often afflicts our thinking here. I acknowledge the work the Minister for Tourism is doing as part of that diversification package. We heard from him earlier. The intention of the fund is also to create jobs, which is the central tenet of us as a government, and to ensure that everyone shares in the prosperity of Western Australia, right across the community, by creating good jobs. In health and biotech there are good quality jobs to be had. They are long-term jobs that can generate great wealth and wellbeing.

I took a delegation of around 40 from the universities and the health sector, including the hospital sector—the member for Mount Lawley named a number of them when he spoke—to understand what we could learn from Israel as the start-up nation and from the approach it takes to medical research and innovation. It is an extraordinary community and one that I understand the member for Mount Lawley has a close association with as he works well with the Jewish community in his electorate. It was terrific to be accompanied by Professor Peter Klinken, the current Chief Scientist of Western Australia, former Chief Scientist Professor Lyn Beazley, the director general of Health, Dr David Russel-Weisz, and a range of health leaders to look at what we can learn about building innovation in our sector.

Israel is struck by a range of constant existential crises born from its geopolitical situation. Although we are not on the same scale, we share a number of characteristics in that. Israel says that it has no friends; we have no friends either. Canberra will not save us, Melbourne will not save us, Sydney will not save us.

Mr Z.R.F. Kirkup interjected.

Mr R.H. COOK: That is right; it is not. However, we are isolated in the same way as Israel is politically isolated, but we have to stand on our own two feet and work with the South-East Asian and Indian Ocean economies to make sure that we are an outward-looking economy that really works closely with that region to improve our economy and our community. It is terrific to see the drive the Israelis have around improving innovation, making sure that health and the provision of health innovation is front and centre of everything it does. We learnt from innovators there who failed once or twice. One chap who recently sold his health innovation company to the US for something like $100 million said that it was his seventh attempt and that the first six attempts at a start-up failed, yet he was supported at every step along the way to ensure that he could get his ideas up, build those ideas and ultimately come up with a hugely successful exercise. Our ecosystem is different from that of the Israelis. We do not have a venture capital system like theirs that brings a lot of cash to the early discovery regime. We do not have the Israeli military, which provides an incredible university around technology and innovation in the way it defends its country. We do not have the same resources as the Israeli national government in terms of pump-priming its innovation industry, but there are things that we can learn from that. One theme is a can-do attitude, which is part of what we do in Western Australia in driving a health system across 2.5 million square kilometres—the most isolated single-authority health jurisdiction in the world. What we do has to be different. We could really learn from the Israelis about how we can go forward and make sure that we innovate and create jobs for the future.

GERALDTON BYPASS

Grievance

MR I.C. BLAYNEY (Geraldton) [9.36 am]: My grievance is to the Minister for Transport. I thank the minister for being available to take my grievance. As long as I have been the member for Geraldton there have been disagreements about a heavy vehicle bypass around the city. There were three models and each had its own champion and, of course, they could not agree. Currently, North West Coastal Highway goes through the city from the start of the suburbs in the south at Wandina and it remains in the suburbs until around Chapman Valley Road. It is a mixture of two and four lanes with eight sets of traffic lights. It passes two schools and runs for about 14 kilometres. It is used by road trains, and even very occasionally triple road trains, which are used during droughts to bring cattle south and move hay north. There was a lot of concern locally with the construction of the Gorgon and Wheatstone projects; however, that traffic is finished and it was very well managed. I am not aware of any issues that arose because of it.

Grain is carted in from the three northern off-rail bins of Yuna, Northampton and Binnu. Thankfully, minerals from the east are able to come straight into the ports using the southern transport corridor. I pay credit to the trucking industry, which I think is extremely well managed and is why the area does not have many issues, and to the local branch of Main Roads Western Australia that does a very good job. I pay credit also to the Rotary Club of Geraldton, which runs a traffic safety awareness course for high school students. Patience Transport brings in one of its road trains for the students to sit in to see how limited the visibility of truck drivers is and how large those machines are. I pay credit to the Mid West Industry Road Safety Alliance. It is a self-funded group and I try to attend its meetings whenever I can. Its whole reason for existence is the interplay between light vehicles, cars and the heavy transport operators. It does a good of getting a safety message out.

There are three perspectives on this. For years the City of Greater Geraldton has peddled a proposal to take a road north of Horwood Road and bring it back in at Webberton Road, relying very much on existing, oldish roads. It would need major intersection works. That would solve the problem up to Beresford, but unfortunately the traffic then joins North West Coastal Highway again, so it would get it out of most of the town but it is not really a longer term solution.

The Mid West Development Commission funded a major road that started at the Pell Bridge at Dongara and ran inland all the way to Northampton, and included the Northampton bypass. For some strange reason it did not include a connection into Oakajee. It is a very expensive proposal that would have to be built at once. It would have a large impact on landowners. It would encourage people to bypass Dongara, Geraldton and Northampton, so the local councils are not in favour of that.

Main Roads has done a comprehensive study that looks at a number of options to varying degrees using existing roads that can be built in stages. There are three options for the southern section and three options for the northern section. It did a very good and professional job drawing up the options and promoting them in the community. The councils have had a change of position. I will quote an article from Everything Geraldton —

> Local Governments in the Midwest have come together to take a united stance against the proposed Dongara–Northampton Transport Corridor route.
>
> The City of Greater Geraldton, Shire of Chapman Valley, Shire of Irwin and Shire of Northampton have expressed their concerns about the proposed route and outlined their alternatives in a joint letter to the State Government.

However, that was before the most recent state election and I am not sure whether that letter got through to the minister. The other day I presented a petition from 1 120 petitioners about the section that runs north from Geraldton to Northampton. They object to routes 4 and 5, which include the new route, if you like, for the road running north and endorse option 6, which is basically the route that takes the road north of Moonyoonooka going in at Oakajee and joining the existing highway. Next time the minister is in the midwest, I ask her to spend half an hour in Northampton to look at North West Coastal Highway, which runs through the middle of town, to observe the trucks going through. I know the shire lives in dread of a serious accident. The shire has talked to both sides of politics, both federal and state, about this for years. It is an issue whose time has come, and in looking at bypasses around other regional cities, this one should be next.

The main point about the section north of Geraldton to Northampton is that option 6 is now a clear favourite to all local councillors and the 1 120 petitioners. I understand that the land for the road to run through the Wokatherra gap is available. The option for the southern section is less clear. Personally, I am okay with either option 2 or 3. In the past I was a supporter of a turn-off at Rudds Gully, which is very close to the southern suburbs of Geraldton, and running across to Narngulu and Moonyoonooka. However, I understand that Main Roads is concerned about the level of congestion that would create, and I am inclined to agree with it especially if Karara lifts its production of magnetite, because there will be even more trains on the railway line than there is now. I once again emphasise how important the Northampton bypass is in this whole process. It is not in my electorate but I am passing on the message that I get whenever I am in Northampton, which is not very often. That bypass is way past critical; it should have been done years ago, and I am happy to acknowledge that. I understand that the government is doing a study and I am curious to know where it is up to and what plans, if any, the minister has.

MS R. SAFFIOTI (West Swan — Minister for Transport) [9.42 am]: I thank the member for Geraldton for his grievance and his interest in this issue, which was also raised more generally in estimates. It is a longstanding issue about which there has been much discussion and debate in the member's area.

The issue of the bypass has caused significant debate in the community. Similar to the planning of all bypasses—this is quite an interesting analysis—there is always a challenge between road efficiency and the impact on local communities and local businesses. That is very clear to me. A lot of towns want bypasses, but when they are provided, they complain that local businesses are suffering. It is always a challenge, and if we get it right at the planning stage and everyone understands it, everyone is better off. This bypass has been the subject of ongoing debate and discussion and, of course, it is important for the safe movement of road trains north and south. I met with the Shire of Chapman Valley early on and it presented a very strong argument against options 4 and 5, which are basically the inland routes, as opposed to option 6. As I said, there was discussion about this issue during estimates. Main Roads has been re-engaging on this issue to find the right route. We expect that the planning study will be finished in March or April next year. The member is right; there seems to be consensus about option 6, but there is the issue about the Oakajee Narngulu Infrastructure Corridor and how it works. Further discussions had been had with the Department of State Development about the alignment of road and rail in that area because there are a number of different competing interests about the future development of Oakajee road and rail routes into that area. We are trying to work through all those challenges and other issues with the state development department.

Based on traffic volumes over the past three years, heavy vehicles make up between seven to 10 per cent of total traffic volume. Heavy vehicle traffic is mostly generated by seasonal grain harvest and agricultural lines, general agricultural products and through traffic between Perth and developments in the north west. As the member knows, the increase in traffic is causing congestion and safety issues. The Geraldton outer bypass is essential to not only improve efficiency and productivity, but also facilitate the future viability of extending triple road train access south of Carnarvon to Muchea. Main Roads recently re-engaged with all the affected local councils about the review of the original study outcomes. The outcome of the original study caused a lot of concern. I think there are signs in some areas asking that this not be the corridor. There has been engagement and re-engagement with the four local governments and the development commission to finalise the planning study, but there is no doubt that option 6 is favoured by all the councils. Main Roads is now looking at whether option 6 can deliver road efficiency benefits and help service the ONIC and the connection further south in an appropriate way. That work is being undertaken at the moment and is expected to be finalised in March next year.

I thank the member for the petition. It is good to again outline community thinking on this project. Once we finalise the plan, we can do a further detailed study and seek commonwealth funding for the project, which is a key part of it. This issue has been around for a while. I like finishing studies before making decisions, but I understand that people in the midwest would appreciate a final decision. I am committed to finalising the route as soon as we can, but in particular once the planning study is finished.

I thank the member for Geraldton very much for his contribution. I will add one last point. No-one in the Nationals WA is in the chamber to listen to this discussion about regional roads. The member for Geraldton might want to note that. Yesterday, the member for Warren–Blackwood put out on social media who was in the chamber during a particular debate. Let me put on the record that no-one from the Nationals is here, member for Geraldton; they are not concerned about the Geraldton bypass route. We should both note that for future reference.

SUBCONTRACTORS — PAYMENT SECURITY

Grievance

MR S.J. PRICE (Forrestfield) [9.48 am]: My grievance is to the Minister for Small Business, and I thank him for taking this grievance. Similar to other members in the house, I am delighted that the McGowan government is progressing major key infrastructure projects in Western Australia, such as Metronet. These major infrastructure projects allow small business and subcontractors to bid for tendered work, which is creating thousands of local jobs. The McGowan government has already introduced legislation, such as the Western Australian Jobs Act 2017, to put opportunities for small to medium enterprises and subbies at the front of the chain. These important changes to government contracting mean that SMEs and subbies have more opportunity to have a slice of the Western Australian projects pie. However, in my electorate of Forrestfield and across the state, many small businesses and subcontractors have experienced some inconvenience and loss of income due to obtaining work on these major projects. I have had many conversations with people from small businesses who have expressed their concern that the horrors of the past may be repeated unless the McGowan government ensures that it cannot happen.

Small business makes up approximately 97 per cent of business in Western Australia. They are responsible for a significant flow-on to the local economy and are often very valued family businesses operating within our electorates. We have heard horrific and devastating stories about how the failure to receive payment has impacted on subcontractors. Some have lost their businesses as the result of financial difficulties that were not of their own doing, but inflicted upon them by the behaviours and actions of other major contracting companies. This includes all types of subbies, such as plasterers, sparkies, plumbers and other businesses that members may not consider, such

as a very successful small local family businesses in my electorate called Grasstrees Australia. Grasstrees Australia was contracted to supply, deliver and install grass trees at Yagan Square. I will not try to pronounce the scientific term for grass trees.

The ACTING SPEAKER (Ms M.M. Quirk): It is xanthorrhoea, member.

Mr S.J. PRICE: Correct; thank you very much.

Unfortunately, Grasstrees Australia's contract, valued at around $60 000, was to a subcontractor named Excedo Contracting. Excedo Contracting went into voluntary administration six days after Grasstrees Australia had completed the second stage of its contracted works. As a result, Grasstrees Australia suffered a significant financial impact. A reduction in payment times to small businesses has also proven to impact on the success of a small business. We are also well aware that in the long chains of who should receive payment, the person who receives the last payment is often the subcontractor at the end of the chain. This delay in having to carry these invoices and expenditure for an extended period has a significant impact on a subcontractor's business viability as well. That then has a flow-on effect on its ability to pay its employees and workers.

The Small Business Development Corporation and the Small Business Commissioner provide a dispute resolution service to small business and subbies, which has been in place for a while now. However, there is a reluctance amongst a lot of the small to medium-sized enterprises and subbies to use this facility to help them get some resolution in their payment dispute with their contractor. The reluctance to use this is for fear of retaliation on other jobs. WA is a small place and only a small number of tier 1 contractors can undertake some of these big projects. The same contractors are working on projects throughout the state, and a subbie does not want to develop a bad relationship with one of the principal prime contractors that they work for, for fear of not picking up work on future projects. In that regard, we need to do what we can to protect small business operators and subbies while utilising the great service that is already there. We can look at ways of doing this. We could give the subbie or contractor the ability to have an anonymous conversation with the commissioner to raise their concerns so that the commissioner is aware of something, but there may not have to be a formal mediation process in which they sit across the table from the person with whom they are in conflict. This could also be extended as we see multiple occurrences of non-payment on a job by a particular contractor. If a lot of red flags are being raised on particular contracts or projects, someone needs to look at that to try to prevent future financial difficulties for small contractors that are working on these projects, whether that be an SME or a subbie. Unfortunately, the previous government did not do anything to address this, and a lot of small businesses failed, which had significant flow-on effects, as a result of non-payment.

I would like to ask the Minister for Small Business what he will do to make sure our small businesses and subcontractors will never be in that position again, when the previous government washed its hands of any responsibility to those subcontractors. Can the minister outline how he plans to make sure that into the future there is a fair voice for small businesses that work on projects in our state?

MR P. PAPALIA (Warnbro — Minister for Small Business) [9.54 am]: I thank the member for Forrestfield for his interest in this matter and strong advocacy on behalf of small businesses in his electorate. The anecdote regarding Grasstrees Australia is concerning, but illustrates the issue perfectly. As the member alluded to near the end of his contribution, there are some terrible examples, which are ongoing, of what I found most concerning, which is subcontractors being treated appallingly on government contracts, not just in the private sector. The scale was significant, particularly during that period when the Rudd government was addressing the global financial crisis and huge amounts of money were given to the states to stimulate the economy and stave off the threat of the global financial crisis. In Western Australia, billions of dollars were given to the then Barnett government, particularly in the Building the Education Revolution program, in which a lot of the problems arose, and projects that should have been reliable and good work for subcontractors turned out to be devastatingly bad for them. The member would recall that several primes or even large subcontractors not only went out of business and failed to pay subcontractors beneath them in the chain, like in the example the member gave, but also then phoenixed or reinvented themselves and got further contracts and, extraordinarily, further government contracts. That was an appalling situation that appalled me and a lot of people across the community. We felt that there must be something we could do, particularly with government contracts. There should be some manner of responding that at least limits that likelihood from occurring and, hopefully, prevents it.

As a member of Parliament, I was personally touched to receive a call from one of my constituents, Max Hannah. I was driving towards Parliament and I pulled over to receive the call. Max Hannah is a good person, who subsequently got quite a profile in Western Australia through advocacy around this matter. He was a landscaper with a good landscaping business that employed scores of people. He came to grief on several government contracts for building schools in which he was the one landscaping. Primes did not pay him and they subsequently went bust and he was left in the lurch. He ended up selling not only his own house that he and his partner lived in, but also his investment property, which was his super, because he was a small business person; that is how he had intended to financially care for him and his partner when they retired. Both his own house and his investment property were sold in an effort to retain the business and keep paying his employees. He was a good businessman

who cared about the people he employed; he wanted that business to be sustained and continue and he cared about paying his workers. He did that, which is extraordinary. At the time, thousands of other subbies were impacted in the same way. This is about five years ago, I think. Many lost their homes, many marriages broke up as a consequence of the stress and strain, and, tragically, some took their lives.

That has motivated us. We are very determined not to allow that to happen if we can avoid it. The member would have heard that we have introduced and second read the Small Business Development Corporation Amendment Bill 2019. We want that to pass through both houses of Parliament as rapidly as possible so that we can empower the Small Business Commissioner to do exactly what the member suggested. He will be empowered to receive information notification from subcontractors. He will not have to reveal them because he will have the power to demand information on proof of payment from prime contractors and he can also look at the behaviour of principals to ensure they are not creating undue stress on the system and encouraging bad behaviour. He can investigate without reason and randomly audit, and demand proof of payment. That will provide a shield in situations in which a subcontractor may have notified him anonymously. He will be able to receive an anonymous notification and investigate, or he may just have chosen to audit that particular project and asked for proof of payment.

I am hoping that this will achieve a change of culture. The Attorney General in his other role is also pursuing the recommendations of the Fiocco review, and that is a far greater and more expansive response, looking at cascading trusts and protecting money in the system so that there will be payment in the event that people go bankrupt or go out of business and have not paid people further down the chain. I am hopeful that the subcontractors support unit, in supporting the Small Business Commissioner carrying out audits and receiving notifications, will prevent bad behaviour in the first place and encourage good behaviour. Good behaviour will be identified and acknowledged and hopefully, in due course, rewarded. As acknowledgement of good behaviour, the companies that do the right thing will be elevated up the chain of likelihood of receiving government work.

The sooner the Small Business Development Corporation Amendment Bill 2019 can pass through both houses, the sooner we can get the commission out there as the cop on the beat in defence of subcontractors, and that will be better for everybody. It will then be more likely that we will bring about a change in culture and a shift in behaviour. It has been welcomed by everyone, including the Master Builders Association and the Motor Trade Association, which are both working with us on it. There is a lot of goodwill in the community towards changing the culture and getting better outcomes. I am hopeful that as soon as we get this amending legislation through the house, we can get to work on fixing things for the better.

TEMPORARY ORDERS 40, 101, 146, 147 — STANDING ORDER AMENDMENTS

Amendment to Motion

On motion by **Mr D.A. Templeman (Leader of the House)**, resolved —

That business of the Assembly, order of the day 1, be postponed until the next day's sitting.

CRIMINAL LAW AMENDMENT (UNCERTAIN DATES) BILL 2019

Introduction and First Reading

Bill introduced, on motion by **Mr J.R. Quigley (Attorney General)**, and read a first time.

Explanatory memorandum presented by the Attorney General.

Second Reading

MR J.R. QUIGLEY (Butler — Attorney General) [10.03 am]: I move —

That the bill be now read a second time.

The Criminal Law Amendment (Uncertain Dates) Bill 2019 seeks to ensure that a conviction can be secured in the face of uncertainty as to the date of the commission of an indictable offence, uncertainty of the age of the victim at the time of the commission of a sexual offence, or uncertainty as to whether an accused was a child at the time of an offence. The proposed amendments to the Criminal Code and the Children's Court of Western Australia Act 1988 seek to remedy situations in which uncertainties as to particular dates prevent a person being found guilty of a crime that is otherwise proved to have occurred.

Although this bill will have application across a range of matters in which there is uncertainty of relevant dates, there is no doubt that it will also facilitate the successful prosecution of child sexual abuse offences and cases in which the trauma of the victim and the passing of time make it difficult to provide sufficient details to a court as to when the abuse occurred. This bill thus extends improvements to the administration of justice for victims of child sexual abuse.

Part 2 of the bill proposes that a new chapter IIB is inserted into the Criminal Code to provide that a person may be charged and convicted regardless of when in a relevant period an indictable or sexual offence occurred, or regardless of the exact age of the victim at the time of a sexual offence. This will be achieved by providing that the accused person may be charged in respect of the relevant offence with the lesser maximum statutory penalty. Importantly, if it can be proved that the offence occurred at some time during the relevant period in situations in

which there is uncertainty as to the exact date, the person may be convicted and sentenced in respect of the relevant lesser penalty offence. A similar approach is proposed for situations in which there is uncertainty as to the particular age of the victim at the time of a sexual offence, because of uncertainty about the date of birth. The proposed remedy has been developed with regard to improving access to justice for victims of serious crimes and is consistent with the principle that an accused is not exposed to a harsher penalty than existed at the time of the offence.

I now provide more detail on the very circumstances to be covered in chapter IIB. The Criminal Code requires that the date on which an offence occurred needs to be established with sufficient certainty to enable an offender to be charged and successfully convicted. A person cannot be convicted under a provision that did not exist at the time the offence occurred. Typically this may not be difficult. But it is often a feature of child sexual abuse cases, given the historical nature of the offending and the tender age of the child, that it is difficult for the victim to recall specific dates of the abuse. Unfortunately, there have been a number of cases in Western Australia in which perpetrators have evaded conviction because it could not be conclusively established when the offending took place. This represents a serious miscarriage of justice.

Under the Criminal Code, sexual offences against a child under 13 years of age are demarcated from those against older children. But if, for example, it cannot be established with sufficient certainty whether a victim had turned 13 years of age at the time of an offence, it may not be possible to establish which relevant age-dependent sexual offence would apply. Similarly, sexual offences against a child under 16 years of age are demarcated from those against older children and adults. To illustrate, I will provide some hypothetical examples. For instance, a child is sexually assaulted on their thirteenth birthday, but cannot say whether this occurred before or after midnight. Or, as may often be the case with historical child sexual abuse that occurred over an extended period, a victim may not be able to recall the specific dates of the abuse, but it could be established that the alleged conduct spanned a period during which the victim turned 13 years of age. Additional issues may arise where an offence is alleged to have occurred in a period which spans amendment to the relevant offence provision.

Proposed section 10L will address the problems that arise where an indictable offence occurred sometime in a period during which the relevant written law was amended, inclusive of being repealed and replaced. Currently, if the conduct constitutes an offence under both the old and new provisions, the perpetrator cannot be convicted where it cannot be established which provision was in force at the time of the offence. The new section provides that an accused may be charged in respect of the relevant offence with the lesser maximum statutory penalty, whether it be under the old or new law. If it can be proved that the offence occurred sometime in the relevant period, the person may then be convicted and sentenced in respect of the lesser penalty offence.

Proposed section 10M will address problems that arise when a sexual offence occurred sometime in a period during which the victim had a relevant birthday. This may arise where it is unclear which age-dependent child sexual offence would apply or whether the victim was still a child at the time of the offence. Again, these problems are resolved by providing that an accused may be charged in respect of the relevant offence with the lesser maximum statutory penalty, whether this is before or after the victim's relevant birthday. If it can be proved that the sexual offence occurred sometime in the relevant period, the person may then be convicted and sentenced in respect of the lesser penalty offence.

Proposed section 10N seeks to address problems where there is uncertainty regarding the birthdate of the victim of a sexual offence, which could be an issue in remote regional areas of Western Australia or for children with refugee backgrounds. This again may be particularly relevant when dealing with age-dependent sexual offences. Consistent with proposed sections 10L and 10M, in such cases the accused may be charged in respect of whichever relevant offence has the lesser maximum statutory penalty, whether this is an offence if the victim was of a particular age or an offence if the victim was of a different age. If it can be proved that the offence occurred, the person may be convicted and sentenced in respect of the lesser penalty offence.

The amendments proposed under part 2 of the bill will remove technical impediments to convicting perpetrators for serious offences, with particular regard to historical sexual offences against children. It is therefore necessary that the remedies available under new chapter 11B of the Criminal Code include acts or omissions committed prior to the commencement of the amendment provisions. Importantly, the bill will not retrospectively alter or add new offences.

I now turn to part 3 of the bill, which proposes amendments to deal with circumstances in which it is uncertain whether the accused was a child or an adult at the time of the commission of the offence. As a result, it is not possible to establish which court has jurisdiction to hear the matter. This situation arises predominantly when an offence occurred sometime in a period spanning the accused's eighteenth birthday, where the exact date of the offence is uncertain. It may also occur where there is no formal registration of the accused's date of birth. There have been several occasions on which the state has been unable to proceed with charges due to uncertainty as to the age of the accused at the time of the offence. For example, in one case, a person was alleged to have committed sexual offences against a younger child in a period spanning a number of years. Particular dates on which the offending occurred were unable to be specified. A number of charges alleging very serious sexual offences could not be pursued because the state could not determine whether the accused was over or under 18 years of age at the time the particular offences were committed.

To address this problem, amendments are proposed to the Children's Court of Western Australia Act to provide the Children's Court with jurisdiction to hear and determine charges where it is uncertain whether the accused was a child at the time of the alleged offence. Proposed section 19(2AA) and (2AB) will provide for the Children's Court to have and retain jurisdiction if the charge alleges that the offence was committed by a person who may have been a child. Section 19(2AB) in particular is intended to avoid prosecutions being discontinued where, during the trial, evidence suggests that the accused was, or may have been, an adult at the time of the offence. This will avoid additional stress and trauma, particularly for victims of child sexual abuse, associated with the trial having to be commenced afresh in another court. The approach under part 3 of the bill has regard to the interests of the accused whilst ensuring a prosecution can proceed in the jurisdiction of the Children's Court.

In conclusion, the amendments proposed in this bill will resolve technical impediments that currently prevent prosecution and conviction, in particular regarding sexual offences against children. The sexual abuse of children is one the worst crimes imaginable. The provisions proposed in this bill will improve the administration of justice for the victims of child sexual abuse. They represent further improvements by the McGowan Labor government in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse and will be complemented by further appropriate reforms over time.

I commend the bill to the house.

Debate adjourned, on motion by **Mr P.A. Katsambanis**.

TICKET SCALPING BILL 2018

Consideration in Detail

Resumed from 19 June.

Clause 8: Supply of tickets not to be made contingent on other purchases —

Debate was adjourned after the clause had been partly considered.

Mr P.A. KATSAMBANIS: When we last debated this bill, we were considering clause 8(1), which makes it clear that suppliers of tickets cannot make a ticket available contingent on the purchase of any other service or bundled up in any other service. Subclause (2) creates a carve-out from that provision. It states —

> (2) Subsection (1) does not apply to the supply of a ticket under —
>
> (a) an agreement that has been authorised by the event organiser for the relevant event; or
>
> (b) any other agreement of a kind prescribed by the regulations.

This relates to when people putting on an event are happy to provide some tickets for sale to the general public and sell other tickets in various other ways, sometimes bundled up with entertainment or travel. When events are held at Optus Stadium, in particular, a portion of tickets are sometimes reserved for sale to potential interstate visitors so they can travel. That is a very well accepted way of allowing people running an event to maximise their return. As the Attorney General; Minister for Commerce pointed out, it is a free enterprise, it is their event and they can do what they want with it.

The AFL grand final is always very popular with Western Australians. It gets annoying when the only tickets people can buy are very expensive. We question the value of the added-on entertainment. People do not pay for the value of the ticket plus the entertainment. That agreement is open to the people who run that event. The same is happening this coming weekend with the State of Origin. A lot of people are coming over on organised packages, which perhaps includes their flights, accommodation, entertainment and the ticket. They have probably paid a good premium that is split between the people supplying the entertainment and the organisers of the event, the National Rugby League, the mob that Peter Beattie is chairman of. That is legitimate. That is well understood.

Two issues arise. First, the term "event organiser" is included in clause 8(2). As we discussed, event organisers could be different people in a contract compared with the people who are deemed to be event organisers under this bill. I seek clarity from the minister. Is the event organiser deemed to be the event organiser by application of the definition in clause 3, or what will become section 3 of the Ticket Scalping Act, or is it an event organiser who is stipulated in a contract between various parties separate from the operation of the act? Second—perhaps the minister can answer the two questions together, for brevity—what other agreements are contemplated to be prescribed by the regulations?

Mr J.R. QUIGLEY: I thank the member for the question. An event organiser will be that person or body designated to be such by the definition contained in clause 3 on page 3 of the bill. That clears that up. As the member said, in a free economy, it is open to the event organiser to make the purchase of tickets contingent on the whole package. That is up to the event organiser if that is how they want to sell their tickets. We included this provision because it also promotes tourism, which we know the member for Vasse is very interested in.

The second question asked what other events this relates to.

Mr P.A. Katsambanis: No, agreements.

Mr J.R. QUIGLEY: The member asked what other agreements will be prescribed by regulation. The other agreements that we contemplate will be prescribed by regulation relate to fundraising or charity events that seek to raise funds for a charitable purpose or for a sporting club or some such thing—a fundraiser—when they can make the condition of coming along to see Kevin Bloody Wilson conditional upon —

Mr P.A. Katsambanis: Down at the Marmion Angling and Aquatic Club.

Mr J.R. QUIGLEY: — yes—buying a $200 dinner. Ticket purchasers cannot see him unless they buy the $200 dinner. They get a plate worth $50 and the sellers raise $150. It is contemplated that those sorts of events are proven to be "regulation upon application" fundraising events.

Mr P.A. KATSAMBANIS: That clarifies the situation. It is quite clear that whoever the event organiser is deemed to be, under this bill, basically the person who has the contractual arrangement with the ticket—the authorised ticket seller—would have to approve any agreement to supply tickets in this manner so the people putting on events are on notice. They know that is the case. That is the beauty of consideration in detail; we can get that information out there at the start so there are no issues later. I thank the Attorney General for clarifying that.

Clause put and passed.

Clause 9: Prohibited advertisements —

Mr P.A. KATSAMBANIS: Obviously, it is quite clear that advertisements need to be prohibited if they are not going to be part of the regime that is stipulated under this bill. That is the primary way that people find these tickets. Scalpers advertise and people who want to go to an event buy them. There are two subclauses in this clause. Subclause (1) states —

> A ticket resale advertisement must not specify an amount for the sale of the ticket that is more than 110% of the original ticket price.

That is pretty clear. Someone cannot put out an advertisement saying, "Here is a $100 ticket; you can buy it for $200" because that is not permitted under the bill. It will not be permitted under the new act when it comes into force, so we cannot have those advertisements. Subclause (2) states —

> A ticket resale advertisement must specify —
>
> (a) the original ticket price; and
>
> (b) details of the location from which the ticket holder is authorised to view the event (including, for example, any bay number, row number and seat number for the ticket).

That is pretty prescriptive. I do not have a problem with that because it provides clarity for the consumer. They know what they are getting. Sellers cannot organise a ticket that is in the mosh pit and buyers end up right at the back of the grandstand needing binoculars to see the event. I do not have any problem with that. I do not think it will be a problem for people who run advertisements generally as part of their business either. The editor of *The West Australian* will instruct his sales staff of the rules that apply. As we know, and as the minister said yesterday in consideration in detail, people buy their tickets from various places nowadays, such as Gumtree—I have never used Gumtree—Facebook and various other sources. How would this apply to an innocent third party? I will give an actual example. The Western Australian branch of Collingwood Supporters has a Facebook page. People can go on there and talk about Collingwood if they like. Someone might go on there one day and say, "I have a spare ticket to the West Coast Eagles versus Collingwood match at Optus Stadium in July. If you want to buy it, contact me; send me a message." That is all well and good. Someone who wants to go to that event sees that and contacts this person, and they are told, "It's a $50 ticket but I need $100 for it", which clearly will be outside the realms of the new act, once it is introduced. That is a hypothetical example of something happening in July. The minister may say that the act might not be in force then—fair enough; that is true—but using it as a more hypothetical example, what would happen to the person who runs that Facebook site? Technically, they would be in breach, but all they did was offer a forum for people to talk. They were not offering a forum specifically for advertisements. We know that in today's modern environment people can place a message that could make the operator of that website liable—I know the people who operate that specific Facebook site; they are good people—either for penalties or taking specific action. How would we deal with those circumstances in relation to clause 9?

Mr J.R. QUIGLEY: With the greatest respect, I suggest that we save that debate until clause 10, in which there are defences and exceptions to the offence of prohibition that is in clause 9. Clause 9 provides that a ticket resale advertisement must not be more than 110 per cent—we are clear on that. The ticket resale advertisement must specify the original ticket price. That is necessary so that we can see whether it is 110 per cent. The row and seat number is necessary because someone does not want to be flogged a seat sitting behind a concrete column!

Mr P.A. Katsambanis: How do you deal with a person who is seven foot tall?

Mr J.R. QUIGLEY: The questions that the member has asked are really all covered —

Mr P.A. Katsambanis: Let's cover clauses 9 and 10 together.

Mr J.R. QUIGLEY: If we pass clause 9, we can go to 10 and deal with the defences because they are all covered in there.

Mr P.A. Katsambanis: All right.

Mr J.R. QUIGLEY: I move that clause 9 be put.

Clause put and passed.

Clause 10: Ticket resale advertising —

Mr P.A. KATSAMBANIS: As the minister said, we can move on to clause 10, which is the penalty and defence section to clause 9. This is where the rub is: I refer to *The West Australian*'s advertising section. That is fine and good—it is a big advertising department. This will not be the only act in Western Australia or in Australia that stipulates restrictions on advertising. Generally, the advertising agents know what can and cannot be accepted, from many perspectives. However, for a mum and dad at home running a Facebook site, under the definition of "advertising publication"—we discussed this definition quite a while ago—all that is needed is —

> … website, on-line facility, newspaper, magazine … containing advertisements to which members of the public have access (whether or not a member of the public is first required to pay a fee or subscription, register or become a member);

The definition is very broad. It does not have to be a publication that accepts and runs advertisements for profit; it is simply a website that contains an advertisement.

Utilising my earlier example, if a mum or dad in the suburbs is operating a Facebook site, supporting a particular cause—it could be a band fan page, a sporting fan page or whatever—some member of the public could go on there and say, "I have a ticket to sell; contact me." It does not include the original ticket price or the location of the ticket, and it does not specify an amount. It does not say, "I'm limiting it to 110 per cent." The owner of that Facebook site, based on the operation of the definition of "advertising publication" and the operation of clauses 9 and 10, is liable to a penalty. They will be served with either a summons or an infringement notice. Yes, they have defences—we discussed them a few weeks ago—but defences require them to roll up to a court, in most cases hire legal counsel, take time off, and spend that time prosecuting their case. Is this not a little heavy-handed for people who have done nothing wrong except have simply been caught up by a nefarious person? They have to roll up to court to defend themselves—is there any flexibility for people in those circumstances not to be charged in the first place?

Mr J.R. QUIGLEY: The answer to that is yes. Perhaps I put the wrong emphasis on clause 9, "Prohibited advertisements". It states what an advertisement must contain. It cannot be more than 110 per cent and it must specify the original ticket price and the location of the seat. The actual offence and penalty is prescribed in clause 10. It states —

> (1) The owner of an advertising publication —

We are dealing with the owners of advertising publications in this particular offence —

> must ensure that no prohibited advertisement is published in the publication.

This is not just the person who sells the ticket; the owner of the publication must not allow a prohibited advertisement to be published in his or her publication. This offence attracts a penalty of $20 000. The bill then sets out four defences for the publisher. The first offence in this clause is —

> (a) the advertisement was received by the person charged, or by a person acting on that person's behalf, in the ordinary course of carrying on the business or undertaking associated with the advertising publication …

If *The West Australian*, in the ordinary course of its business, received an advertisement that was —

Mr J.E. McGrath: It does not run it. Most of these are online.

Mr J.R. QUIGLEY: No; I am just giving this as an example—if it is received in the ordinary course of the business of an advertising publication associated with the advertising. At clause 10(2), the next stage is —

> (b) the agreement relating to the publication of the advertisement between the person charged and the person placing the advertisement was subject to terms or conditions prohibiting the publication of prohibited advertisements …

The publisher has the conditions of advertising on the site; he will not know the terms and conditions of every advertisement, but that would not be the publication of an unlawful advertisement. He has put the person on notice. The clause continues —

> (c) the person charged, or a person responsible for managing the advertising publication on that person's behalf, as soon as practicable after becoming aware that the prohibited advertisement had been published in the publication, took reasonable steps to ensure that the advertisement was removed from the publication; and
>
> (d) the person charged took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication.

This does not deal with individuals selling; it deals with the owners of advertising publications. In the case the member cited, it would be Mr Zuckerberg or Facebook Ltd or whatever it is. That is the owner of the publication. Facebook does not do the posting; it receives the advertisements. This clause is to do with the advertising of resale tickets and provides that the publisher of the advertisement commits an offence unless he protects himself by clause 10(2)(a), (b), (c) and (d). I will repeat them. The advertisement was received in the normal course of business; it was subject to terms and conditions that they would not publish unlawful material; the person charged or responsible, as soon as practicable after realising the advertisement was unlawful, took steps to take it down; and the person charged took such other steps as were reasonable in the circumstances to ensure that no prohibited advertisement was published in the publication

Mr J.E. McGRATH: I would like to hear more from the minister because what he is saying is very interesting.

Mr J.R. QUIGLEY: Thank you member. In further debate on clause 10, I invite members to keep focused on this: this clause is not aimed at the ticket reseller; this clause is aimed at the advertising publication, saying, "You shouldn't be carrying these advertisements, and the penalty is $20 000 if you carry the advertisements, but there are four conditions, and if you have met those four conditions, Mr advertiser, you won't be held liable." I will go through them again quickly. In the ordinary course of business; it was subject to terms and conditions whereby a person would not be placing an unlawful advertisement; the person responsible for the publication took reasonable steps to remove the advertisement once becoming alert that it was unlawful; and the person took such other steps as were reasonable to make sure it was not there. That then protects the advertiser. I repeat: clause 10 does not deal with the scalper; it deals with the advertising medium that the scalper uses to advertise.

Mr P.A. KATSAMBANIS: It is one defence with four parts.

Mr J.R. Quigley: That is right; I said "and".

Mr P.A. KATSAMBANIS: They are all linked with "and". Of course, this deals with the person who runs the advertisement. However, we were not discussing an advertisement that is accepted by Facebook, Mr Zuckerberg and those people; we were discussing a situation in which someone has established a Facebook site. Unless the general law of Australia has been twisted on its head, I imagine that in the ordinary course of events, the person who has established that site—it could be the minister; it could be me; it could be anyone—would be deemed to be the owner of the advertising publication under this legislation. It is those people I am worried about. I do not care about Mr Zuckerberg. He has all the systems, all the knowledge, all the smart people and all the smart bots in the world to deal with him. What if someone has a Facebook site and some other third party—another member of the public—says, "I have some tickets. Who wants them?" Will that person who is running that site be subject to this? Will they have to roll up to court and argue these defences? If they do, I argue that, at the very least, clause 10(2)(b) would not apply to them, and possibly paragraph (a) would not apply to them either. Those defences would not even apply to those people. Irrespective, would those people be charged in the first place? Otherwise, it seems like a pointless exercise to charge someone who was, effectively, an innocent third party whose page was used as a medium by a scalper. What protection do those people have from being prosecuted and then forced to go to court and run these defences with the risk of a penalty of up to $20 000?

Mr J.R. QUIGLEY: It is unimaginable that the staff of the Department of Mines, Industry Regulation and Safety would make such a fundamental error of incorrectly charging one of those persons. First of all, we have to go back to the definition in clause 3 of the bill. It provides —

> ***advertising publication*** means any website, on-line facility, newspaper, magazine or other publication or service containing advertisements to which members of the public have access …

That is whether or not the member of the public has to pay for the access. That refers to any site on the web. Now we go back to clause 10, which provides —

> The owner of an advertising publication —

We have already decided what an advertising publication is—any site on the web. The clause states —

> The owner of an advertising publication must ensure that no prohibited —

What is the owner of an advertising publication? I go back to the definition in clause 3 again. It states —

> ***owner***, of an advertising publication, includes any person who carries on the business or undertaking of the advertising publication;

Mr P.A. Katsambanis: That is my point.

Mr J.R. QUIGLEY: A person running a page on Facebook could not fit within the definition of an owner of the advertising publication. It is not the owner of the advertising publication. The Facebook page of the mighty Yanchep Red Hawks might run a comment by one of the members, saying, "I've got tickets to Optus this weekend if anyone wants to buy them from me." The Red Hawks are not the owner of the advertising publication. They would be posting on a publication, which fits within the definition of an advertising publication. They would be

posting on there but the Facebook page administrator does not own the advertising publication; it just posts on Facebook. That is why I say that Facebook is the owner of an advertising publication. Would Facebook be chased for carrying an advertisement? Good luck.

Mr J.E. McGrath: Minister, wouldn't the Red Hawks be responsible for taking an ad from one of their members and putting it on their site, which might lead to a contravention of this bill?

Mr J.R. QUIGLEY: The person who is selling the ticket is different from —

Mr J.E. McGrath: He or she will be caught up with.

Mr J.R. QUIGLEY: The seller will be, but we will not be able to prosecute —

Mr J.E. McGrath: The Red Hawks.

Mr J.R. QUIGLEY: — the Red Hawks because they do not own the advertising publication. If their member advertised on that site, "I have a ticket for resale, limited to 110 per cent", they would have to say what they originally paid for it and what row and seat number it is for. The bill will still catch those small-scale scalpers who are doing that, but we will not be able to punish the Red Hawks footy club because it does not own the advertising publication. Indeed, sites such as the Red Hawks page are open, so people can post their comments. We could not ping the club every time someone does that, and that is not the intention of the legislation. However, there is a culprit; there is someone saying that they are charging $250 for an Optus ticket.

Mr J.E. McGrath: That is whom you want to catch.

Mr J.R. QUIGLEY: That is whom we want to catch. Those cases in which individuals are selling two or three tickets on a Facebook page are the sorts of cases for which the government has designed the facility of an infringement notice.

Mr D.R. MICHAEL: Mr Acting Speaker, I would like to hear more from the Minister for Commerce.

Mr J.R. QUIGLEY: We do not want to drag people away from work or whatever they are doing in Malaga and back into court on a summons for scalping two family seats at Optus Stadium. An officer will investigate it and write out the appropriate infringement notice.

Mr P.A. KATSAMBANIS: I appreciate that clarification and I appreciate that the minister has put on the record that he does not believe that the administrator or operator of a Facebook page or any other type of publicly accessible online facility would not be deemed to be the owner of the advertising publication but with this legislation. Absent the explanation that the minister has just put on the record, which will help any court in the future and also help the bureaucrats in dealing with this, I argue strongly that they would have been caught, because the clause states —

> ***owner,*** of an advertising publication, includes any person who carries on the business or undertaking of the advertising publication;

It is not of advertising or of running it, but "of the advertising publication". They are carrying out the undertaking, they are running the site, and it falls into "advertising publication". Absent that explanation, I believe they would have been caught. Now we have that on the record. It is valuable information that we can glean from the consideration in detail stage, but it goes to prove once more that the passage of this bill will mean that people who try to do the right thing need to start taking action to protect themselves. They will need to publish notices saying, "Please do not run any advertisements on this website." They are public access websites. They are not controlling it; they are not acting as a gatekeeper. They can get to it only after the event. People will have to have statements on their page: "Please do not run advertisements that are prohibited". I think that would probably cover it and perhaps the terms of Facebook itself might provide them some coverage. However, if someone in Western Australia who runs a Facebook site is whacked with a summons, I am not sure that asking Mr Zuckerberg to come to their defence will work too often. I raise these issues so that the public has clarity on this matter. I am glad the minister indicated that the intention of this legislation is not to catch the innocent people who are trying to do the right thing by supporting their local footy club or a band they enjoy. We will see how this provision goes in practice. I welcome what the minister has put on the record about that.

Mr J.R. QUIGLEY: For the edification of the chamber, I draw the member's attention to the fact that clause 10 is a straight lift from the New South Wales clause.

Mr P.A. Katsambanis: That is my concern, because it has not been tested.

Mr J.R. QUIGLEY: The New South Wales department published a fact sheet, and our department intends to do the same. The fact sheet states —

> Fair Trading offers the following guidance for some other reasonable steps publication owners can consider taking to help prevent prohibited advertisements from being published:
>
> - conducting regular compliance checks on the advertisements published

- manually checking every advertisement submitted for publication before it is listed on the website
- tracking suspected or known non-compliant users to restrict or prevent their activity on the website
- engagement with event organisers or other parties to determine official original cost prices for certain tickets, and 'hard-coding' this information into the website …

An education program that we spoke about yesterday will encompass this very issue of club advertisements.

Clause put and passed.

Clause 11: Prohibited conduct in relation to the use of ticketing websites —

Mr P.A. KATSAMBANIS: This is a standalone clause in part 3 on the online purchase of tickets and is effectively the clause that bans the use of bots to circumvent the security measures put in place by ticket sellers, obviously in agreement with their various partners. The agreements may be different. Ticketmaster may restrict the purchase to 10 tickets, but in a transaction for an AFL match, it might be restricted to only four tickets or to as many as are wanted but with each corresponding to a membership number, or whatever the case may be. That is fair enough. It is open to the organisers and the ticket sellers to come to those agreements. Clause 11(2) states —

> A person must not use any software to enable or assist the person to circumvent the security measures of a website to purchase tickets in contravention of the published terms of use of the website.

The fine is $100 000, and I think that is fair. The real evil here is not Johnny down the pub flogging a ticket that he cannot use to a mate and the mate buys him a few drinks that are more than 110 per cent of the value of the ticket—especially if they are at one of those places that charges a fortune for drinks—but the people who use electronic systems bots, or electronic robots, that continually purchase tickets on a website in contravention of the security measures. That could include the security measures around credit card details, because these guys have funny ways of getting around them too. They spend all their lives looking at ways to circumvent these measures. The fine of up to $100 000 is good; I do not have a problem with that. However, a couple of questions arise. First, is there an intention to serve infringement notices for this offence as permitted under clause 14, or will the infringement notice be limited to the other offences we have already discussed?

Mr J.R. QUIGLEY: To limit the infringement notices for the offences we have already discussed, this is an offence of a different order. There will be no infringement notice for this; it will be by summons.

Mr P.A. KATSAMBANIS: Who is likely to be summonsed? If someone is sitting in a lounge room in Padbury doing this, I have no doubt whatsoever that the Department of Commerce will find them and will knock on their door and issue them with a summons. If they are doing the wrong thing, I have no problem with them being prosecuted under this clause. However, as we have seen in lots of media around this issue and as we have discussed already at the consideration in detail stage, those operators are often in other places. They might be registered in Switzerland but their staff operate out of all sorts of interesting and exotic nations where Western Australia and Australia generally do not have an ability to enforce our laws—for example, Ukraine, Russia, Azerbaijan and all sorts of places from which we see regular hits in an attempt to breach internet protocols and internet security. We know that these people are operating in these places. They target Australia because it is a wealthy market and they target it in the area that people love, attending events, because that is where the money is. Australians love attending events. We are trying to protect people so that they can get to events for a reasonable price. How does the minister propose the department will track down, shut down—which is just as important—and prosecute people who are acting not here in Western Australia or across Australia, but in places in which we do not have great reach?

Mr J.R. QUIGLEY: As I said yesterday, the enforcement of our laws overseas is within our jurisdiction or reach if it has sufficient connection with an offence in Western Australia. No-one shies away from the difficulty involved. Not even the United States of America can keep its power grid computers secure from dedicated Russian cyber units. We know from recent articles that America has done the same back, and planted programs in the Russian power grid. That just demonstrates that where there is a will with overseas computers, there is a way. However, we have prescribed a very serious penalty and in cases in which people who are overseas offend, they will be summonsed. I do not shy away from the fact that enforcement will be challenging, as we will witness—I mentioned this yesterday—in the enforcement proceedings against Viagogo for what will be a massive fine in the Federal Court. The answer to all this does not lie solely with the government; it has to work with industry and the sector. We have done our bit. We have prescribed the law that it is unlawful to use technology to get around security measures that prevent people from buying more than X number of seats on one credit card and the like. We look to industry to implement its own security measures. Each of us in the chamber knows that a lot of sites use grids that people have to tap on to indicate which box has a crosswalk or a traffic light sign. It reads, "I am a human" underneath.

Mr F.M. Logan: I'm not a robot.

Mr J.R. QUIGLEY: I am putting so much legislation through, member, I feel like one!

Ms R. Saffioti: It's amazing how you get it drafted!

Mr J.R. QUIGLEY: Cabinet members are having a go at me because they think that I have got the inside running because the Parliamentary Counsel's Office is my agency, but it is not true.

Ms R. Saffioti: There's no evidence to support that whatsoever!

Mr P.A. Katsambanis: If he had the inside running, he would have got a lot more resources for the Parliamentary Counsel's Office and he wouldn't have the logjam that he's got.

Mr J.R. QUIGLEY: I am having that out with the Treasurer.

To cut back to the chase, it says, "I'm not a robot". We are looking to industry to do its bit as well. It cannot all be within the gift of government. Government is partnering with the industry. As I have said before, concert promoters do not want to see the public ripped off at their events and performers do not want their fans to be ripped off when they send a great wad of money to Viagogo in Switzerland. They want their loyal fan base to get value for money. We have to do this with industry. Our best dip has been to prescribe a massive penalty, and $100 000 is a large penalty for running a program to get around the security measures that concert promoters and event organisers put in place. Additional to that $100 000 penalty, people run bots to get tickets to resell and, as I mentioned yesterday, each event of resale incurs a discrete penalty of $20 000. The government is doing as much as it can and we will pursue these people. It is not perfect, and we look to industry to come up with other solutions, which it is doing.

Mr P.A. KATSAMBANIS: I welcome the minister's response to this. That is the nub of clause 11(3). It is really a best endeavours clause. We want to stop this. We know that we cannot stop it alone. I also welcome the minister's comments about industry stepping up. During my second reading contribution, I spent a bit of time talking about the need for industry to step up to the plate. It can fix this and it can fix it better than any government can. Also in my second reading contribution—it was so long ago, I am trying to remember whether I did say it or whether I think I said it—I lauded the AFL for moving last year's grand final tickets back to a paper-based ticket, a real ticket, not one that is emailed to people to either print at home and use or print at home many times and try to sell. As we heard yesterday when the minister referred to figures that reflect the misuse of tickets at various events in Perth, people also try to move the PDF around multiple times. In one case—I do not remember which event it was; I think it might have been the Eminem concert, but whichever concert it was—six groups of people rolled up ostensibly with the same ticket for the same seat in the same row at the same event on the same day. The bad guys do not sell a ticket once; they sell it many times. They do not care whether people get into an event; all they care about is making more money illegally. There are things that industry can do. It has tried to make it easy for people, but the ease of use of tickets and the ease of production of tickets have made it easy for people of nefarious ways to rip off the public. I welcome the minister's comments and, like him, I see the difficulties in actually applying this provision. It will not be a panacea, but hopefully, as industry wises up, and if the current Australian Competition and Consumer Commission Federal Court action is successful, it will deter these people in the future and give members of the Western Australian public more certainty that they will get onto an actual ticket seller's website on the day that tickets are sold and be able to buy tickets, because they will not have been scooped up by bots and the people who sell them through Viagogo and other means at inflated prices.

Clause put and passed.

Clause 12: Functions of Commissioner —

Mr P.A. KATSAMBANIS: We can quickly wrap up the clauses in part 4. Clause 12 refers to the functions of the commissioner. The minister has already discussed the functions and intention of an advertising campaign, an educational campaign and the like. All I want to know is whether the commissioner will undertake these functions within the existing budget or will additional resources need to be allocated; and, if so, what resources will need to be allocated?

Mr J.R. QUIGLEY: I have to tell the member that when the Premier rang me and asked whether I would take over the commerce portfolio, I did not realise how big the department was. But I went to the department at William Street, which occupies two or three floors of a big building above the railway station, and then I went to Cannington, and it has masses of offices out there. I met all the staff in groups; it is a very big department. I am assured by the department that it will be able to monitor this within its existing resources. A lot of it will be screen time, with people at desks monitoring and trawling around events.

Mr P.A. Katsambanis: Like we did yesterday.

Mr J.R. QUIGLEY: Yes; we looked at the Hugh Jackman one yesterday.

Staff have only to tap in one of those and up will come Viagogo. It is not as though they will have to walk the streets looking for advertisements; the majority will be online. Existing resources within the department are capable of monitoring that, and the department feels that within its existing budget it can enforce this legislation when it finds offences.

Clause put and passed.

Clause 13 put and passed.

Clause 14: Infringement notices and the *Criminal Procedure Act 2004* —

Mr P.A. KATSAMBANIS: Clause 14 is about the interrelationship between infringement notices and the Criminal Procedure Act 2004. We have discussed it at length in talking about the other clauses, so I will not go over the same old ground. The clause states —

> The infringement notice must be served within —
>
> (a) 21 days after the day on which the authorised officer forms the opinion that there is sufficient evidence to support the allegation of the offence; and
>
> (b) 6 months after the day on which the alleged offence is believed to have been committed.

Why was 21 days and six months chosen? The minister said that there are big offices on William Street and in Cannington, with lots of people available. Is this unfairly fettering our authorities in serving these infringement notices? For instance, 21 days seems a little odd; 28 days seems a more commonly used figure across our system. Why six months rather than nine or 12 months?

Mr J.R. QUIGLEY: That is a fair question. I did not know the answer, but I am informed of a very good answer.

Mr P.A. Katsambanis: That's because it came from the officers.

Mr J.R. QUIGLEY: That is right. The good answer is that the member will remember that we tried to harmonise with Australian Consumer Law. Under Australian Consumer Law, infringement notices have the same 21-day and six-month limitations, so we wanted consistency across consumer law to get harmonisation. Otherwise, we would have an inspector saying, "For this offence I have to have it within this many days, and for that offence I have to have it within that many days", and offenders will escape because they will slip through the cracks. I am instructed that it is for consistency. That is a good policy.

Clause put and passed.

Clause 15: Regulations —

Mr P.A. KATSAMBANIS: This is the regulation clause. We discussed it earlier when we first spoke about commencement, again from memory. Clause 15(2) states —

> The regulations may provide for offences against the regulations and prescribe penalties for those offences not exceeding a fine of $5 000.

What types of offences does the minister foresee would be prescribed under the regulations, and could any of those fines be dealt with by infringement notice rather than by a summons?

Mr J.R. QUIGLEY: Because this is such a new and developing area, we did not know whether there was any conduct that we had not yet thought about that should be deterred. We think we have covered the field in the legislation. The member will recall that in the offence provisions, the penalty is $20 000. We have put in an empowering provision so that if we find some conduct that does not strictly fall within the legislation but ought to be deterred, and that falls within the matrix of this bill, a regulation can be promulgated prescribing that. However, it would have to be a much more lesser type of misconduct and limited to a $5 000 fine and, commensurately, an infringement notice of not more than 20 per cent of that, which would make it up to $1 000. I cannot say or identify now any such conduct or it would have been in the bill. Because we and New South Wales are dealing with such a new area, we have both included it. If we see some conduct, I would liaise with the ministers in other states to say, "We have seen this little glitch; we think it should be banned", and we could draw a regulation and take it to the other place without having to bring the whole act back for amendment. It is for more minor matters as reflected by the penalty, which is only 25 per cent of the normal penalty in the act.

Clause put and passed.

Clause 16 put and passed.

Clause 17: Transitional provision —

Mr P.A. KATSAMBANIS: Anyone still tuned in would be glad to know that this is the last clause of the bill. Clause 17 in part 5 states —

> This Act does not apply to a ticket purchased from an authorised ticket seller before the day on which Part 2 comes into operation.

That is fair enough, because authorised ticket sellers will have to do certain things introduced by part 2 and they cannot be held responsible for not doing them before the part comes into operation. But it begs the obvious question: does the act apply to a ticket purchased from anyone else other than the authorised ticket seller before the day on which part 2 comes into operation? This question is not asked glibly. Some event tickets are sold way in advance—15 or 16 months in advance. I remember I bought a ticket to see the Guns N' Roses reunion concert that was held in Subiaco during the 2017 election campaign. I took a night off from campaigning to see it, but I had purchased the ticket in either late 2015 or very early 2016. Of course, as the minister can see, that time allows

bots to buy up tickets and for Viagogo and the like to sell tickets way ahead of the actual event. The ticket purchased from an authorised reseller would not be subject to this bill if anyone rolls up to it, which makes sense because its noncompliance with this legislation would be technical. It did not do the things that this bill asks it to now do, but it was the authorised ticket seller. That is fair enough; I accept that. But is it intended for the bill to apply, once it is in power, at the moment when a ticket is used to gain entry to an event, irrespective of whether that ticket was purchased before or after the bill came into force?

Mr J.R. QUIGLEY: No, not irrespective. We have to keep in mind that the legislation will cover the resale of tickets, not the initial sale of tickets. The whole scheme in the bill is about the 110 per cent et cetera, and the penalties if someone tries to sell a ticket for more than 110 per cent. This legislation will not apply to a ticket that was first purchased prior to the commencement of the act, so if the ticket is purchased now and the legislation gets through the Council next month or whenever and is promulgated, the ticket purchased will not be subject to the act; I can go out and sell it for a motza! The tickets that will be covered are those tickets that are first purchased after the commencement of the act. Their resale will be governed by the provisions of this legislation.

Mr P.A. KATSAMBANIS: I thank the minister for that important clarification and for the brevity; it has not been a difficult process, it has just been long. Right at the start of this process I offered the member for Mandurah, the Minister for Culture and the Arts, my spare ticket to the Metallica concert coming up in October, and he still has not told me yes or no! I do not intend to flog it for a "motza", as the Minister for Commerce said, if the Minister for Culture and the Arts does not take it up, but I can tell him that I do have another willing taker if he does not accept it, and that is the Leader of the National Party! So, Minister Templeman, that offer still stands, because I am a man of my word, but please give me a yes or no!

I thank the Minister for Commerce for this consideration in detail. I think it has been useful to clarify how the legislation is going to operate, and that is really important for the people out there who will be operating under it. I also thank his advisers, who have certainly added significantly to the process by informing the minister.

Mr P.J. RUNDLE: I would like to just make a short statement at the end. I think the member for Hillarys has done a comprehensive questioning. I have been listening to all of the answers and so forth. I am a little concerned with the fifth anniversary review under clause 16; I think that is a bit too far down the track.

Mr J.R. Quigley: We've already passed that clause.

The ACTING SPEAKER (Mr I.C. Blayney): We have not put clause 17 yet.

Mr J.R. Quigley: That was 16; clause 16 was passed.

The ACTING SPEAKER: Member, it would be best if you just made a short speech at the third reading stage rather than making your points here; that would be a better way to address it.

Clause put and passed.

Title put and passed.

Leave granted to proceed forthwith to third reading.

Third Reading

MR J.R. QUIGLEY (Butler — Minister for Commerce) [11.23 am]: I move —

That the bill be now read a third time.

MR P.A. KATSAMBANIS (Hillarys) [11.23 am]: I rise on third reading to speak about the Ticket Scalping Bill 2018 and to thank the minister and his staff for going through consideration in detail. I think the consideration that we have been through over three or four days over a number of weeks has been extremely useful in teasing out the operation of what will be a new act and a new regime in Western Australia. Hopefully, the information we have gleaned out of consideration in detail will reduce the likelihood of any litigation arising from the implementation of the act and make it clear to everyone what is and is not covered.

As I have consistently reiterated, in my contribution to the second reading debate and in consideration in detail, the Liberal Party supports consumers. We support consumers who want to go to an event being able to do so without having to worry about whether their ticket is valid, without having to pay exorbitant prices for a ticket, and without having to incur the double whammy of paying an exorbitant price to a scalper and then being denied entry. We support the principle of the legislation, and we are supportive of the legislation that is going through.

However, we want to highlight some of our issues and concerns. At the outset the previous minister made a policy decision that he would not accept the operation of third party ticket brokers, as the Victorian government has done in its legislation to give them a little carve-out within which they can operate in the same way as they have operated in the past. This minister took responsibility for the bill halfway through its passage; the previous minister made that policy decision, and that is fair enough. But during consideration in detail we determined that there were a number of questions that remain up in the air. The definition of "advertising publication" is really extremely broad. It will apply to everyone from Mr Zuckerberg and his Facebook all the way through to people who might run

a little fan site on Facebook or other social media platforms. It might even apply to the shopping centre noticeboard where people put up notices for sale of chests of drawers, tables, or spare tickets to semifinals or to the State of Origin, or whatever. It is a very broad definition. The obligation is quite onerous on the people who run any of these normal, day-to-day sites that would be deemed to be advertising publications under this legislation. The minister indicated that the department will issue some instructions on how people can protect themselves by making standard-form disclosures to deter others from using their site for nefarious purposes relating to ticket scalping.

We determined that the term "event organiser" can be confusing because there might be a cascading series of event organisers for different parts of an event. Obviously, there will be an event organiser deemed by this legislation, but it might not be the event organiser determined in a contract between a venue operator and a promoter, or even between a promoter and an act. That is understandable and it is not insurmountable, but it is quite clear that this legislation will deem someone to be the event organiser, and that is the person who organises the supply of tickets.

We determined that some tickets will fall outside this regime, and they are the tickets that do not go out for retail sale. It can often be a large chunk of tickets that are reserved either by the operator of the event, the person putting the event on, the promoter, the sporting or concert venue, or even the ticket seller. They may, by agreement, reserve some tickets, hold them back and never put them out for public sale. As the minister said a few weeks ago during consideration in detail, those tickets will not be subject to this regime, but to all the other best-intentioned provisions put in place by ticket sellers and the like. To use a practical example, if one of those tickets is bought by somebody as part of a package provided by a travel wholesaler for travel into Western Australia, that can be onsold, and it may be onsold in contravention of other contractual prohibitions and restrictions. It will not be caught under this legislation, unless that ticket had been offered for retail sale by the authorised ticket seller. That is made clear in the definition of "original ticket price" on page 3 of the bill. There are some tickets that will not be caught. I realise that it will be a small portion. They are the more expensive tickets, and people can deal with them in their own right.

In terms of the use of bots, everyone hates them. I hate them. All my friends who try to buy tickets, especially for a sought-after event, go online at 9.00 am and they are jammed out. They refresh and refresh and they use multiple browsers. I have known people to use their office computer, their phone and their iPad to try to get on. They each have a little story to tell. Perhaps the iPhone works quicker than the office or home computer. Each person comes up with their own little plan of attack. We want to limit that. We want to stop the nefarious scalping bots from going on and jamming the system, stopping legitimate consumers from purchasing legitimate tickets, and then, worse still, once they have scooped up all the tickets, offering them to consumers for an inflated price. As the minister and I have pointed out, that is a no-win situation. The artists—the people putting on the event—get ripped off, the consumer gets ripped off, and nobody wins, other than the scalper, who is acting for nefarious purposes. We want to stop that.

We spoke about the functions of the commissioner. Clearly, the minister has indicated that no additional resources are required. A lot of this work will be done online, by just hunting down who is offering these tickets. What has been interesting for me is that the Victorian regime is restricted to a smaller number of prescribed events. In Victoria, the nefarious sites, such as Viagogo and Gumtree, have either acted cooperatively or simply decided to not bother, because it is all too tough. People are not able to buy tickets to the prescribed events on Viagogo for an inflated price, or on Gumtree for that matter, because it is a small group of events. People in Victoria with knowledge in these things have said to me that that has perhaps happened because they know it is a small group of events and they can ratchet up their systems for it. The New South Wales legislation has not been in operation for that long but we have already seen some patterns and changes, which I think are for the better. The Western Australian legislation is largely modelled on the New South Wales legislation, as the minister kept pointing out. It is good to have more than one regime introducing very similar legislation. South Australia is going down the same path. It will be interesting to see how it works in practice.

I hope that once this bill becomes an act, it stays in place for a long time without the need for us to patch it up and make amendments. However, I fear that that hope will not be realised. It is not because this is badly drafted legislation or that the legislation has not contemplated what is going on in the marketplace, but because, as with so many things in the twenty-first century that rely on online activity, things change very quickly. Things come into place that we could not have contemplated even six months ago, let alone 12 or 24 months ago. That will be the same in the future. It is incumbent on the authorities who will be monitoring this—the officers of the department—to identify new trends. They should not lock themselves into a pattern of just enforcing this legislation, but should concentrate on what this legislation is here for, which is to stop ticket scalping. They should not religiously enforce the act, but should ring the alarm bell if the activity moves into an area that we had not contemplated, to alert the public and the government of the day so that we can all come together and again look at what changes need to be made to protect the public of Western Australia.

The Liberal Party, and the government also, has taken that consumer-first approach on ticket scalping. We want to protect the consumer. As the legislation begins to operate, I hope that the authorities implementing it in the department take that approach as well. If there are any gaps, identify them quickly. We do not want to end up with

situations like that of our American visitors, who came to Perth and wanted the cultural experience of going to an AFL match. Those people bought tickets, bought all the gear as well in that case, rolled up to the gate and were not allowed entry because their tickets were clearly invalid. They had bought from a third party site, from scalpers. They were never going to be let into the stadium. That puts a bad taste in everybody's mouth. We do not want to be in a situation in which a grandchild buys tickets to a concert, the opera or the ballet for their grandparents for their anniversary or Christmas, and for those grandparents to roll up to the venue and be told that the tickets are invalid. We want people to be able to buy with certainty. We do not want people to be conned. We want them to be able to buy from the authorised seller's site and not be directed to a third party site, where the provenance and validity of the tickets cannot be determined.

We support the legislation. We think the process we have gone through in the consideration in detail stage has been a good one, but I do ring that alarm bell—that it is not realistic to expect this legislation to protect consumers forever and a day from being ripped off by nefarious ticket scalpers. In the future, something else will happen to replace the bots and the Viagogos, which will again put our consumers at risk. I hope that at that stage, we can all come together and plug those holes as well.

MR J.E. McGRATH (South Perth) [11.38 am]: I thank the minister for bringing the Ticket Scalping Bill 2018 to the Parliament. It is legislation that both sides have supported, but it has taken a long time to come before us. The main point I want to make is that I have never really had a problem if I wanted to get a ticket. If I really wanted to go to an event and it was going to cost me a bit more than what it would have cost if I had bought a ticket earlier, I would not mind paying a premium. If I wanted to go to an event and I could secure a ticket, I would not be unhappy about that. What I would be annoyed about is if I bought a ticket and found that it was void when I got to the gate. That is the biggest issue with this. I tried to buy a ticket for the grand final last year and was offered all these deals by the AFL. I think one was about $4 000 for a ticket, which would have got me lunch at Crown and a limousine down to the ground.

Mr P.J. Rundle: It shouldn't be a problem for you!

Mr J.E. McGRATH: It was not my sort of ticket. This happens in the real world. People out there make money from onselling tickets, and some of those tickets are not void. We heard some evidence from the minister about one event—it might have been a concert—for which someone had sold tickets on Gumtree. I think six couples turned up for the same two seats. That is terrible behaviour by the person who sold those tickets. We need to crack down on those people because they are gaming the system. I regard those people as pretty immoral. If I had a ticket for an event and I could not go, I would not want to make a profit out of it; I would sell it for the price I paid for it. There are people out there who will do this, and that is why they are called scalpers.

I have a couple of concerns. The minister mentioned to us during consideration in detail that some people who had problems at the gate of an event had bought tickets from Ticketmaster Resale, Viagogo or lower profile sites such as Gumtree and Facebook. If I bought a ticket from Ticketmaster, a reputable organisation, I would expect it to be a valid ticket.

As I said during my speech on the second reading, I went to New York a few years ago. I wanted to see the New York Yankees play. I bought a couple of tickets on StubHub. I was a bit reticent to do so. I asked a couple of people and they said that StubHub should be okay. I did not know. I was not sent the tickets online until a couple of days before the game. I was waiting nervously. Suddenly, I got the notification and I could print them off at the hotel. The tickets were fine. I would have paid a premium for the tickets. They might have been members' tickets that were offered to the Yankees for resale, which West Coast Eagles members do. I do not think Fremantle Dockers members do so because there are normally seats for their games.

Dr A.D. Buti interjected.

Mr J.E. McGRATH: When games were played at Subiaco Oval, people could not get an Eagles ticket but they could always get a Fremantle ticket.

Buying tickets online worked well for me then. I thought that was good. When tourists come to Perth and want to go to an event, there should be some means for them to get a ticket at the last minute. That is why we need these processes in place. I am just hoping that this legislation will clean up a lot of these things. Sometimes when we stay in a hotel, there is a concert on in that city. The concierge will arrange a couple of tickets. That is good. That is what tourism is all about. If people go to an Australian city, there is not much to do that night and a big event is on—a concert, a footy match or another sporting match—they should be able to get a ticket. The member for Nedlands was going to London this week but something happened and he was elevated to the position of Deputy Leader of the Opposition. He had bought a couple of tickets online for a one-day game at Lord's. That is great that people can do that. We do not want this avenue for people to get tickets to disappear.

I was staggered by the number of people who turned up at events and found their tickets to be void. Even in a small city such as Perth, those numbers were quite disturbing. Hopefully this legislation will reduce the likelihood of that happening.

I also think there needs to be an education program. I think people need to be warned. Any site that offers these tickets should have some guarantee that the tickets it sells are valid, saying that if people buy tickets, they will get into the event. We need to give people that assurance. A lot of people—I have done it myself—look up the event, such as a title fight or whatever, and can see who has tickets on offer for that event. There should be something in the regulations requiring those onsellers to give a guarantee. If they cannot live up to that guarantee, they should pay a penalty. We do not want to see the consumer losing out. It is quite embarrassing. The minister said that some people turn up at the gate and they are so embarrassed that they have been scammed, they do not want to talk about it; they want to go away.

My friend John Bowler was in Sydney. He bought a couple of tickets to see *The Book of Mormon*. He was very happy that he had done so. I think the tickets cost about $90 each but there were charges of $30 on top. He got to the door and was told that they were not valid tickets because they had been onsold and there was a requirement that people could not onsell tickets for that event. He bought them from Viagogo. He did not get his money back. He ended up going to the movies. It is a very disappointing experience for people.

The people of Western Australia deserve to be looked after better. We need to put very strong measures in place to ensure that when we come back into this house in 12 months, the statistics that the minister mentioned during consideration in detail about the various venues, the number of people who have been scammed and the number of complaints will have reduced significantly, and, hopefully, that will be as a result of this legislation.

MR P.J. RUNDLE (Roe) [11.46 am]: I wish to make a few brief comments. I would like to note the heavy duty questioning from the member for Hillarys, which I think was excellent. It clarified a lot of issues that all of us probably have. The member certainly got to the bottom of quite a few issues. Firstly, I would like to say that I as an individual and also the Nationals WA support consumers, and we certainly support the Ticket Scalping Bill 2018. It has been a long time coming. It is good for the ticket buyers and the consumers of Western Australia. In Victoria and New South Wales, people can actually relax to some extent as they can buy their tickets without worrying about the overriding fear that they have bought a false ticket or that their ticket does not count. From that perspective, it is important that this legislation goes through. I do not know whether there will be some amendments in the upper house.

I heard the comments of the Minister for Commerce about Viagogo. There seems to be a mixed assortment of places of registration and location of offices et cetera—Geneva, the eastern states, the United States of America and Ukraine. I worry about whether the enforcement will occur. I know that the minister has spoken about the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and this case that is coming up in July. I look forward to seeing the result of that. I worry about the ability to enforce the legislation on this particular group. I hope we are successful. I hope the minister is successful in prosecuting and pinpointing the offenders.

I agree with the member for Hillarys. When we look at the likes of Ticketek, which releases a lot of tickets priced at $167.50 one day and then releases another lot another day at $422.15, that is almost a form of ticket scalping in itself. I believe that that needs to be looked at. It is really a form of price gouging–ticket scalping. Withholding tickets and releasing them again in another tranche is a form of that. I think that is also something the minister needs to look it. The minister talked about socialism and all of that, after the member for Hillarys raised it. To me, that is another form. I worry about enforcement. I certainly worry a little about the five-year review. We need to look at that earlier than five years. I would have thought three years would be more appropriate. It remains to be seen whether that amendment is moved in the upper house. I believe that five years for a review of enforcement and the operation of the act is probably a bit too far down the track.

Finally, for those 127 people who were turned away from the Hopman Cup and the likes of the American couple at the AFL grand final, I hope this legislation cleans up that sort of situation. As far as I am concerned, it is good for the consumer. It is good for all of us that we will be able to relax to some extent; that is, when we buy a ticket, we will know it is actually a genuine ticket.

When this legislation passes, I would like the minister to advertise it. It is important that WA consumers are made aware that this legislation has gone through and that the tickets they buy in future are genuine tickets. People will no longer have to worry about whether, when they go on Gumtree or some other site, they are buying a genuine ticket. I urge the minister to advertise this legislation when it has gone through to let the consumers of WA know that he has acted, that the legislation will be enforced and that it is there for all to see.

MR J.R. QUIGLEY (Butler — Minister for Commerce) [11.51 am] — in reply: The member for Hillarys is here; I was going to thank him for his contribution during the debate on the Ticket Scalping Bill 2018. I also thank the members for South Perth and Roe for their contributions. The five-year period is reasonable given this is a low-grade social problem. When I say "low-grade social problem", it is not a big criminal offence that we need to review in 12 months to see whether we have the setting right. We will see how this evolves.

I want to thank all members who have contributed to this debate. I particularly want to thank the people who were here to advise me on this bill and during its preparation stage. Karine Broux and Robyn Peterson represented the

Department of Mines, Industry Regulation and Safety, which I am so honoured and proud to represent. DMIRS is a very good department. It has been an absolute honour to have been asked by the Premier to be the minister and to represent the department in this place. I would also like to thank Janis Carren from VenuesWest for her assistance during consideration in detail and in the preparation of the bill.

This is something that is not read about in the papers every day. During footy season there are complaints from committed fans who cannot gain entry other than via a scalper, who then rips them off. It is becoming a little more common that we see popping up in the press from time to time complaints from people who have turned up at venues, got all dolled up for the night out and gone to the gate only to find that their ticket is not valid; it is a resale ticket. It has also been very embarrassing on occasions for people who give expensive tickets away as birthday presents to get feedback from their mum and dad, "It was a dud ticket; we didn't get in!" It is an area of consumer protection that certainly needed addressing.

As I said during debate and consideration in detail, we have largely followed the New South Wales model. As far as I am concerned as the Minister for Commerce and Attorney General, although Western Australia does not have to slavishly follow other jurisdictions, when possible and reasonable, effecting harmonisation of our laws is an objective that I try to achieve. The Parliament would have seen me on previous occasions bringing in bills that reflect what is happening in other states so we can get harmony across our jurisdictions. In that regard, I have already foreshadowed that we will be bringing in a bill that brings us into the national legal profession, the national uniform evidence act, which is under drafting instructions at the Parliamentary Counsel's Office at the moment. I know the member for Hillarys is interested in that.

Mr P.A. Katsambanis: It makes me feel so old every time I hear about it!

Mr J.R. QUIGLEY: Yes. We will both be a little older by the time it passes, but we will get there.

I like to try to achieve harmony across the jurisdictions as far as possible so that retailers, resellers and the public moving around Australia or buying tickets in other jurisdictions will know what the law is. This has not yet been achieved. South Australia has followed the New South Wales model, so that is three states. Victoria may update theirs; we will see.

I thank all members for their assistance in the passage through this chamber of this rather important piece of consumer legislation.

Question put and passed.

Bill read a third time and transmitted to the Council.

CRIMINAL APPEALS AMENDMENT BILL 2019

Second Reading

Resumed from 20 February.

MR P.A. KATSAMBANIS (Hillarys) [11.57 am]: I rise as the lead speaker for the Liberal Party on the Criminal Appeals Amendment Bill 2019 to indicate that the Liberal Party will not be opposing this bill. It is a rather interesting bill, to say the least. It is different. In many ways, it is quite a challenging bill because it deals with a subject that has to balance a number of competing legal rights within our criminal law that particularly relate to people who have been convicted and sentenced for very serious offences. It introduces a new statutory right for a person who has been convicted and sentenced to make a second or subsequent appeal against their conviction. It is not just a second appeal, but a second or subsequent appeal. It introduces the possibility of a series of appeals for the same crime. It does so when two circumstances have come to light. The first circumstance is "fresh and compelling" evidence and the second circumstance is "new and compelling" evidence. They are two separate and distinct terms, fresh and compelling compared with new and compelling. They are defined separately in the Criminal Appeals Amendment Bill and different procedures apply to each case on the rights of appeal. That is good for those people who have been convicted of an indictable offence and who believe that they have been wrongly convicted. We know anecdotally from speaking to many people who are incarcerated or have been incarcerated that our jails seem to be full of innocent people. That is the anecdotal evidence. The reality is that it is still a majority of people who are convicted of indictable offences who plead guilty to those offences. Already we are dealing with a minority of people who have been convicted when they have not pleaded guilty; they have pleaded not guilty. Our legal system currently allows an appeal upon conviction on the conviction itself or on the severity of the sentence when the sentence is proved to be manifestly unjust. Once the appeal has been heard, there is no longer a right of appeal.

Some other rights are well enshrined in our legal system, including our legislation, and those rights have been exercised in the past, including in Western Australia. There is the royal prerogative of mercy, which is obviously exercisable by the Governor because it is a royal prerogative. There is also the opportunity to petition the Attorney General of the day. A person who is convicted of an indictable offence can petition the Attorney General of the day and request that they refer their case to the Court of Appeal. They obviously then have to provide

evidence to the Attorney General to satisfy them that it is the right thing to do. In his own second reading speech, the Attorney General indicated that he had recently considered one of those petitions on behalf of a Mr Scott Austic. I will be careful because I do not think that matter has been finally determined.

Mr J.R. Quigley: There is a hearing on 22 July. I am waiting because it is an appeal.

Mr P.A. KATSAMBANIS: I do not want my comments to interfere in any way with the administration of justice. I am not suggesting that this bill would affect it. It is best to simply refer to the fact that the Attorney General has made a decision to refer Mr Austic's matter to the Court of Appeal and, as he indicated, it will be heard in July this year. Already, that is being used. We know also that in Western Australia there are some well-known cases in which people have utilised the existing rights in our legal system to have their matter reopened and reheard. Obviously, the Attorney General has had some involvement in some of those matters. The matter of Andrew Mallard is fresh in the mind of most Western Australians. There was the Mickelberg brothers' case and the von Deutschburg case and the like in which those matters were reopened to the benefit of the accused person. In those cases, the person had been convicted and it was subsequently found that that conviction ought to be quashed on the merits of their case. It is not as though no system is in place; it is just that the Attorney General has advanced that that system is difficult, it is cumbersome, and it might be subject to political whims of the day. Again, I think in his second reading speech he indicated that he had long campaigned to take politics out of these matters. I think he was wearing his hat as Attorney General and as an advocate there rather than as a strong and sometimes feisty and dogmatic parliamentary performer. I think we could probably balance out that aspect of his personality with the aspect of him being the senior law officer and previously having been a senior legal practitioner. The actions of either side may not always fall on the side of taking the politics out of matters, but we will leave that to one side and consider the bill on its merits.

Given what is currently available, the Attorney General has indicated that he and the government believe there is a gap in the system, and he has introduced this legislation that will allow second and subsequent appeals. It challenges one of the real axioms of our legal system, a real pillar of our legal system, and that is the pillar of finality; that is, a matter does not drag on forever, particularly in criminal law; a matter is decided. Once a court has decided the matter, that decision is final. An appeal can be lodged for procedural fairness or for natural justice, but, again, the trial has been held, the determination has been made and the appeal has been held. That is it. The system considers the matter done and dusted unless or until there is an application for the exercise of the royal prerogative of mercy or a petition is made to the Attorney General and convinces the Attorney General of the day to refer the case to the Court of Appeal for rehearing.

As we said, the number of cases is very narrow. We can list them because there are so few. That is how the system has been working until now. The Attorney General has determined that a new system needs to be brought into place that challenges that principle of finality. It allows second and subsequent appeals, very clearly, not just one more appeal. It can allow multiple appeals if new and compelling or fresh and compelling evidence can be adduced.

Why do we have the principle of finality? There are a number of reasons. One of those reasons is that our court time is precious and we do not want our courts to be reconsidering again and again matters that have been determined when there is absolutely no hope that the original decision will be overturned because it is a waste of time, a waste of energy and a waste of resources. That is one of the reasons for the principle of finality.

The other reason that the principle of finality is important is that it gives certainty to victims. I use the term "victims" broadly—both the victims of the actual crime, be it an assault, a sexual assault or the like, and the families of the victims. In particular, in cases of murder or manslaughter, the primary victim is, unfortunately, no longer with us, but the secondary victims have to live with that forever. At the moment we are seeing a matter in which families of victims in some very well-publicised cases in Western Australia are hoping to see a conviction so they can get finality. I am not going to traverse those grounds in any way, shape or form, except to indicate that the families of those murdered in what are known colloquially as the Claremont serial killings still struggle to come to grips with things today, and they still call for justice. They cannot have their loved ones returned to them. The only justice they can seek is to identify the perpetrator and have that perpetrator convicted. We see how important it is for victims and secondary victims to get finality—to get a conclusion on a matter. We also know that when matters are dredged up again, it causes significant harm to victims. It re-traumatises them and reminds them of what went on. It brings all those horrible thoughts back to being. We recently dealt with legislation that the Attorney General claimed would give more certainty to victims of crime because matters would not be dredged up again and again and the Attorney General could stamp the file with "Do not bring it to me for a while" so the victims and their families would know that the criminal would not come up for parole again for a while and those issues would not be dredged up publicly and remind them of what they have been through and what they are still going through. Often victims cannot put these matters behind them. They might do their best to put on a brave face and they might put the matters to the back of their mind, but they are never totally forgotten. An important pillar of our justice system is protecting our victims. That is the area in this legislation that we as an opposition are concerned about. We have significant concerns about it. We do not want to deny anyone justice. In particular, we do not want innocent people rotting away in prisons; nobody does. We on this side do not want that, nor does the

Nationals WA or the government—nobody does. However, at the same time, we unashamedly stand on the side of victims. We want to protect them. Firstly, we want to have far fewer victims of crime than we have today by limiting crime. However, once crime happens, we want to wrap our arms around those victims and protect them and offer them the services and protection they need, which go well beyond the criminal justice system. One of the great things about living in twenty-first century Australia is that we have worked out that victims need far more than simply seeing the perpetrator of the crime against them go to court and face justice. Victims need a lot more than that.

Facing justice is one part of the process of assisting victims. We do not want them re-traumatised. We do not want the matters dredged up again and again hopelessly. At the same time, we do not want miscarriages of justice. We do not want a repeat of a recent case—the Attorney General would be able to assist me on this—that I think is known as the Gibson case; he was the fellow who was wrongly accused of murder. In the end, the victim's mother was one of the strongest campaigners for an appeal—in that case it was an appeal—to be determined so that the accused person who was at first instance convicted could be exonerated. We do not want to see those sorts of miscarriages of justice. We want a system that can be nimble enough to identify as quickly as possible a miscarriage, and to fix it. I would argue that the gentleman who was accused and originally convicted is just as much a victim of this process as anybody else. I have not looked into it recently, but I believe the perpetrator of that crime remains at large, so a series of victims are waiting for justice to take its course.

We stand unashamedly on the side of victims. We are concerned at what impact this new regime will have on victims of crime, especially in serious matters. This is related only to indictable offences to start with. It applies only to those serious matters. Simply by its nature, it will relate to offences for which people have been convicted and sentenced to really long sentences, because by the time we go through the process in this case, often people are in jail for only 12 months, 18 months or two years, and by the time they get legal representation and get fresh and compelling evidence, they will have served their term. They still might want their day in court and to have their name cleared, but they will not be rotting away in a jail cell unnecessarily. It will be skewed to that higher end where the impact on the victims is greatest and the secondary victims have also been impacted on gravely, whether they are dealing with a victim of serious assault or grievous bodily harm. The secondary victims—the family, relatives and friends—have to nurse that victim through their life. They might be dealing with a victim of sexual assault, including child sexual assault, who has to live through that horror on a daily basis, or they might simply be the secondary victims of homicide victims who must live with their grief and who miss their loved ones on a daily basis.

We are concerned that a series of subsequent appeals will have an impact on primary and secondary victims and their families and friends. That is why we are at best lukewarm on what is proposed by the Attorney General. We are extremely wary about what the reality will be when this regime is introduced, especially in the first few years. There will be people in prisons around Western Australia today thinking that as soon as this legislation is passed, they are going to give it another go. We will see a series of cases come forward rather quickly because of that bank up. Some of them may have merit, but some of them may not. I will discuss that in a minute. We do ring that alarm bell. As a responsible opposition, I think it is fair to put that on the table at the outset. This is a new criminal appeals regime that will allow second and subsequent appeals, and we are concerned about the impact that will have on the victims and the secondary victims of those who have been convicted of offences in the first place. We realise that it is not a linear matter either. That is why I use the case of Gibson to highlight that, in many cases, miscarriages occur that need to be fixed, but already our system is dealing with that. That case was dealt with on appeal and there was no need for a second or subsequent appeal. The Austic case is going through the courts. We know about the Mallard and Mickelberg cases and the like. We know that our system has been working.

Interestingly, the system in this legislation will not replace the existing system of an as-of-right appeal followed by an opportunity to petition either the Attorney General for the matter to be referred to the Court of Appeal or the Governor for the exercise of the royal prerogative of mercy, or to do both. As I understand, that system will stay. However, this new criminal appeals process in new part 3A of the Criminal Appeals Act will come into being to give persons who have been convicted of indictable offences the opportunity to appeal against the conviction. It is another important criterion that new part 3A allows appeal only on conviction, not on sentence. The grounds are either fresh and compelling evidence, or new and compelling evidence. I assume that these terms are quite confusing for non-lawyers, because non-lawyers might think that the definition of "fresh and compelling" is new and they might think that "new and compelling" means stuff that was still around. From a legal perspective, I think the definitions are good. That is my personal opinion; the Attorney General can give that the weight he wants to give it. The definitions are clear. "Fresh" means that if, despite the exercise of reasonable diligence, it was not and could not have been available at the trial of the offence or any previous appeal. As hard as they tried, this evidence was not and could not have been made available; without limiting it, it did not exist.

Mr M. Hughes: Yes, it wasn't adduced.

Mr P.A. KATSAMBANIS: No, adduced is different.

Mr M. Hughes: Is it?

Mr P.A. KATSAMBANIS: That is coming up. That is the trap for young players.

I do not want to limit it but, really, from a legal perspective, that is pretty clear. "Compelling" means if it is highly probative in the context of the issues in dispute at the trial of the offence. If a person is accused of murder, the fact that they were not there when the murder took place is highly probative. In most cases I doubt whether the footpath on which a victim was shot was gravel, bitumen or concrete would be highly probative. In some cases it might be, which is why, members may notice, I hesitate before I say these things. That is fresh and compelling. Then there is the definition of "new and compelling", the proposed new section 35E. "New" is defined as —

> (a) ***new*** if —
>
> (i) it was not adduced at the trial of the offence; but
>
> (ii) with the exercise of reasonable diligence, could have been adduced at the trial of the offence or any previous appeal;

If we had gone down that rabbit hole, we would have found it or we would have used it. "Fresh" means that no matter what rabbit hole we went down, it was just not around. The Attorney General is paying particular attention. If I get it wrong, he will tell me. He will not wait for summing up; he will interject. "New" means new in the context of being adduced in the case. If we had gone down the rabbit hole, we would have found it, but we did not. It is not fresh evidence, it is not evidence that has come to light since the trial; it is evidence that could have been brought at the trial or the appeal, but it was not because something happened, and that something that happened could be on the part of the prosecution or on the part of the defence. That is left open, and I understand why. That is fair and reasonable in the strict legal context. Again, in the definition of "new and compelling", "compelling" means exactly the same as it does in the definition of "fresh and compelling"; that is, it is highly probative in the context of the issues in dispute at the trial of the offence.

Subsequent clauses set out what will happen in cases in which an application for special leave is made to bring this appeal. When I first looked at this I was probably more concerned than possibly I am today. There are things in this legislation that put a ring-fence around it. First of all, it is an appeal to the Court of Appeal, our most senior justices. This is what these people do every day; they weigh up evidence to see whether it is fresh and compelling, or new and compelling, or compelling if it has a high probity value. That is what they do as a business. This will not be determined by a bunch of people down at the local coffee shop. That is a bit of a temper on where all this goes. Secondly, there is a provision that evidence is not precluded from being admissible on an appeal brought under this part just because it would not have been admissible in the earlier trial of the offence that resulted in the relevant conviction. That is pretty clear. There are all sorts of rights on how the appeal will be determined. Effectively, at the end of the day, under "Decision on appeal" in proposed new section 35I(4) —

> The Court of Appeal must allow an appeal based on new and compelling evidence if it is satisfied that in light of all the evidence, the evidence establishes that the offender is innocent.

They have to find innocence. This is really an appeal on conviction—you did it or you didn't do it. We will wait to see how this operates in practice. I do not intend to interrogate every single word in the bill; that would not be fair because the procedure is limited to serious indictable offences and it will apply to only a limited number of offenders.

The ACTING SPEAKER: Attorney General, I am having difficulty hearing the member for Hillarys.

Mr P.A. KATSAMBANIS: What I am concerned about in all of this is what these appeals will do to victims. In his second reading speech, the Attorney General said that the opportunity to apply for special leave in every case is designed to act as filter for vexatious, frivolous or spurious applications, and that is true. The fact that these cases will go to the Court of Appeal will also act as a filter because the judges of the Court of Appeal are pretty good at smelling that quickly. I think the judges will be able to rule applications out—or in, for that matter—on the papers anyway, which, hopefully, will not eat up too much court time. The refusal of special leave cannot of itself be the subject of an appeal, but we will see what might be able to be the subject of an appeal. That does not rule out all appeals; it just rules out that the refusal of special leave will, of itself, not be of appeal.

The Attorney General indicated that the bill provides the court discretion to order the appellant to pay another party's costs of or relating to that appeal. That sounds good in theory; if a convicted person appeals and the court rules out that appeal, the court can order the person to pay the costs of parties and they will have to pay those costs. In reality, someone sitting behind for bars for a long time is highly unlikely, not totally unlikely, to be a person of significant financial means so the worth of a costs order against that person is questionable, not that I think that the fear of a costs order should preclude people from bringing an appeal when they ought to bring it. That is that twin-edged sword. I do not think that the fear of cost orders will deter anyone in this sort of element. We are talking about people who have been convicted and sentenced to long terms of imprisonment, who are highly unlikely to have been pecunious to start with and, with the time of incarceration, are probably even less pecunious than they were, so I do not think that will be much of a deterrent. Some of the other concerns I have about this bill are probably about the operation of it—the numbers. How many people do we expect would utilise this new appeals process over time, especially in those first few years?

Mr J.R. Quigley: We are cleaning out the same old suspects, if I can put it that way.

Mr P.A. KATSAMBANIS: Yes.

I think that over time we will settle at a relatively even number a year, but early on there might be a spike. I would be interested in the Attorney General, in his summing up, giving me an indication of what that will be like. How much more court resources or time will this require?

Mr M. Hughes: Member, are you aware of the Criminal Cases Review Commission in the United Kingdom?

Mr P.A. KATSAMBANIS: I am.

Mr M. Hughes: The numbers would suggest something to you from that.

Mr P.A. KATSAMBANIS: We will leave that. It is a different and much larger jurisdiction that also utilises different forms of justices. We are not comparing apples with apples with that jurisdiction. I am aware of it. The principles are similar, but it is a very different justice system there, particularly in its breadth.

Sticking to this legislation, I would be interested in those numbers and what the likely additional costs will be. I would also be vitally interested in what additional services or funds will be provided to existing services that support victims of crime and what rights victims would have during the appeal process, because that is the unresolved issue here. Where do victims fit into this process?

As I indicated at the outset, we do not oppose this bill. We have some serious concerns and we unashamedly approach it from the perspective of victims; however, we strongly recognise that innocent people should not be incarcerated. We recognise that there have been failures in our justice system in the past. It is an excellent system. We would like to say it is perfect, but it is not infallible. Existing provisions to deal with its fallibility have been successfully utilised in Western Australia. We are not sure how much more this legislation will add to it from the perspective of allowing people to prove that they are innocent when fresh and compelling evidence comes to light, but we are wary of the impact on victims.

Mr J.R. Quigley: Just on that question of how many people are likely to come through the system, how many appellants and what resources, after further discussions with the Director of Public Prosecutions, who has an interest in maintaining convictions, and the head of jurisdiction at the court, we settled upon an amendment, which is on page 11 of the notice paper. It slightly modifies the definition of "fresh".

Mr P.A. KATSAMBANIS: We will discuss that.

Mr J.R. Quigley: We will have to go into consideration in detail to move that amendment. The director was satisfied—we will discuss that later—that this will also have a dampening effect on numbers.

Mr P.A. KATSAMBANIS: Okay, good. I was hoping to get to that during the consideration in detail stage, sooner rather than later. Thank you for that, Attorney General. We will briefly discuss that when we get to it.

Because of our concerns and the concerns I think the public has about this new and rather different, let us say even radical, regime that is being introduced, I am concerned about the time between the introduction of the new act and the first review that is due under this bill on the fifth anniversary of the day on which the Criminal Appeals Amendment Act 2019 section 4 comes into operation. There is never a right number, and in the Ticket Scalping Bill 2018 we just debated a moment ago, the Attorney General indicated that a five-year review period was good enough for a matter that is not of a serious criminal intent. But in these sorts of very serious matters, I would expect that a shorter review period, especially for the initial review, would be warranted—a two or three-year review process—to not only iron out some of the definitional issues, but also see what is happening in process. Perhaps that review could tease out that more resources are needed. I know that any Attorney General of any time would be happy to have a compelling argument for more resources. I put that on the table. I will not be running an amendment on it, because it will not get through this house unless the Attorney General and the government agree to it, but I put that on the table as a possibility, that perhaps we can shorten that period of first review to over two or three years, because it would be valuable in sending the message, particularly to victims of crime, that if anything is going wrong, we will review it quickly rather than leave it for five years. I know the Attorney General might say, "Look, if we think there's something wrong, we will fix it anyway; we won't wait for review."

Mr J.R. Quigley: Your helpful contribution is being viewed live by the DPP, who texted to say that it will take some years for the cases to work through, and that is why we've lobbed at five years. It might be in another place, so my adviser is saying that these things take quite a bit of time forensically to work through the system.

Mr P.A. KATSAMBANIS: I recognise that. I hope that it does not take years and years for each individual case. That also raises that concern again that it could be a long process from start to finish. It is a second or subsequent appeal. Again, that length of process adds to the problems, and the stress and strain on victims of crime and their families. That is the fear here. I take the interjection, and the information provided by the Director of Public Prosecutions, who is intimately aware of how this process works. I recognise that. We are trying to measure how long a piece of string is here, and it is a system that we know, at that top end of serious indictable offences, takes

a long time anyway, but again I put out in good faith that five years for a review is still too long. I think three years would be better, but that is for the Attorney General to consider. Otherwise, I will let other members who are interested in this legislation speak on it and again indicate that the opposition will not oppose this bill. I point out that we are not jumping out of our skins about this bill, particularly because we are concerned at the impact this will have on primary and secondary victims, and their families.

MR P.J. RUNDLE (Roe) [12.38 pm]: I rise to make a brief contribution to the Criminal Appeals Amendment Bill 2019, which the Nationals WA will not be opposing. It is an important bill. When I look at the track record of some of the cases that we have seen over the last 10, 15, 20 years and even further back, with the likes of Darryl Beamish, I see that those many cases over the years indicate that this legislation is required.

I take on board the comments of the member for Hillarys. We need to always look at the victims of crime as well as the perpetrators. The purpose of the bill is to amend the Criminal Appeals Act 2004, introducing the statutory right for an offender convicted of an offence on indictment to bring a second or subsequent appeal to the Court of Appeal against conviction if there is either fresh and compelling or new and compelling evidence relating to the offence. The bill allows for an offender convicted of an offence to bring a second or subsequent appeal to the Court of Appeal, and it is against the conviction, not against the sentence.

The definition of "fresh and compelling evidence" is important in respect of the offence or the conviction. In today's world, the advances in technology and DNA testing and the many other forensic advances that we have seen over the last couple of decades are probably the most important elements in creating fresh and compelling evidence. Another element is situations in which witnesses change their story or witnesses come forward who were not previously prepared to come forward.

The bill has significant safeguards to protect against the flood of appeal applications that I suspect will come forth if or when this legislation goes through, because as members can imagine, there is a raft of convicted people out there—or rather, in there—who will be looking to lodge appeals. As I have said before, I think it is absolutely essential that the victims are looked after and treated as a priority in this scenario. I am sure the Attorney General is well and truly aware of that. As we know, every time an appeal comes up, the victims and their families have to be dragged through it, and it can be very taxing and emotionally disturbing for them.

The provision for new and compelling evidence under proposed section 35I(4) requires the Court of Appeal to allow an appeal based on new and compelling evidence if it is satisfied that, in light of all the evidence, the evidence establishes that the offender is innocent. The effect of this provision is that in considering new and compelling evidence in combination with evidence previously adduced at trial, the Court of Appeal must allow the appeal if it is satisfied that the offender is innocent on the totality of evidence presented.

There is similar legislation in South Australia and Tasmania that the Attorney General has referred to in the past. As we know, the Attorney General is a proponent, one could say, of removing politics from criminal appeals. I note that in his second reading speech he spoke about the discretionary powers of an Attorney General who might potentially be reluctant to deal expeditiously with some of these matters. I think that is a comment to take on board because we do not want politics coming into this type of scenario. We do not want appeals sitting on the desk of the Attorney General for months or years on end. An advantage of this legislation is that it removes the politics. It does not reduce the powers of the Attorney General because the Attorney General will still have the power to look at appeals and refer them to the Court of Appeal. I guess it is a double-edged sword for a convicted person to have the ability to have fresh and compelling evidence considered, while the Attorney General still has the ability to put cases through to the Court of Appeal.

I turn to a couple of examples of wrongful convictions in Western Australia. There was the case of Andrew Mallard, who was wrongfully convicted in 1995 of the murder of Pamela Lawrence. After appeal to the High Court, his conviction was quashed and he was released in 2006. In the original case, the Mallard family sought the help of journalist Colleen Egan, who is actually in the gallery here today. There was some back-and-forward, and despite fresh evidence in the initial case, another appeal went to the High Court in 2005 and eventually he was released, in 2006. Despite the fact that there was an initial appeal and despite the fact that there was fresh evidence, there was also some concealed evidence. It was important that the eventual appeal went to the High Court and he was released in 2006. I am sure part of reason for the Attorney General's bringing this legislation forward is that he was involved in that case, along with Colleen Egan and Malcolm McCusker, QC. Mr McCusker is also very highly respected; I respect him very highly, and I know that he has been involved in several such cases over the years.

Another case was that of the Mickelberg brothers, who were wrongfully convicted in 1983 of the Perth Mint gold swindle. Ray served eight years, Peter served six years and Brian's conviction was overturned after he had served nine months in prison. Once again, there were several appeals over the decades. The police continued to provide false evidence but finally, in 2004, the Court of Appeal quashed the Mickelberg brothers' convictions. Following admissions of corruption by police officer Anthony Lewandowski, they were finally successful on their eighth appeal.

The case of John Button was another such case. He was convicted in 1963, served 10 years in prison, and was eventually acquitted in 2002—nearly 40 years later—based on fresh evidence relating to the confession of Eric Edgar Cooke.

The other night I was listening to a podcast about the 1961 conviction of Darryl Beamish. He served 15 years in prison and was acquitted in 2005, based once again on fresh evidence from Cooke's confession.

These are the sorts of cases that, as the years go by, have involved the provision of false evidence and police harassment. There are unfortunately any number of cases in which people have been left in jail for too long. That is a tragedy for those people, but we must always take into account the victims as well. That is so important.

Several other cases have happened during the years, such as the case involving Chris von Deutschburg. As was mentioned earlier, the case involving Scott Austic is still out there at the moment. They are the cases that support this legislation. It is important that fresh and compelling evidence is taken into account. I pointed out that the Attorney General will still have those powers, which I think is important. The proposed amendments in the bill will operate retrospectively, which is important. The National Party will not oppose this legislation.

Debate interrupted, pursuant to standing orders.

[Continued on page 4438.]

KALGOORLIE–BOULDER COMMUNITY ACHIEVEMENTS

Statement by Member for Kalgoorlie

MR K.M. O'DONNELL (Kalgoorlie) [12.50 pm]: Taya Giddha, Maddison Virgo and Jan Manansala, all aged 12, have each received Rotary Club of Boulder scholarships in recognition of their exemplary academic ability, community involvement and personal integrity. They will each receive $1 000 for the next three years to support their education needs.

Sixteen-year-old Cassidy Rose McGlade of Kalgoorlie was crowned the region's third Goldfields Girl on 27 April, following in the footsteps of last year's winner Nakyeta Nicholls and inaugural winner Breanna Taylor. During her victory speech, Cassidy said she hoped the crown would lead her to a future in which she could support other young Indigenous women and act as a role model for younger generations.

Eleanor Hill of Laverton received the Ambulance Service Medal. She commenced volunteering for St John Ambulance in 1996. She has been described as the backbone of the sub-centre.

Haylie and Phil Dowson support the Starlight Children's Foundation, which helps the wishes of seriously ill children come true. In 2018, they raised $77 000. This year, 2019, will be the ninth year they have been involved with the foundation.

Kim Eckert was recently bestowed the honour of an Order of Australia medal for all her hard work and dedication to the local environment and landscapes. Kim is the chief executive officer of the Kalgoorlie–Boulder Urban Landcare Group and has been part of the establishment of the eco-cultural classroom on site at the KBULG nursery in Karlkurla Bushland Park, which is used by Central Regional TAFE Kalgoorlie students in horticulture, conservation and land management courses. Kim was also recognised for her work as the chairwoman of the Kalgoorlie–Boulder Community Garden and vice-chairwoman of the Kalgoorlie Boulder Visitor Centre.

CITY OF BAYSWATER — YOUTH ADVISORY COMMITTEE

Statement by Member for Morley

MS A. SANDERSON (Morley — Parliamentary Secretary) [12.52 pm]: Last week, I had the pleasure of hosting the City of Bayswater's Youth Advisory Committee at Parliament. The Bayswater YAC consists of 10 locals aged 12 to 24 years, some of whom are still at school or doing further study, while others have just graduated. I want to congratulate Mayor Dan Bull and the City of Bayswater for their initiative in establishing the Youth Advisory Committee. Youth voices have been missing from our local government for many years.

I speak for myself and the members for Bassendean and Maylands when I say that we really enjoyed our long discussion. It was a breath of fresh air in a long parliamentary week. We talked about mental health, employment and increasing casualisation. We talked about drug use and pill testing. We talked about our journeys into politics and how the Parliament could be more representative, particularly of millennials. The federal election was the first time the number of millennials voting was higher than the number of baby boomers.

As leaders and decision-makers, it is important that we engage with young people and recognise the challenges they face. What we do not do now as policymakers, we leave for them to deal with in the future. I do not want to leave a warming planet that is suffering the impacts of climate change because we did not do enough. I had the benefit of a fully government-funded university degree. I was one of the first people in my family to go to university. Now, people are left with crippling debts before their careers have even begun. It was a given that I would get a full-time job, and I did. Now, people are working three or four jobs and sometimes do not get any hours. It is harder for people to buy a house and enter the housing market. Many of the things this group care about are the reason I got into politics—to change them for the better. I am proud of the work we are doing as a Labor government to make a better future.

REGIONAL AIRFARES

Statement by Member for North West Central

MR V.A. CATANIA (North West Central) [12.54 pm]: Flights to regional Western Australia are among the most expensive in the world. A recent Senate inquiry revealed Australia as the twelfth most expensive country to fly in, at $42 per 100 kilometres for short-haul flights. Yet when we drill down further, we find that air routes servicing regional destinations in WA are far more expensive. A flight from Karratha to Perth costs passengers an eye-watering $64 per 100 kilometres, while flights to Perth from Albany cost $59 per 100 kilometres, flights from Geraldton $52, and flights from Exmouth $51. Prices for flights to towns across the state are quite similar.

Our regional communities are already forced to pay more for everything from fresh food to petrol and insurance premiums. During tough economic times, paying through the nose when required to travel to Perth to see family or for medical appointments is a real kick in the guts.

The findings of the McGowan government's inquiry into regional airfares were handed down more than a year ago, yet no action has been taken. The McGowan Labor government made an election promise to lower regional airfares, but instead it has just cherrypicked popular destinations such as Broome and used taxpayer dollars to give Perth residents a cheap holiday option. Where are the affordable flights, Mr McGowan? Regional people living in Karratha, Albany, Geraldton and Exmouth are paying through the nose. It is outrageous.

THERESE GORTON — KINROSS PRIMARY SCHOOL

Statement by Member for Burns Beach

MR M.J. FOLKARD (Burns Beach) [12.55 pm]: I rise to bring to the attention of the house the fantastic work being done by Therese Gorton, the principal of Kinross Primary School. Therese has built up a great local community around her school, including Emma Oliver, a school board member; Nicolene Van Der Bank, president of the Kinross P&C; Ms Greer Prebble, P&C volunteer; Ms Jaqueline Brandis, schoolteacher, parent and member of the school board; and Donna Colgan, teacher and parent. What an outstanding job they are doing at the school.

I met with this group last week to discuss the planned $1.6 million early intervention centre at Kinross Primary School. We spoke of what a fantastic opportunity this facility will bring to the community of Kinross, offering programs and services for families with young children from birth to eight years of age. The centre will include a health service space that can be used by the area child health nurse and specialist speech pathologists. This area will also be used by the school psychiatrist and the school chaplain. It will include general officers' multipurpose rooms, a kitchen and storerooms for services such as playgroups, a school fathers group, before and after school care services, child health service clinics, checks and consultancy.

This new early intervention facility and its multi-use rooms at Kinross Primary School will be a vital community asset and provide our future generations with the best start to their education.

CHAMPION BAY SENIOR HIGH SCHOOL AND GERALDTON SENIOR HIGH SCHOOL

Statement by Member for Geraldton

MR I.C. BLAYNEY (Geraldton) [12.57 pm]: I would like to acknowledge the re-establishment of two senior high schools in Geraldton this year, marked by the reopening of the former John Willcock College as Champion Bay Senior High School by Minister Sue Ellery on 26 February. I would like to acknowledge a former member for Geraldton, Hon John Willcock, after whom the school was named. He was the member for Geraldton for 30 years and the fifteenth Premier of Western Australia, serving for nine years. The decision to re-establish the two senior high schools was announced at John Willcock College by former Premier Hon Colin Barnett and former Minister for Education Hon Peter Collier in November 2015. As part of the announcement, $20 million was allocated to buildings at John Willcock and $6 million to Geraldton Senior College.

Geraldton Senior High School opened in 1939 and then operated as part of the amalgamated Geraldton Senior College from 1997, offering years 10 to 12. John Willcock started as a junior high school in 1975, expanding to a senior high school in 1983. From 1997, it offered years 8 and 9 as part of the combined school. This year, Geraldton Senior High School has added year 7, and Champion Bay, year 10. Both schools will offer years 7 to 12 by 2021. I would like to congratulate Geraldton Senior High School and its principal, Greg Kelly, and Champion Bay Senior High School and its principal, Julie Campbell. Finally, I acknowledge the school captains of Geraldton Senior High School, Kyle Martin and Olivia McCarthy; and the captains of Champion Bay Senior High School, Jack Garland and Brooke Martin.

BEAUFORT STREET BUSINESSES

Statement by Member for Maylands

MS L.L. BAKER (Maylands — Deputy Speaker) [12.58 pm]: There has been talk of doom and gloom in store for businesses along Beaufort Street. I want to highlight the positives of the emerging Inglewood retail strip in my electorate.

In the last year a host of new businesses have opened up shop, including Kustom Klaws, Favourite Daughter, Chef and Co, Ninth on Merchant, Clear Mind Studio and The Stripey Horse. Kustom Klaws is run by "Boss Lady"

Kenjai, an international burlesque performer who has now set her sights on creating fabulous nail masterpieces. Favourite Daughter is a fantastic activewear and lifestyle store, brought to us by the family team behind Inglewood favourite Finlay and Sons.

These new offerings have popped up whilst community group Inglewood on Beaufort continues its place activation work in the background. The group continues to revitalise the strip with place activation activities, landscaping, lighting, public art and hosting the ever-popular Inglewood Night Markets on Monday nights during the warmer months.

The McGowan government secured funds for Inglewood on Beaufort to engage Curtin University researchers to carry out a study and produce a report on Inglewood crime prevention through environmental design. Its aim was to assess the specific experiences of Inglewood town centre businesses and users and tailor recommendations that could be taken by residents, shop owners and local government.

I encourage my colleagues to linger a little longer on Beaufort Street. Whether it is Inglewood, Bedford, Mt Lawley or Highgate, we can all do our part to support local business and make sure our town centres thrive.

Sitting suspended from 1.00 to 2.00 pm

VISITORS — CARCOOLA PRIMARY SCHOOL

Statement by Speaker

THE SPEAKER (Mr P.B. Watson) [2.00 pm]: I would like to welcome to the gallery Miss Sharon Hunt and the year 6 leadership group from Carcoola Primary School in north Pinjarra, in the member for Murray–Wellington's electorate.

QUESTIONS WITHOUT NOTICE

TAX CUTS — FEDERAL LABOR POLICY

485. Mrs L.M. HARVEY to the Premier:

I refer to the Premier's pathetic response yesterday when he refused, as Premier of Western Australia, to advocate for tax cuts for all Western Australians. How can the Premier involve himself in federal issues, namely the chaos and division within Labor associated with John Setka and Christy Cain, but cannot involve himself with desperately needed tax cuts for 1.4 million Western Australians that will help struggling households, small businesses, and much-needed jobs?

Mr M. McGOWAN replied:

The member has spent three days as opposition leader and is already repeating her questions. I will repeat my answer. We are the state Parliament. The Liberal Party in office put up land tax on small businesses across Western Australia three times.

Mr D.C. Nalder: What have you done?

Mr M. McGOWAN: The member for Bateman has a very short memory. I am going to remind him of what the former government did. There was $1.5 billion worth of land tax increases on small businesses across Western Australia during its time in office. That is what it did. But I had forgotten about another thing it did in office. Remember the cancelling of the payroll tax reduction? When the Liberal Party came into office, payroll tax reductions for small business were already scheduled and legislated. Who came to office and legislated to abolish them? The Liberals and Nationals did!

Several members interjected.

The SPEAKER: Member for Bateman!

Mr M. McGOWAN: When the Liberal–National government came into office —

Mrs L.M. Harvey: We raised the threshold.

Mr M. McGOWAN: The former government cut the legislated payroll tax reductions. From memory, Treasurer, I recall it also got rid of cuts to stamp duty when it came into office. Admittedly, that was 10 years ago, but I have a long memory. When the former government was in office, it put up fees and charges by more than $2 100 per household. That is what happened.

Several members interjected.

The SPEAKER: Member for Carine and member for Bateman, it is your last warning!

Mr M. McGOWAN: We are the state Parliament. This government is getting on with the job of fixing the mess we were left.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse!

Mr M. McGOWAN: We are getting on with the job of getting the debt and deficit we were left under control.

Several members interjected.

The SPEAKER: A question was asked. I want to hear the answer. There is just a wall of noise.

Mr M. McGOWAN: You may note, Mr Speaker, that yesterday's *The Australian* had on its front page a story about each of the states of Australia. The only state in Australia that has debt going down is Western Australia, under this Labor government.

TAX CUTS — FEDERAL LABOR POLICY

486. Mrs L.M. HARVEY to the Premier:

I have a supplementary question.

Ms S. Winton interjected.

The SPEAKER: Member for Wanneroo, I call you to order for the first time.

Mrs L.M. HARVEY: When is Labor going to stop focusing on its own internal chaos and division and start focusing on struggling Western Australians trying to cope with the government's $850 cost-of-living increases?

Mr M. McGOWAN replied:

I am very pleased the Leader of the Opposition asked that question. There are a few ways I can go here! If we are going to talk about internal divisions —

Several members interjected.

The SPEAKER: Member for Carine, I call you to order for the first time.

Mr M. McGOWAN: — I note that earlier this week, on their way into Parliament, the member for Carine and the member for South Perth indicated a few things. In respect of the Leader of the Opposition's announcement on policy, the member for Carine, otherwise known as "Two Votes", had this to say —

Several members interjected.

The SPEAKER: Members! Attorney General, I am on my feet. I call you to order for the first time.

Premier, you will call the member by his correct title, please.

Mr M. McGOWAN: The member for Carine had this to say in respect of the Leader of the Opposition's pronouncements on Western Power, trading hours and public sector pay. Mr Krsticevic said that the announcements were not policy —

Ms L. Mettam: You cannot say his name!

Mr M. McGOWAN: I am quoting something.

Ms L. Mettam: It is Krsticevic.

Mr M. McGOWAN: I think we discovered the person who voted for him, Mr Speaker! I think she has outed herself. There is the other vote.

Mr D.A. Templeman: Thank you, "member for Vase"!

The SPEAKER: Leader of the House, I call you to order for the first time.

Mr M. McGOWAN: The other voter has emerged! He had this to say —

Several members interjected.

The SPEAKER: All these interjections mean that there will be fewer questions to ask.

Mr M. McGOWAN: The member for Carine said this about the Leader of the Opposition —

Mrs L.M. Harvey: This is about your fees and charges.

The SPEAKER: Leader of the Opposition!

Mr M. McGOWAN: The Leader of the Opposition asked me about policy differences and division. He said this, and I quote —

> "I don't think they're necessarily policy announcements, I think they are, in terms of for example the trading hours discussion, … her view …

Mr A. Krsticevic: Read the whole thing!

Mr M. McGOWAN: I will read what the member for South Perth had to say when he came in. Maybe he is the other voter! The member for South Perth is known as a sympathy voter. He provides a sympathy vote when someone is going to get only one vote. He is known as that sort of person. He is a good fellow; he does that sort of thing. The member for South Perth had this to say —

> "She is going to make some statements about what she would like to do, but in the Liberal Party even the leader has to take those statements to the partyroom …
>
> "Getting closer to the election I think we will have a better look at what our policies will be."

Are the member for Carine and the member for South Perth correct?

Several members interjected.

The SPEAKER: Member for Vasse, I call you to order for the first time.

Mrs L.M. Harvey: You were asked a question about fees. Answer the question about fees and tax cuts.

Mr M. McGOWAN: Clearly, when it comes to —

Mr A. Krsticevic interjected.

The SPEAKER: Member for Carine, I call you to order for the second time. This is going to be a very short question time.

Mr M. McGOWAN: Clearly, when it comes to division, the Liberal Party has a range of views. The Leader of the Opposition already has senior members of her team undermining her position on policy matters.

Members might recall that yesterday I asked a question about the Leader of the Opposition and her contact with Mr Cain of the Maritime Union of Australia, considering she is asking me about these matters. On 9 May 2018, she said, "When I next contact Mr Cain." To me, that implies a lot of contact between the Leader of the Opposition and Mr Cain. I think the Leader of the Opposition needs to answer these questions. She has been in touch with him.

Mrs L.M. Harvey: I was talking about the Westport Taskforce.

Mr M. McGOWAN: So the Leader of the Opposition has been in touch with him about these matters?

Mrs L.M. Harvey: No. I was quoting what he said in the paper.

Mr M. McGOWAN: "When I next contact Mr Cain."

Mrs L.M. Harvey: I have not contacted him yet.

Mr M. McGOWAN: What was that?

Mrs L.M. Harvey: This is about your inability to support tax cuts, and your fees and charges. Stop diverting.

Mr M. McGOWAN: I think it is a worthwhile question.

Mr A. Krsticevic interjected.

The SPEAKER: Member for Carine, you have three; one more than you got in the vote!

Mr M. McGOWAN: I think it is a worthwhile question for people about the contact between the Leader of the Liberal Party and Mr Cain because she has indicated already that she has been in touch with him.

Mrs L.M. Harvey: He and I agree on Roe 8.

The SPEAKER: Leader of the Opposition, this is your last warning.

Mr M. McGOWAN: So you have been in touch with him?

Mrs L.M. Harvey: I agree with him on Roe 8 and Roe 9.

Mr M. McGOWAN: So you have been in touch with him?

Mrs L.M. Harvey: I agree with him on Roe 8 and Roe 9.

Mr M. McGOWAN: So the Leader of the Opposition has been having conversations with him—correct? The Leader of the Liberal Party has been in touch with Mr Christy Cain. I think that is a question worth asking of her.

The SPEAKER: Are you finished, Premier?

Mr M. McGOWAN: No, not quite, Mr Speaker.

When it comes to division, I think the Liberal Party is all at sea on policy and it shows that it is prepared to have all sorts of communications. Questions need to be answered by the Leader of the Liberal Party about what those communications are.

WESTERN AUSTRALIAN JOBS ACT

487. Ms E. HAMILTON to the Premier:

Can the Premier update the house on how the McGowan Labor government's Western Australian Jobs Act is creating more jobs for Western Australians and delivering more opportunities for local businesses, contractors and suppliers?

Mr M. McGOWAN replied:

I thank the member for Joondalup for the question. Prior to answering it, on behalf of the member for Jandakot, I welcome the year 6 students from St John Bosco College and their teacher, Kalinda Knight. I also welcome the students from Carcoola Primary School, whom I met at lunch a few moments ago.

The government has been committed to ensuring that we secure more work for Western Australians on major projects such as the Matagarup Bridge, which was, of course, languishing in a workshop somewhere in Malaysia—a couple of pieces of metal on a fabrication floor in Malaysia—under the last government. Now we can see that it has been built by Western Australians. It looks magnificent over the river. We brought that project back to Western Australia and had it built here using Western Australian firm, Civmec. Obviously, we have ensured that we take steps to ensure that Western Australian people—bricklayers, plumbers and electricians—are employed and we do not fast-track occupations of that nature into Western Australia when people here are unemployed. On top of that, we introduced our Western Australian Jobs Bill, which came into operation in October. It means that companies or businesses bidding for government work need to submit a local participation plan outlining apprenticeships, traineeships, local content and the like.

Since October, 46 projects have required local participation plans. The percentage of Western Australian work on those projects is at more than 90 per cent. That means that Western Australian businesses and Western Australian suppliers are securing more than 90 per cent of the work here in our state. Under these participation plans, 7 624 local jobs have been created and we are ensuring that small businesses in the regions in particular have help in tendering, with $300 000 of support in grants announced in the last month. We have also put staff into development commissions to support those sorts of initiatives to ensure that the actions as a result of the Western Australian Jobs Act support Western Australian regional small and medium–sized enterprises.

Further news out of this 90 per cent local content is that 340 apprenticeships and traineeships have been created as part of this work for Western Australians—340 apprenticeships and traineeships across the state. That contrasts, of course, with what occurred under the last government when it put up TAFE fees by 500 per cent. When the Leader of the Opposition was in government, TAFE fees for important trades went up 500 per cent; there was a 500 per cent increase for Western Australians wishing to attend TAFE. Of course, we froze fees, as opposed to the 500 per cent increases by the Liberal Party. We saw a dramatic cut in the number of people undertaking apprenticeships and traineeships under the last government, which is another thing the Liberal Party in particular should apologise for. But something this government is focused on is local apprenticeships, local traineeships and local jobs.

Parliamentary Assistant — Paddy Loney — Statement by Speaker

THE SPEAKER (Mr P.B. Watson) [2.14 pm]: Members, before we go on, I would like to wish Paddy Loney well. It is his last day today. We know Paddy from the bar and the chamber. He has a very interesting job to go to. He will be an anaesthetist technician at St John of God hospital. Maybe I might need him to calm down some of the members!

[Applause.]

PAYROLL TAX

488. Mr D.C. NALDER to the Premier:

Why is the Premier waiting 12 months to give consideration to payroll tax relief, given concerns expressed by captains of industry such as Michael Chaney and Gina Rinehart and when 90 000 Western Australians do not have a job and the domestic economy is in recession?

Mr M. McGOWAN replied:

It is because the previous government left us with $40 billion of debt. It left us with deficits of over $2 billion a year. It left us with the worst debt per capita of anywhere in Australia at that time. That is why. We now find there is a government that is focused on fixing the former government's mess. I do not know why the member for Bateman cannot get that through his head. Every time he asks this question, I will repeat his government's record. That is what it left us and the member for Bateman knew it because when he challenged Colin Barnett for the leadership, that was one of his grounds—the terrible financial management of the former government. He said that that was why new leadership, as he claimed, was needed in the Liberal Party. Two and a half years later, he has amnesia about the reason why he challenged Colin Barnett for the leadership. The member has amnesia.

Obviously, as I have said on many occasions, dealing with payroll tax is desirable, but we have to also manage the state's finances responsibly. As I will repeat, yesterday's front page of *The Australian* showed that in every state in Australia debt was going up significantly, bar one—Western Australia, because of our good financial management.

I will make another point. In New South Wales, which sold off its electricity utilities, debt is going from zero to $38 billion. The New South Wales government sold off those utilities and went on a spending spree, and it now does not have solid financial management, and look at what is happening. By 2022, its debt will go to $38 billion from zero.

Dr M.D. Nahan interjected.

The SPEAKER: Member for Riverton, I call you to order for the first time.

Mr M. McGOWAN: I am interested, when the member for Bateman stands and asks his supplementary question, whether he still thinks Western Power should be sold.

PAYROLL TAX

489. Mr D.C. NALDER to the Premier:

I have a supplementary question. Given iron ore is on track, and that and the GST solution combined to add $6.5 billion in revenue over 2015–16, how many businesses need to close and how many jobs need to be lost before the Premier acts on this important issue?

Mr M. McGOWAN replied:

I asked the member for Bateman a simple question: is his position still to sell Western Power?

Mr D.C. Nalder: I am not allowed to answer.

Mr M. McGOWAN: Is that his position?

It is a question the press could ask the member for Bateman. When he is coming into the house next week, they can put a microphone in front of him and ask him the question.

Point of Order

Mr S.K. L'ESTRANGE: Standing order 75 provides that questions may be asked of ministers. They are not to be asked of the opposition.

The SPEAKER: They can be asked, but they do not have to answer. That is the difference. If you ask a minister, they have to answer. It is not a point of order. Are you finished, Premier?

Questions without Notice Resumed

Mr M. McGOWAN: I repeat: obviously, payroll tax is an issue that business speaks to us about. Clearly, it would have been better had the Liberal Party not cancelled payroll tax cuts when it was in office. It clearly would have been better had it not cancelled stamp duty cuts when it was in office. Clearly, it would have been better had it not put up land tax three times in a row. We now have the legacy the former government left us. The Treasurer, cabinet, the government and I are dealing with it better than any other state in Australia.

STATE FINANCES — FINANCIAL MANAGEMENT

490. Ms J.M. FREEMAN to the Treasurer:

I refer to the responsible financial management of the McGowan Labor government, which has already seen a $4.1 billion reduction in the debt it inherited from the previous Liberal–National government.

(1) Can the Treasurer outline to the house how driving down debt will benefit all Western Australians?

(2) Can the Treasurer advise the house how this government's strong fiscal resolve to reducing net debt compares with that of other states?

Mr B.S. WYATT replied:

(1)–(2) Yesterday's *The Australian* carried on the front page a story about the level of debt that has been taken on by the states of our nation under the headline "States climb $180bn debt mountain". It included a nice colourful graph highlighting the net debt of all the states now, and the net debt they are expected to have in 2022–23. Only one state had the 2022–23 graph smaller than the 2017–18 graph. Of course, that was Western Australia. I am intrigued by the growing reference by the opposition to the term "domestic recession" and its complaints about that. In the years 2012–13, 2013–14, 2014–15, 2015–16 and 2016–17 the state final demand of this nation did not grow—not once. Into that economy the Leader of the Opposition and the then Minister for Finance, the member for Bateman, introduced three increases in land tax, which is why historically we see rates of negative equity, as the member for Bateman likes to talk about, increase more rapidly for owner–occupiers. We see that increase more rapidly now in investment properties. Why is that? It is because of the three increases in land tax that the Leader of the Opposition and the then finance minister, the member for Bateman, introduced into that domestic recession—five years thereof. In the last two years of the former government the state economy shrank by 11 per cent. It stripped out over $6 billion from the domestic economy. They talk about state final demand and the fact that turning that ship has been an enormous effort by this government, and it is turning. That is why Western Australia's domestic economy and gross state product are expected to grow the strongest across the forward estimates compared with all other states.

The state is also expected to have the strongest employment growth across the forward estimates compared with all states in the nation, as opposed to the former government whose entire second term lost a net 670 jobs. In four years of government it did not increase the workforce at all. That is the record of the former Liberal–National government. I know members opposite are agitated by the fact that the Premier has been able to secure a fairer GST arrangement for WA, but of course it is not all about revenue, and that is the fundamental problem. Already, commitments have been made by the Leader of the Opposition. She has already said that we should give the wage rise as asked—just a lazy $850 million impact across the forwards. She has already committed to Roe 8 and Roe 9; a $1.8 billion impact because the state will have to fund its component of those projects as well. However, it is not just about revenue; it is also about what we do with what we can control. That is why, as the Premier outlined yesterday, Chris Rodwell, the head of the Chamber of Commerce and Industry of Western Australia, says —

> "Western Australia is … the only state managing to reduce its debt over the forward estimates." Puts in perspective expenditure control and debt reduction strategy of WA Government. Not just about iron ore royalties and GST distribution.

That is correct. I suspect that with the rhetoric being run by the Leader of the Opposition, the DNA built into the mob opposite over 20 years in government highlights the fact that regardless of what the revenue of the state will be, they will always spend above and beyond it. That is what we know about the Liberals: they cannot find a bucket of money that they cannot spend more than once. That is what they do. They always have the response: find yourself a problem and you can always spend your way out. Those days are over. That is why we are getting credit rating upgrades. That is why organisations such as the Chamber of Minerals and Energy and the CCI make those sorts of positive comments about the financial management of this government. It is always in comparison. It is a comparison to the eight and a half years of what the Liberal–National government left us in 2017.

CASTLETOWN PRIMARY SCHOOL

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

I refer to the litany of building and maintenance issues at the Castletown Primary School in my electorate, which has had more than 170 students relocated due to health and safety concerns.

(1) Will the Premier urgently task his Minister for Education and Training to visit the school to meet with the board in order to gain a thorough understanding of the issues?

(2) Will the Premier provide an undertaking to provide the full amount required for remediation works identified in a building condition assessment report from 2013?

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

(4) Will the Premier today acknowledge the uncertainty, fear and disruption caused to staff and students at Castletown Primary School?

Mr M. McGOWAN replied:

I thank the member for some notice of the question.

(1)–(4) During upper house estimates earlier today, the Minister for Education and Training gave an undertaking to provide a detailed answer into the discrepancy between the outstanding maintenance issues identified in 2013 and those identified more recently. The minister has also asked that a senior member of the department visit schools. The building condition assessment report identified priority maintenance issues and provided data and information to inform future programs of improvements and preventive maintenance. The Department of Education commits to address high–priority maintenance issues identified in BCA reports. Schools may choose to use their school funds to undertake some of those works. The department has spent approximately $370 000 on repairs and maintenance at Castletown Primary School since the 2013 BCA report. Currently, no capital works are planned for the school. The Department of Education and the Department of Finance's Building Management and Works liaise closely with the school when maintenance or improvement works are undertaken to minimise the operational impact.

CASTLETOWN PRIMARY SCHOOL

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

I have a supplementary question. Does the Premier think it is appropriate that the school board has to put out a media release to jolt the government and the Department of Education into action to protect their kids?

Mr M. McGOWAN replied:

I note that the issues at this school have been around since 2013. I note that over that period $370 000 has been spent on repairs and maintenance at the school. I am advised by the department that the issues include flaky paint and mould in the school and some plastic coming off some material in the roof. In any event, the department and the government are working cooperatively with the school on these issues. As I said, a senior member of the department will visit the school shortly to examine the issues.

PLANNING — HOUSING DIVERSITY

493. Mr J.N. CAREY to the Minister for Planning:

I refer to the state Labor government's commitment to promoting housing diversity that drives the local economy and provides Western Australians the opportunity to live close to public transport and employment.

(1) Can the minister advise the house whether she is aware of any local governments that are working to deliver increased activation for their community that supports small business and creates jobs?

(2) Can the minister advise the house whether she is aware of anyone who is seeking to undermine this positive work?

Ms R. SAFFIOTI replied:

(1)–(2) I thank the member for Perth for that question and for his commitment to creating more housing diversity and support for small business in his community. This week the City of Subiaco passed amendments to local planning scheme 5. Basically, the City of Subiaco worked to get a position to put forward to the state government. I welcome the work undertaken by the mayor, in particular, to drive a decision to allow the state to then have a look at it. However, it was very clear that it was hard work from the mayor and hard work from all the community to get an outcome that will progress to the Western Australian Planning Commission and also to me as minister. A lot of density is being proposed and being agreed to, and it is density in the right places. The work being undertaken by the government around Subiaco Oval and the old Princess Margaret Hospital for Children site will increase vibrancy and housing diversity and really allow density to grow in that area.

Of course, as I have always said, we are looking at an outcome that balances the needs of the community together with the need to continue to grow diversity and density in the right location. The City of Subiaco put forward a plan, unlike the City of Nedlands, which walked away from the whole process and would not put forward an agreed plan to the state. I congratulate the work of the mayor and administration of the City of Subiaco in putting forward a plan to the state. I welcome that. Some in the community want to undermine that. The main culprit is the Leader of the Opposition. The Leader of the Opposition questioned the need for density because "WA's population growth had flatlined". Business associations in the western suburbs are calling for planning certainty.

Several members interjected.

The SPEAKER: Members, you might not like to hear it, but she is saying it.

Ms R. SAFFIOTI: Something happened this week; the City of Subiaco put forward a plan—a plan that the Leader of the Opposition said she would revoke. She said that she would reverse infill planning. A plan has been set forward by Subiaco, which the Leader of the Opposition said she would turn around—remove—which would result in more uncertainty for businesses in WA and more uncertainty for the wider community. Does the Leader of the Opposition support the City of Subiaco plan?

Dr D.J. Honey: It's rubbish.

The SPEAKER: Member for Cottesloe!

Ms R. SAFFIOTI: The member for Cottesloe said it was rubbish. What we have seen from the Leader of the Opposition is a captain's call. She has taken policy leadership from the member for Cottesloe on this issue. This week we have had the flattest opposition that I have ever seen. The member for Churchlands has completely disengaged. The member for Bateman, who I think is a genuinely nice person, has been trying to help by explaining state final demand and gross state product. The member for Nedlands has sat there dazed and confused: "How did I get here? I don't know what I'm doing here, but I'm here." The Leader of the Opposition—the Leader of the Liberal Party!—managed to be criticised by the Chamber of Commerce and Industry of Western Australia within a week of gaining her position. No Leader of the Labor Party has ever achieved that outcome! The opposition is a complete mess. Its policies are all over the place. It is the flattest, most hopeless opposition that I have seen in this place.

HEALTH — HOSPITAL BEDS

494. Mr S.K. L'ESTRANGE to the Premier:

Let me liven it up for the Minister for Transport!

In an answer to a question on notice received on 13 June from the Minister for Health, it was revealed that more than 280 hospital beds across the health system were available for use, but were closed. Will the Premier direct

the Minister for Health to immediately open those beds given record ambulance ramping, emergency department wait time blow-outs and the chronic flu season?

Mr M. McGOWAN replied:

What has occurred in Western Australia with the influenza outbreak is a very serious matter. Twenty-nine people have lost their lives to this matter over the course of 2019. It needs to be treated with the utmost seriousness and not politicised.

Several members interjected.

The SPEAKER: Members, wait for the answer.

Mr M. McGOWAN: Twenty-nine people have lost their lives; it does not deserve politicisation. Department of Health staff and hospital staff are doing their utmost to deal with a very serious situation. I am advised that just 15 per cent of people who present with influenza need to be admitted to hospital. Most are dealt with in emergency departments—they are triaged, treated and discharged home. On occasion, a bed might be available in one part of the state that obviously is not available to someone living in another part of the state, and that is the reason that some beds are empty compared with some other areas. I just want to repeat that I visited a hospital yesterday morning with the Minister for Health. I met with some of the staff who have been dealing with this situation. People only have to walk around the streets and listen to know that a very serious matter is going on before us. The relevant staff across the state are dealing with this as best they can.

HEALTH — HOSPITAL BEDS

495. Mr S.K. L'ESTRANGE to the Premier:

I have a supplementary question. We are not politicising deaths in hospitals; we are talking about resourcing. Is the Premier forcing our state health service providers to cut costs and hold back resources or will he provide additional resources to cope with this sudden increase in demand at our hospitals?

Mr M. McGOWAN replied:

Under this government, the resourcing of hospitals has increased and the hospital budget across Western Australia is going up by between 2.8 and three per cent per annum. As I said to the member a moment ago, 15 per cent of people with influenza need to be admitted to hospital; the rest are triaged and discharged. As I heard yesterday from a senior doctor, most people visit their GP or a doctor in the community to get whatever assistance they need and then they take themselves home. Most people are managing themselves well in their houses and communities. Yesterday I advised people who are suffering from influenza to please stay at home until they are better and to please ensure that their children stay at home from school until they are better. That is the best advice I can provide. I urge everyone to have the respect that the people in our hospitals who are coping with this difficult situation deserve.

GRIFFIN COAL — EWINGTON MINE

496. Mr D.T. PUNCH to the Minister for Mines and Petroleum:

Can the minister update the house on the current situation at Griffin Coal's Ewington mine, which was impacted by fire earlier this morning?

Mr W.J. JOHNSTON replied:

I thank the member for the question. I will inform the house of some advice that I have received. This refers to the Ewington mine of Griffin Coal, the company that the member for Riverton asked to shut down and leave the state. Around 2.00 am this morning, there was a significant fire at the Griffin Coal mine load-out facility located on the Ewington mine site near Collie. The site emergency response team attended the scene, together with fire crews from the local area—Bunbury, Eaton, Collie and Donnybrook—and, I understand, the emergency response team from the neighbouring mine. Mining operations were suspended and non-essential personnel were sent home. The fire was brought under control at about 4.00 am. No injuries have been reported. Mine safety inspectors from the Department of Mines, Industry Regulation and Safety attended the site very early this morning and are investigating the incident. The fire has impacted two conveyors, conveyors 11 and 12, that feed the coal storage bins above the train load-out facility. The site is unable to load coal trains without this facility until the conveyors are repaired. The company is exploring other options for transporting coal to its customers. The main customers that are impacted are Worsley Alumina and Cockburn Cement. The coal storage area and infrastructure used to supply the nearby Bluewaters power station was not impacted by the fire. The Public Utilities Office has been in touch with Bluewaters and indicated that it is not currently concerned about the situation. Bluewaters expects that the infrastructure can be re-energised and restarted once the area is declared safe. Accordingly, Bluewaters is expecting to experience only a one-day interruption to its coal supply and during this period it will be using coal from its stockpile.

WATER RESOURCES MANAGEMENT — LEGISLATION

497. Mr D.T. REDMAN to the Minister for Water:

I refer to the minister's media statement on 23 August last year in which he announced that drafting would start on the water resources management bill and to the ongoing consultation that is occurring as we speak.

(1) How will the outcomes of ongoing consultation guide the drafting of the legislation given that the legislation is nearly a year into its drafting?

(2) Will the new legislation include a shift from water licences to water entitlements, which has been described in previous iterations of this important legislative reform?

Mr D.J. KELLY replied:

(1)–(2) I am pleased the member has asked that question. New water legislation was something that I think every Minister for Water under the Barnett government promised, with the exception of the member for Nedlands. I do not think he did anything in that portfolio while he was the minister. Certainly, when the member for Warren–Blackwood was the Minister for Water, he promised new water management legislation.

Mr W.R. Marmion interjected.

The SPEAKER: Member for Nedlands!

Mr D.J. KELLY: When the Leader of the Nationals WA was the Minister for Water, she promised it, and in eight and a half years, the Barnett government never delivered it. So, I am pleased that the member has a keen interest in this bill.

A water resource management reference group has met and continues to meet under this government to talk through these issues, and we continue to have discussions with that group about this bill. That bill is progressing. We are continuing to work on it. When the bill is drafted, the member will see the final contents of it.

WATER RESOURCES MANAGEMENT — LEGISLATION

498. Mr D.T. REDMAN to the Minister for Water:

I have a supplementary question. To give us confidence that the minister is over his brief, can he describe the difference between water licences and the water entitlement?

Mr D.J. KELLY replied:

You are a funny guy!

Several members interjected.

The SPEAKER: Members! Member for Warren–Blackwood!

Mr D.J. KELLY: If the member wants me to explain to him the difference between a licence that has to be renewed, whether it be in one year or 10 years, and having an entitlement—under the regime that is contemplated under that legislation—to a share of a consumptive pool, he should ask for a briefing. There is a clear difference between a licence and having an entitlement to a share of a consumptive pool. If the member wants me to give him more details, I am more than happy to ask for a briefing.

Mr Z.R.F. Kirkup interjected.

The SPEAKER: Member for Dawesville!

Mr D.J. KELLY: Any other questions the member has, let me know. The member could explain why in eight and a half years he never did it. He could explain that.

Several members interjected.

The SPEAKER: Is everybody finished?

FIONA STANLEY HOSPITAL — FAMILY BIRTHING CENTRE

499. Mrs L.M. O'MALLEY to the Minister for Health:

I refer to the responsible financial management of the McGowan Labor government that has meant more funding in hospitals and more investment in services that put patients first.

(1) Can the minister update the house on the $1.8 million investment in a new family birthing centre at Fiona Stanley Hospital?

(2) Can the minister advise the house how this will support expecting mothers in the southern suburbs?

Mr R.H. COOK replied:

(1)–(2) I thank the member for the question. She is quite right. As the Premier said a little while ago, we have been increasing the funding for hospitals year on year, at around between 2.8 per cent and 3.5 per cent

across the forward estimates. We can do that because of sound financial management. We can also provide capital funding for much-needed upgrades and changes to the way we deliver services.

As every member in this place would understand, great work has been done at King Edward Memorial Hospital for Women over the last 27 years at its birthing centre, allowing mothers with low-risk births to have their child delivered in the way that they want. One of the aspects of our putting patients first policy was to provide more choices for mums about their birthing options. We committed to the development of a new family birthing centre at Fiona Stanley Hospital to provide that option for mums in the southern suburbs. I am very pleased to say that the construction of this is coming along nicely to create a more home-like, holistic birthing centre. It has been designed in consultation with a group of mums who have utilised Fiona Stanley Hospital maternity services in the past few years. The maternity ward at Fiona Stanley Hospital does a great job, and this will be a terrific addition. Following a period of staff training, the centre will start enrolling pregnant women in the program from August this year. The new family birthing centre will provide women in the south metropolitan catchment with access to midwifery-led care, through their antenatal, labour, birth and postnatal periods, currently not available south of the river. The centre will also feature three birthing suites, two of which have inbuilt birthing pools and another with a portable pool.

This sort of facility is very different from the feel of the rest of the hospital. It is a really important aspect of the way we provide health care in Western Australia and because we want to put patients first—put the consumer in charge of the services they receive. It is terrific that we are now seeing the extension of a family birthing centre from King Edward Memorial Hospital to Fiona Stanley Hospital as well.

SMALL BUSINESS — BEAUFORT STREET

500. Ms L. METTAM to the Premier:

Yesterday, the Leader of the Opposition, shadow Treasurer and I met with the people in struggling businesses on Beaufort Street. What does the Premier say to the business owners of Beaufort Street who complain that the significant falls in discretionary expenditure under his watch, as a result of his $850 a year cost-of-living increases, is hurting their businesses?

Mr M. McGOWAN replied:

I have a great deal of empathy, sympathy and support for small business in Western Australia. I assume when the member for Vasse spoke to them, she advised them of the previous government's three land tax increases on them, and its $2 000-plus increases in fees and charges when it was in office. I am sure she advised them of that, because that would be in the interest of full disclosure.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse!

Mr M. McGOWAN: I want to ensure that the people of Beaufort Street—a very important strip, I used to spend time there some years ago—are aware of a few things. This government has done a range of things to support them. Firstly, we implemented liquor reform to cut red tape for operators. The Minister for Racing and Gaming has put that in place—another round. The member for Vasse might recall that the last time Labor was in office, we had to overcome the opposition of some members of the Liberal Party in order to provide the small bar and restaurant reforms that allowed people to sell liquor without a meal and to open up small bars. All those small bars we see across Western Australia, of which there are now 129, are a consequence of those reforms that Labor brought in last time it was in office. On top of that, the member can advise them of the new employer incentive scheme to provide support for small businesses to employ apprentices and trainees. That was not in place before. She can advise them of the fact that under this government the increases in the price of water and electricity have been half the rate of what was put in place under the last government. She can advise them of the fact that we are bringing in a range of subcontractor reforms, so that those people who are subcontractors—whom some of them may well be, or they may have family members engaged in subcontracting—will have greater certainty and security when they contract to bigger businesses. She can advise them of the support that we are providing the Small Business Development Corporation to ensure that it has the financial and legislative capacity to take action on their behalf, and also that we passed the Western Australian Jobs Act, to ensure, as I outlined before, that there is as much spend as possible. We now have 90 per cent local content in those Western Australian projects I referred to. The member can advise them of all those things next time she goes there.

SMALL BUSINESS — BEAUFORT STREET

501. Ms L. METTAM to the Premier:

I have a supplementary question. Can the Premier confirm that the statistics released by the Australian Bureau of Statistics today highlight that his economic settings have forced 80 000 people to leave the state since he was elected and that fewer customers is a major reason that small businesses are closing —

Several members interjected.

The SPEAKER: Member, I want to hear the question. Do it again, please.

Ms L. METTAM: Can the Premier confirm that the ABS statistics released today highlight that his economic settings have forced 80 000 people to leave the state since he was elected and that fewer customers is a major reason that small retailers and businesses are closing on Beaufort Street?

Mr M. McGOWAN replied:

I have those statistics, and the member for Vasse should not be misleading. In annual average terms, Western Australia's population increased by 0.8 per cent, or 21 515 people, in the year to December 2018. That is the highest rate of population growth since the December quarter 2015. On top of that, since this government has been in office, in net terms 3 000 additional small businesses have been created in Western Australia.

Ms L. Mettam: Thirty thousand small businesses gone.

The SPEAKER: Member for Vasse!

Mr M. McGOWAN: No, in net terms, since this government has been in office—the word "net"—3 000 additional small businesses have been created in Western Australia.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse!

Mr M. McGOWAN: But I am interested to know whether the member for Vasse agrees with the move by the Leader of the Opposition in relation to trading hours. Does she agree with the Leader of the Opposition about trading hours?

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse, I call you to order for the second time.

Several members interjected.

Mr M. McGOWAN: At last! At last the Deputy Leader of the Opposition has awoken! The Deputy Leader of the Opposition, like a grumpy bear, has emerged from his cave.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse, I call you to order for the third time.

Mr M. McGOWAN: The Deputy Leader of the Opposition is a very grumpy, urbane and well-dressed bear! A Volvo-driving bear from one of the most expensive caves in the national park!

Those are the facts, member for Vasse.

Ms L. Mettam: Your spin on them.

Mr M. McGOWAN: I have the facts before me.

Ms L. Mettam: I've got my own facts.

Several members interjected.

Mr M. McGOWAN: Let the record show: she said she has her own facts!

I have the exact figures. The net growth in small businesses over the last year in Western Australia is 2 433. The growth in the number of small bars since the reforms passed by Labor were introduced is 129. In annual terms, Western Australia's population increased by 0.8 per cent, or 21 515, in the year to December 2018, which is the highest since 2015.

Ms L. Mettam interjected.

The SPEAKER: Member for Vasse, you are on three!

Mr M. McGOWAN: Case closed.

The SPEAKER: That is the end of question time.

CRIMINAL APPEALS AMENDMENT BILL 2019

Second Reading

Resumed from an earlier stage of the sitting.

MR M. HUGHES (Kalamunda) [2.51 pm]: Given the contributions thus far to debate on the Criminal Appeals Amendment Bill 2019 by the lawyers present—I think we have a couple more to follow—I am a bit hesitant to make a contribution. I listened with interest to the observations made by the member for Hillarys and I clearly respect his position—that this government is bringing forward legislation that needs to ensure a sensitive balance between consideration of the needs of victims of crime and those of people who may find themselves in circumstances of wrongful conviction.

From where I stand, the government has a strong record on protecting the interests of the victims of crime. Our Attorney General has been a very strong advocate for ensuring that we have legislative reform in that area. Before he leaves, I have a question for the member for Hillarys. When he talks about victims of crime, I am interested to know about those members of the Western Australian public who have been wrongfully convicted and are, in effect, innocent of the crimes for which they have been convicted. I ask the member for Hillarys: is a prisoner who has been wrongfully convicted and is serving a significant term of imprisonment as a result of that conviction not also a victim of our judicial system? I would argue that such a person clearly is, and we as a Parliament should be fulsome in our support for legislation that ensures speedier access to the appeals process. I understand that the member for Hillarys is supportive, albeit somewhat cautiously.

I welcome the provisions contained in this bill. Why? It is commonly understood and generally accepted by the legal profession that the rate of wrongful conviction runs at about one or two per cent. In most areas of human endeavour, an accuracy rate of 98 to 99 per cent would be seen as close to perfect; I think everyone would agree with that. However, that is not the case for a person who has been wrongfully convicted of a crime and sentenced to imprisonment.

We should remind ourselves that we currently have approximately 6 900 adult prisoners in Western Australia. Of those, 4 700-plus have been convicted of the most serious offences, including murder, homicide, and assault and battery; there is a whole list, and I will not go through them all. Using simple arithmetic, given a total prison population of 6 900, we can reasonably say that there are potentially between 70 to 140 people in our prisons who are currently serving sentences for crimes that they did not commit. As the member for Hillarys pointed out, some of those sentences are quite short in duration, so for some of them perhaps not any appeals process could be brought on in time for those wrongs to be corrected.

However, we are talking about serious crimes, and as an aside I would like to commend the criminal justice review project being undertaken by the Sellenger Centre for Research in Law, Justice and Social Change at Edith Cowan University. That project is committed to pursuing the exoneration of those who have been wrongfully convicted. By identifying the factors that contribute to wrongful conviction, the project seeks to facilitate law reform, equity and equality for all who encounter the justice system process. Within that, we talk about not only the victims of criminal behaviour but also, I would argue, those people who have been wrongfully convicted. They are victims of a justice system that—given that human judgement is brought to bear on it, as the member for Hillarys quite rightly put it—is not perfect. If we think of any of our children sitting in a lonely cell, knowing that they have been wrongfully convicted—I will later enunciate some of the reasons why that might be the case—we would not want to leave any stone unturned until their innocence was brought to light.

I would argue that under the procedures currently available to us, the process of righting such wrongs is fraught with difficulty, as the Attorney General mentioned in his second reading speech. Currently, the power to have a case re-examined rests essentially with the Attorney General. The member for Roe enumerated many historical cases of wrongful conviction that tell us that this process is extremely difficult to activate and that those who are ultimately proved to have been wrongfully convicted of particularly serious crimes can languish in prison for decades.

It is proper to remind ourselves that the executive government and the Attorney General of the day are elected politicians who keep one eye on the power of the ballot box.

The more timorous Attorneys General of this state—that does not include the current Attorney General—may have been disposed to want to be seen as hard on crime and, as a result, have proved extremely reluctant to grant leave of appeal. Having a politician make a decision on a matter as serious as this in the court of public opinion is not ideal, to say the least, particularly when the person seeking the appeal has been convicted of murder or a similar heinous crime.

As I understand it—I can be corrected on this—the process of providing institutional solutions for the deficiencies of the criminal appeals process emerged initially in the United Kingdom, following the investigation of a large number of convictions, many of which involved Irish terrorists. That investigation resulted in the establishment of an independent Criminal Cases Review Commission and, in turn, the number of quashed convictions increased from roughly four to five a year to between 20 and 30. The member for Hillarys was very interested in this question of how big the backlog would be and whether the court system could be potentially clogged by a large number of appeals under the provisions we are addressing in this bill. If we put the UK position into context, approximately 96 per cent of all applications to the commission were rejected. I do not believe that we will be in a dissimilar position in this state with the results of applications made for judicial review of a conviction. Of the four per cent

of applications to the commission that were referred to the Court of Appeal in the United Kingdom, 70 per cent had their convictions quashed. Really, 70 per cent of a four per cent figure is not very large. I have drawn those statistics from a paper by Malcolm McCusker titled "Miscarriages of Justice", presented as an address to the Western Australian branch of the Anglo–Australasian Lawyers Society in June 2015. Of course, this bill does not propose a similar Criminal Cases Review Commission, although I understand that in 2011, the then Western Australian Attorney General was reported as favouring the exploration of the creation of such a body in this state, which might be of interest to the member for Hillarys. As I said, the proposed legislation does not explore the creation of such a body in this state.

With the passage of the bill before us, which is often referred to as the second appeal legislation, Western Australia will follow the lead of South Australia and Tasmania, which are the only jurisdictions that have legislated to solve the problem by taking the criminal appeals process out of the political arena and placing it firmly in the hands of the impartial judicial wing of government, where I believe it should firmly rest, notwithstanding that this legislation does not take away the capacity of the Attorney General to grant leave of appeal. The legislation in South Australia and Tasmania allows people convicted of crimes to apply directly to the court of appeal to determine whether there is fresh and compelling evidence sufficient to warrant an acquittal or retrial. That is important. This modern approach to post-conviction review provides a clear and, hopefully, objective pathway for a second and subsequent appeal against conviction, and promotes an emphasis on evidential matters by which to substantiate a review of, or appeal against, conviction. The advantage of the proposed change to our statute law in this area is that the decision to allow the appeal will be made openly and freely, and away from political or populist considerations, by an independent judiciary, which will not have one eye on whether it will be re-elected if it is perceived to be soft on crime.

This bill obviously takes advantage of the experiences of legislation introduced elsewhere in the commonwealth. I know that the Attorney General has ensured that the Solicitor-General has taken the time to consult on the proposed legislation with senior lawyers and members of the judiciary. Among them is the Honourable Mr Malcolm McCusker, who, commenting as recently as June 2018 to Phil Hickey of WAtoday, said that the current situation in WA regarding the appeals process has long been thought to be unsatisfactory. He went on to comment —

> "It is undesirable for a politician to be put in that position. It is far better that the question of whether the fresh evidence warrants a further appeal should be decided by the Court of Appeal itself."

One argument that has sometimes been raised against this legislation is that it might open the floodgates for a host of applications to flood the Court of Appeal. The member for Hillarys said that, but Mr McCusker thinks differently, and I choose to take his view.

Mr P.A. Katsambanis: I didn't use the term "floodgates". I questioned the number; that's all.

Mr M. HUGHES: I think the member said something about —

Mr P.A. Katsambanis: It just doesn't matter.

Mr M. HUGHES: I will find it. If I have misquoted the member, I stand corrected. I apologise, if I have misquoted him. However, should he have that thought, I want to dissuade him from that view. Mr McCusker made the point that no such thing as an opening of the floodgates has happened in either South Australia or Tasmania.

Mr P.A. Katsambanis: I asked the question.

Mr M. HUGHES: Well, he does not take that view, so the member for Hillarys should feel comforted by that.

There are some notable cases, to which a few members made reference during the course of the debate. The Andrew Mallard conviction is one that is very poignant for me at the moment because of his tragic death on 18 April 2019, when he was fatally struck by a car while crossing the road. Had it not been for his supporters and the current Attorney General in a different role, he may still have been in prison, ironically. Nevertheless, he spent 12 years in prison and was eventually found innocent, after having gone through the appeals process. We know that immediately after his conviction, he appealed to the Court of Appeal, which dismissed his appeal. He sought special leave to appeal to the High Court in 1997. This was refused. He proceeded to serve his sentence of life imprisonment, always protesting his innocence. His friends and supporters managed to find pro bono lawyers who were sufficiently concerned about the case to persist with the legal challenge to the conviction. Eventually, a petition was presented to the state government in 2002 for the exercise of the royal prerogative of mercy on the basis of unsatisfactory features of the trial. Fortunately, the petition was referred by the then Attorney General to the Court of Appeal of Western Australia.

[Member's time extended.]

Mr M. HUGHES: That court dismissed the petition once again and confirmed the conviction. For the second time, Andrew Mallard invoked the appellate jurisdiction of the High Court of Australia. He complained that the Court of Appeal had failed to consider the whole of his case. This time the special leave was granted—a process that took over a decade. He was an innocent man convicted of a crime that he was not guilty of because of

a combination of the nature of the man and the preparedness of the police in his case to effectively suppress evidence that they had collected or to minimise it. It was an absolute disgrace. He was a victim of our judicial system. In commenting on the case, which he heard on the first and second application, His Honour Justice Kirby said —

> … for me, the most important feature of the *Mallard* appeal was the demonstration of the near impossibility of reconciling the established movements of Mr Mallard on the day of the offence that showed that, in terms of the time of the homicide and the times of the accused's sightings, the factual mosaic did not fit together. This was a feature of the evidence which, with more time and clearer focus, should have been brought out in the earlier appeals.

While fresh evidence was considered, ultimately the outcome of the appeal "did not depend on laboratory or scientific proof."

The Andrew Mallard case demonstrated the imperfections of any system of criminal justice. No system dependent on human judgement is therefore ever free of error. It was only by close analysis of the evidence produced at the trial that Andrew Mallard's counsel demonstrated convincingly that the prisoner could not have been at the murder scene at the time of the homicide, given other objective evidence of timings and sightings of him elsewhere in Perth that day.

In the foreword of the book *Miscarriages of Justice: Criminal Appeals and the Rule of Law in Australia* by Sangha and Moles, His Honour Justice Kirby, speaking of himself, observes —

> As a judge of a final court of appeal, the *Mallard* case reminded me once more of the heavy obligations that rest upon all judges to be vigilant for error and possible miscarriages of justice so that we can prevent or repair wherever possible.

He asks himself the question whether, with further assistance and more time to consider the first application 10 years prior to the second application, he might have spared Andrew Mallard a decade of needless and unjustified imprisonment. In the same foreword, Michael Kirby reflects on the circumstances of individual persons wrongfully convicted and those who remedy wrongful punishment of the innocent. He says —

> Sitting in their lonely cells, the victims of apparent miscarriages of the criminal justice system witness the power of the law over their freedom. When they protest their innocence, they are reliant on the operation of a complex system of law and justice that provides checks at many levels against the nightmare of serious errors and wrongs. Yet, human justice is always prone to serious error and mistaken outcomes. The lawyer assigned to the case may have been incompetent, inexperienced or overworked. The trial judge may have made mistakes that misled the jury but which the appeal judges were willing to excuse as harmless or immaterial. The appeal bench may have been so overwhelmed with cases that the judges did not have the time to notice a basic flaw in the evidence. These facts may have made the judges over-dependent on lawyers who themselves lacked the time or imagination to consider the enormous detail about which the prisoner was endlessly protesting.

Justice Kirby also observed —

> When even conscientious judges, provided with inadequate support by advocates and working under pressure with inadequate time for self-initiated speculation, fail to perceive crucial flaws, it is clear that there is an institutional weakness that needs to be addressed.

I believe that the right of criminal appeal on second and subsequent occasions will assist in improving the criminal appeal processes that we have available to ourselves in this state, particularly in providing the removal of an outcome that is more within the political arena because the more timorous Attorneys General are fearful of a public response to them being seen to be soft on serious criminals. It is to the weakness of the current criminal appeals process and the repairs essential to cure it that the Attorney General has directed his energies. The Criminal Appeals Amendment Bill 2019, in amending the Criminal Appeals Act 2004, will introduce a new statutory right for an offender convicted of an offence on indictment to bring a second or subsequent appeal against conviction to the Court of Appeal if there is either fresh and compelling or new and compelling evidence relating to the offence. I thank the member for Hillarys for providing me with a clear understanding of the differences between those two concepts.

Mr P.A. Katsambanis: It will get murkier when we go through the Attorney General's amendments.

Mr M. HUGHES: I am amazed that I am daring to speak in an arena filled with lawyers, but here we go.

This bill creates, as we have heard, a second and subsequent appeal directly to the Court of Appeal. Although the concept of finality is an important element of the legal system, as the member for Hillarys quite rightly pointed out, this needs to be balanced against the evident occurrences of miscarriages of justice when a person has been found guilty of a crime that they did not commit. As the Attorney General observed in his second reading speech —

> … there are limited circumstances in which the principle of finality must be put aside for the purpose of allowing justice to be served, however belatedly.

It is not going to open a floodgate.

I do not think there is any merit in the finality of a conviction of an innocent person or a legal indifference to their plight. Protecting the innocent is a hallmark of a civilised society that upholds universal human rights. I think that really says it all. If we have the means before us to improve the processes by which a person is appealing against conviction because there is new or fresh compelling evidence, it should be brought immediately before the Court of Criminal Appeal rather than being adjudicated, if that is the correct term, by an attorney who has one eye on the ballot box.

The bill allows a person convicted of an offence on indictment to bring a second or subsequent appeal to the Court of Appeal against a conviction, not against sentence, if there is either fresh and compelling or new and compelling evidence relating to the offence and conviction.

I do not think I need to go into the detail provided in the Attorney's second reading speech about safeguards against unmeritorious or vexatious appeal applications. He dealt with that substantially in his opening remarks in his second reading speech. As has been observed, the proposed amendments will not alter or remove the power of the executive with respect to an application of the royal prerogative of mercy—which is a good thing—and the power of the Attorney General, should he or she be so disposed to refer matters back to the Court of Criminal Appeal under section 140 of the Sentencing Act 1995. I am pleased that the amendment bill will operate retrospectively. As we need to give this sufficient time to operate, I support the view that the practical operations of the legislation under the provisions made in the bill will be reviewed within five years of its commencement. Any shorter time would not be advantageous in improving the process.

From a layperson's point of view, I think the bill strikes the right balance between the public interest in correcting miscarriages of justice and that of bringing finality to criminal matters before the courts. Balancing the rights of victims of crime and those of innocent persons wrongfully convicted is no easy matter, but this bill strikes the right balance. The creation of a right to a second or subsequent appeal provides a public and pragmatic solution, by way of a judicial approach, to revisit a conviction outside the executive or political sphere. These reforms will ultimately provide a simpler, direct and more transparent process than currently exists.

To conclude, this legislation seeks to place the appeal process fully in our courts, acknowledging there will forever remain the capacity for the courts to make the wrong decisions, but it will remove the dead hand of those who have responsibilities under the current regime in the executive branch of government from yielding to the court of populist opinion when exercising the discretion whether to allow or not allow an appeal.

DR A.D. BUTI (Armadale) [3.21 pm]: I also rise to contribute to the Criminal Appeals Amendment Bill 2019. I thank the member for Kalamunda for his very comprehensive contribution and also the other speakers today. The member for Hillarys is always eloquent in his very forensic examination of bills before the house. I am sure that this bill will be further examined with the Attorney General during the consideration in detail stage.

In many respects, this bill comes to the house as a result of a South Australian case, which I will talk about shortly. We probably should start framing this debate by the famous words of a great British jurist, William Blackstone, who, in his commentaries, said —

> It is better that ten guilty persons escape, than that one innocent suffer.

That is known in legal circles as the ten-to-one rule. In a South Australian case, Henry Keogh was found guilty of drowning his fiancée in the bathtub. There were numerous appeals et cetera. The case came before the South Australian Court of Criminal Appeal: R v Keogh [No 2] (2014) 121 SASR 307. The appeal looked at the issue of granting leave for permission to pursue a second or subsequent appeal pursuant to section 353A of the Criminal Law Consolidation Act 1935. The bill before the house today goes much further than that section. In many respects, what happened in the Keogh case has led our Attorney General to bring this bill before the house. I refer to an article written by Emily Carr in the Adelaide Law Review (2015) 36(1) 257. A paragraph from page 258 states —

> Traditionally, Australian courts have been reluctant to infer any authority to entertain appeals against criminal convictions beyond their statutorily conferred jurisdiction. The courts have been at pains to emphasise, as was stated in *R v Edwards*, that an appeal court 'should not attempt to enlarge its jurisdiction beyond what Parliament has chosen to give it.' Thus, the notion that criminal appeal courts have the jurisdiction to hear subsequent appeals on the basis of fresh and compelling evidence has been firmly rejected by the High Court. This issue was further considered in *Mickelberg v The Queen*, where the High Court held that it does not have jurisdiction on appeal to consider fresh evidence which has not been put before a criminal appeal court. Therefore, subject to a single right of appeal against conviction, there was no further avenue for appealing on the basis of fresh and compelling evidence other than by way of the petition referral procedure.

In his second reading speech, the Attorney General said —

> The Criminal Appeals Amendment Bill 2019 will amend the Criminal Appeals Act 2004, introducing a new statutory right for a person to make a second or subsequent appeal against a conviction on indictment in circumstances in which "fresh and compelling" or "new and compelling" evidence has come to light.

The distinction between new and fresh evidence is quite interesting. There are a number of authorities on this issue. Ordinarily, an appeal court will only decide an appeal on the basis of evidence already given at trial. The court will decide, in the light of the evidence, whether the decision of the trial court was incorrect. In addition, the appellant can introduce fresh but not new evidence to show that the decision should have been different. Fresh and new evidence is evidence that was not led at the original trial. Fresh evidence is evidence that could not have been discovered by an appellant with reasonable diligence. This would be the case, for example, if the evidence either did not exist or it had not been disclosed by the prosecution prior to the original trial. New evidence is the corollary of this test; that is, evidence that could have been discovered with reasonable diligence prior to the original trial and therefore evidence that was reasonably available to the appellant at trial but it decided not to use it. It cannot be used as evidence in an appeal, although this is not a hard and fast rule.

This legislation seeks to allow the possibility of fresh and compelling evidence and also new and compelling evidence to be utilised. The meaning of "fresh and compelling evidence" under proposed section 35D states —

> … evidence … is —
>
> (a) ***fresh*** if, despite the exercise of reasonable diligence, it was not and could not have been made available at the trial of the offence or any previous appeal;

That is quite standard. Under part 3A of the bill, fresh evidence used in a second appeal cannot be resubmitted as fresh evidence in a subsequent appeal. Each subsequent appeal may be brought only on fresh evidence that was not and could not have been adduced at the previous appeal. Evidence will be compelling if it is highly probative in the context of the issues in dispute at the trial of the offence. That makes sense because so-called fresh evidence cannot be used in one appeal and then used again at a subsequent appeal. That is just re-trialling the same evidence in trying to get a different verdict.

Under part 3A, proposed section 35E, "Meaning of new and compelling evidence", it states —

> For the purposes of this Part, evidence relating to the offence against which the offender was convicted is —
>
> (a) ***new*** if —
>
> (i) it was not adduced at the trial of the offence; but
>
> (ii) with the exercise of reasonable diligence, could have been adduced at the trial of the offence or any previous appeal; and

The new evidence used in the second appeal under part 3A cannot be resubmitted as new evidence in a subsequent appeal. Each subsequent appeal may only be brought on new evidence that was not adduced at the previous appeal, which of course makes sense. The proposed section continues —

> (b) ***compelling*** if it is highly probative in the context of the issues in dispute at the trial of the offence.

Fresh evidence is evidence that was not available, even with due diligence. New evidence is evidence that was available in the exercise of reasonable diligence. But issues such as incompetence of the legal team for the appellant—which would have been the defendant at the original trial—does not necessarily mean that the barristers were incompetent personally, but often these defences are run on limited budgets; they do not have the support staff to troll through voluminous evidence. Police have to provide all the evidence that they have gathered. Even though defence lawyers may have to get through a mountain of evidence, they may not have the support to do so. They may miss something that was there, so yes, it is incompetence in a general professional manner but we would not necessarily say that that lawyer was an incompetent lawyer. If that new evidence has a compelling highly probative value, it could be used in subsequent appeals. However, what is important is that by bringing this before Parliament, the Attorney General is trying to take politics out of it in the sense that the Attorney General does not become the arbiter on whether there has been a miscarriage of justice that needs to be rectified. That is very important. We can understand the dilemma that an Attorney General and a government face. As the member for Hillarys mentioned, there are the rights and concerns of the victims, vis-a-vis the rights of the appellant or the accused. Towards the end of his second reading speech—this is important because it goes to the nub of the philosophy behind the introduction of this bill before the house—the Attorney General states —

> In introducing these amendments, I have had to balance the public interest in correcting substantial miscarriages of justice, and the public interest in the finality of litigation. I have considered the right of victims of these crimes to feel confident in the finality of the court's findings and to not be re-traumatised. I have also had to consider the potentially innocent person, who, unless through a successful petition, has no recourse against the injustice served upon him or her. There is the overarching and inextinguishable right of all members of our society, offenders and victims included, to have absolute belief in the judicial process that the right outcome will always be found.

It is a balancing act. The Criminal Appeals Amendment Bill before the house seeks to strike that balance. As we know and as has been mentioned by other speakers before me, there are a number of examples of miscarriages of justice in Western Australia. I would like to provide a bit of chronology of those miscarriages of justice. Often the cases referred to are Beamish, Button, Mickelberg and Mallard. We can even include cases such as Christie and Walsham. I go back to the Beamish case. Daryl Beamish, a deaf mute, was convicted of the 1959 murder in Cottesloe of Jillian Brewer, the heir to a chocolate fortune. I think the apartment still stands, does it not, member for Cottesloe?

Mr R.R. Whitby: It is quite close to the home of the former Premier.

Dr A.D. BUTI: That is what I thought. That murder took place in 1959. In a trial in 1961, Beamish was found guilty. The court case was in August 1961 and Beamish commenced an appeal in the Court of Criminal Appeal in September 1961, which he lost, and he was incarcerated at Fremantle Prison. Remember, he was sentenced to death but because of his disability, his sentence was commuted to life imprisonment. That is important because, as we know, later on, his conviction was quashed. He was convicted to capital punishment. The Jillian Brewer murder of 1959 was a precursor to a spate of violence and murders that occurred in the early 1960s. As we know, on Australia Day, 26 January 1963, five people were shot in one night in Cottesloe and Nedlands. Two of them were murdered and another suffered severe brain damage and died three years later. Many people say that two weeks after 26 January 1963, Perth lost its innocence. Of course, I am referring to the murders by serial killer Eric Cooke, who had a role to play in the Beamish and Button subsequent appeals. On 9 February 1963, Rosemary Anderson, aged 17, was deliberately run down on Stubbs Terrace in the Perth suburb of Shenton Park. She died from her injuries at Royal Perth Hospital later that night. Her boyfriend, 19-year-old John Button, was arrested and was eventually charged. His trial took place on 29 April 1963. He was found guilty of manslaughter and sentenced to 10 years of hard labour.

In both the Button and Beamish trials, the defence raised concerns about the confessions. Both alleged that the confessions were the result of police pressure and, in the case of Beamish, the result of police prompting or suggesting answers. On the night of 31 August 1963, the police apprehended Eric Cooke. As we know, he was involved in a number of murders. He was eventually arrested because he had hidden a rifle in the Canning River, Mt Pleasant, and that led to him making a mistake when he went to try to retrieve it and he was arrested. He admitted to a stream of murders. He also admitted to the murders that Button and Beamish were convicted of. It is interesting that the prosecutor in the Eric Cooke, Beamish and Button trials was Ronald Wilson, who later became WA's first High Court Justice and was known as a ferocious prosecutor. Some people were quite critical of the way he prosecuted cases. Before Ronald Wilson came to the prosecuting Crown Solicitor's team, it was seen that the prosecutor should be quite neutral and present the facts so that they lay where they lay. He was seen to be somewhat zealotry in his prosecution. Because he was such a strong advocate, it was seen that maybe some people were prosecuted when they should not have been. It was quite interesting that when Cooke admitted to the murders for which Button and Beamish were convicted, they, of course, subsequently appealed. I cannot remember which one it was, but Eric Cooke was put on the stand and admitted to the murders of Brewer and Anderson, and Sir Ronald Wilson, being probably the foremost ferocious prosecutor at that time, cross-examined him and said, "You're not guilty of those crimes", and Eric Cooke said, "I am guilty of those crimes." It was a really interesting interplay between the two.

[Member's time extended.]

Dr A.D. BUTI: Subsequently, Beamish and Button served time and were eventually released from prison. They continued to argue their innocence and they lost on subsequent appeals. However, later, through the petition process, their cases came before the court again. Quite alarmingly—it would never happen today—the second Beamish appeal that commenced on 17 March 1964 in the Supreme Court, was heard by Chief Justice Wolff, Judge Jackson and Judge Virtue. It is interesting that Chief Justice Wolff was the trial judge in the Beamish trial. In other words, Chief Justice Wolff was the judge in the trial of Beamish and sat on the second appeal of that conviction. The other two, Jackson and Virtue, had sat on the first appeal. The bench was being asked to overrule themselves. So much for the independence of the judiciary at the time. Of course, the appeals were unsuccessful. I am not sure when Beamish was released from prison, but Button was released on 20 December 1967. He married in 1968. After a chance meeting in 1992 between his younger brother and Perth journalist Estelle Blackburn, his story ended up in the book *Broken Lives* in 1998, in which Estelle presented a compelling case that Cooke had killed Rosemary Anderson.

In light of that, the Attorney General at the time, Peter Foss, QC, MLC, referred the matter for reopening. The decision was handed down on 25 February 2002. The court held that if all the evidence that had been presented to the appeal court had been available for the jury's consideration at the original trial, there was a significant possibility that a jury acting reasonably would have acquitted Button. They considered the verdict unsafe and unsatisfactory on the ground that there had been a miscarriage of justice, and there was no retrial. It is important to repeat the decision that the verdict was unsafe. Of course, the way the system works is that people are either guilty or innocent. Because a decision is found to be unsafe does not necessarily mean that the person is innocent,

but of course under our criminal system, one is either innocent or guilty. In regards to a later case, I refer to the member for Roe on that.

Beamish had success later. His success came on April Fools' Day, ironically, in 2004. The court also held that there was a substantial miscarriage of justice. It held that the confession of serial killer Eric Cooke to the murder, including his gallows confession 15 minutes before he was hanged, was decisive. He was the last person to be hanged in Western Australia. He was not seeking to have a retrial of his own conviction. Obviously, it gave much weight to the fact that he held the view that he had killed Jillian Brewer.

On other occasions I have mentioned Christie, Walsham and Mallard. Andrew Mallard was unfortunately involved in a hit-and-run in Los Angeles.

Mr P. Papalia: The driver gave himself up.

Dr A.D. BUTI: He gave himself up, did he? Of course, the Mallard case was a much celebrated case. As mentioned by the member for Roe, local journalist Colleen Egan became very involved in that case. I want to read a bit about that case. Mallard was convicted of the brutal murder of Pamela Lawrence. He appealed in September 1996 to the Court of Appeal. The court rejected the appeal and said that there was no miscarriage of justice. In 1997, the High Court denied Mallard special leave to appeal. Malcom McCusker, QC, joined a growing number of people questioning the admissibility of the confessional evidence. Mallard underwent a polygraph test in 2001. The results support his claim of innocence. In July 2003, he passed a second polygraph test; however, the court would not consider the results of either test as they considered it to be inadmissible as evidence in criminal matters. I am reading from a book about this topic —

> In 2002 the stubborn and sometimes testy state Labor politician and former Police Union lawyer John Quigley (earlier involved in Police Union attempts to sue Lovell over *The Mickelberg Stitch*) agreed to review the Mallard case. Mallard could not have done better. Quigley took apart the undercover investigation the police ran on Mallard in 1994. He found the operation gleaned nothing the police could use against Mallard but plenty that could have worked in his favour—except the police and DPP never gave this information to Mallard and his defence team.
>
> Particularly damning was Quigley's discovery that the police failed to disclose evidence demonstrating that, according to the state Chief Forensic Pathologist Clive Cooke, the weapon police claimed Mallard confessed to using could not have caused the injuries that killed Lawrence. The pathologist had carried out extensive tests in which he used the alleged weapon, a large wrench, to inflict wounds on the head of a pig. The experiments conclusively established that such a weapon could not have inflicted the wounds suffered by Lawrence.
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> As a result of the new evidence, Attorney-General Jim McGinty agreed to refer the case back to the Supreme Court for a new appeal. During the hearing in 2003, McCusker for Mallard suggested that there might be a perception of bias as former DPP John McKechnie, who gave advice on whether to charge Mallard and appeared for the prosecution at his first appeals, was now a Supreme Court judge. However, McKechnie's colleagues on the bench held his submissions had no basis and the rehearing went ahead.
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> The three justices hearing the case, Justices Kevin Parker, Christine Wheeler and Len Roberts-Smith, were unimpressed by the new evidence and, after a long and drawn-out hearing, refused Mallard's appeal. They concluded there was no miscarriage of justice and that there was plenty of evidence to support the conviction. As a result, Mallard remained in gaol.
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> In October 2004, Mallard again applied for special leave to appeal to the High Court. This time he was successful and in November 2005 the High Court unanimously overturned the WA Supreme Court's decision to deny Mallard's appeal. In a judgment critical of the state's Supreme Court, prosecution office and police, the High Court quashed Mallard's conviction. They ordered a retrial but suggested the DPP might decide not to proceed on the evidence, given its doubtfulness and the fact that Mallard had already spent considerable time in gaol.

That was a celebrated more recent case of a miscarriage of justice before the Supreme Court of Western Australia. WA has a history of cases that have involved a miscarriage of justice. The Mickelberg saga went on for 25 years. Ray, Peter and Brian were convicted of the so-called Perth Mint swindle. All were given lengthy terms of imprisonment. Brian was released shortly after imprisonment but died in a plane crash; he was a pilot. Ray and Peter kept firm on their innocence and that they were physically abused by the police and that confessions were basically fabricated. They had seven or eight appeals, including to the High Court, without success. The two investigating officers in the Mickelberg case were Don Hancock, who came to a violent death at the hands of some bikies, and —

Mr R.R. Whitby: Lewandowski.

Dr A.D. BUTI: Tony Lewandowski. The member for Baldivis was working for Channel Seven at the time. An allegation had been made that Hancock had killed a bikie in a pub outside Kalgoorlie on the opening night of the Sydney Olympics. He was never charged. The bombing of the car that he was in when he was coming home from

the Belmont races was basically payback. Tony Lewandowski then made an admission that they had fabricated the witness statements of Peter and Ray, but Lewandowski said that he still believed there was sufficient evidence that the Mickelbergs were guilty. This is often known as noble cause corruption. It is described by Seumas Miller as the paradox whereby police necessarily use morally problematic methods to secure morally worthy ends. Noble cause corruption is reported by Porter and Warrender as the most frequent source of police misconduct. It is an attempt to justify corruption in some instances when a cause is noble in light of the apparent greater good. It obviously involves a philosophical dilemma. It is when the police think that someone is guilty, but they do not think they have enough evidence. Obviously, the problem with that is that sometimes innocent people are going to go to jail, and sometimes guilty people will not go to jail. That is why police should never engage in so-called noble cause corruption.

After the Lewandowski admissions, the case came back before the Court of Appeal as a result of the referral by the Attorney General of the day. In a 2–1 decision, it was found that the convictions were unsafe because, basically, the story was that if the jury at the time had known of the so-called behaviour of Lewandowski and Hancock with regard to the fabrication of the evidence, they may not have convicted Peter Mickelberg in particular. Steytler, who wrote the leading judgement in that case, said that even though there was a lot of other evidence that pointed to the guilt of Peter Mickelberg, the fact that Peter and Ray Mickelberg's convictions were interlinked meant that it would be up to a jury, and reason for a jury to find it unsafe to also convict Ray Mickelberg.

The Criminal Appeals Amendment Bill 2019 is important legislation. Obviously, yes, victims have to be considered. The Attorney General's statement, which I read out previously, referred to victims wanting finality, but surely victims want the right person to be found guilty. Although they may be at peace because someone has been found guilty and they think that that person is the guilty party, I am sure that if they knew that the person who had been found guilty was not the guilty party, they would not want them to be in prison. There are enough safeguards in the legislation to respect victims' feelings. It is important and, as William Blackstone said, it is better that 10 guilty persons escape than one innocent suffers. Some people may not agree with that. It would be better if no innocent person suffered and all guilty people were found guilty. It is hard to have a 100 per cent foolproof justice system. The bill before the house should be commended. I look forward to the consideration in detail stage.

MR R.R. WHITBY (Baldivis — Parliamentary Secretary) [3.50 pm]: I rise to speak on the Criminal Appeals Amendment Bill 2019. We have high expectations of our justice system. We expect it to get it right—to free the innocent and punish the guilty. It is a sad fact of life that citizens of this state sometimes inflict horrific crimes on other citizens of this state. As a community, a Parliament and a police service, we all want the offender caught, charged, tried and convicted in a timely manner. We have a troubled history over many decades of getting it wrong when it comes to some of the worst crimes committed in this state. I listened to the member for Armadale and I found his contribution very fascinating. Anyone who has spent time in Western Australia will know of the long history of miscarriages of justice. They hang like a long shadow over our state. Earlier, there was mention of serial killer Eric Edgar Cooke. As a young boy, I remember hearing tales of "Cookee" and the impact that he had on Western Australia. Indeed, the impact of his actions and the associated charges against others and the miscarriages of justice in relation to Eric Cooke's activities have cast a very long shadow—the damage, the corrections and the mopping up of that history has continued until very recent times. This long history that has cast a shadow over the state has meant that the innocent have sometimes had to deal with an unimaginable wrong—they have been accused and rejected by their community and sometimes even their friends and family as someone who is guilty of a terrible crime. A few names come to mind—they have been spoken about this afternoon—Western Australians whose lives have been ruined by a failure of justice. The ones I will mention are Daryl Beamish, John Button and Andrew Mallard. There are others and, indeed, some former journalistic colleagues of mine—Estelle Blackburn, Colleen Egan and Bret Christian—have played very significant roles, as has the Attorney General, in securing a correction of those miscarriages of justice.

In criminal law, as the member for Armadale has already mentioned, there is Blackstone's ratio. The English jurist published in the 1760s the assertion that it is better that 10 guilty persons escape than one innocent suffers. There is a long history of similar sentiments in law that predate Blackstone's ratio. The general message is that governments and the courts must err on the side of innocence. Benjamin Franklin echoed the principle when he said that it is better that 100 guilty persons should escape than one innocent person should suffer. It is interesting that in recent years, there has been an attempt by some people to reverse Blackstone's ratio and turn it on its head. I refer to former Vice President Dick Cheney, who commented on his support of enhanced interrogation techniques against suspected terrorists, and the fact that some 25 per cent of those detainees were estimated to be innocent people, or people who were later proven to be innocent, including one who died from hypothermia in CIA custody. The former vice president believed that it was acceptable that there was a proportion of innocent people if the CIA was going to interrogate mainly guilty people. Former Vice President Cheney said —

> I'm more concerned with bad guys who got out and released than I am with a few that, in fact, were innocent.

I find that a very troubling view and perspective. I am not sure that the Western Australian judiciary or community wants to apply the Cheney doctrine, whereby we would ignore the risk of punishing the innocent. Effectively, this is what these amendments are about.

The Criminal Appeals Amendment Bill will allow a convicted person who has exhausted their appeals to seek further appeal if certain key considerations are met. At the moment, a convicted person who has exhausted their appeals has no further right of appeal even if fresh or new evidence comes to light. Imagine that. Imagine a convicted murder, for instance, sitting in jail unable to appeal even though new DNA technology exists that proves they are not a killer. Currently, the only way forward for the convicted person to appeal is to lodge a petition for the exercise of royal prerogative, or to petition the Attorney General. They would have to rely on political intervention to progress the appeal. Mixing politics and the judiciary has never been a good idea. Imagine the innocent condemned man serving a sentence for a notoriously sickening crime—perhaps a crime of child molesting or child murder—getting major media coverage for seeking an appeal from a so-called tough-on-crime Attorney General in an election year. What are the chances of that Attorney General making a fair and considered decision to grant an appeal? What would be the fallout for a government that made a fair and appropriate decision to grant an appeal in a heated public atmosphere when crime is a hot button issue? These amendments remove politics from the criminal appeals process. The changes that we are debating will allow a convicted person the right to a second or subsequent appeals against conviction to the Court of Appeal. An appeal will require fresh or new evidence. Fresh evidence is evidence that was not or could not have been made available at the initial or a subsequent appeal. A classic example that has been spoken about is DNA evidence. Such technology did not exist in previous years, but because of technological advances, there may be evidence to prove someone's innocence. New evidence is evidence that was not adduced at the trial or subsequent appeal, but with reasonable diligence could have been adduced at the trial or appeal. In either case the evidence must be compelling to the probable outcome. The level of proof required differs depending on whether the evidence is fresh or new. Fresh evidence will require the Court of Appeal to hear an appeal if it is satisfied that there was a miscarriage of justice. The threshold for new evidence is higher because the court must be satisfied that the evidence establishes that the offender is innocent.

The bill has protections against spurious applications. As we all know, if we ask them, everyone in jail is innocent. Some of the protections against spurious applications include the requirement for an applicant to seek special leave to appeal; the provision to have the applicant pay for the other party's costs; the ability of a single judge to hear special leave applications; the requirement for the special leave to be ruled on before a full hearing of a court; the requirement for applications to be heard on the papers; and the refusal of special leave itself not being subject to appeal. The bill will operate retrospectively, so that those currently convicted of a crime may be able to seek an appeal. The bill's amendments will be reviewed after five years.

I will now refer to some of the more infamous cases of wrongful conviction in WA, when justice was delayed for many, many years because the current system stood in the way. One would hope that these amendments would have brought swifter justice to these innocent Western Australians, who suffered for many years before their innocence was finally established. As we heard from the member for Armadale, in 1959, Darryl Beamish was an 18-year-old deaf-mute. A young woman was murdered in her bed with an axe and scissors. Jillian Brewer was 22 years old. She was murdered in her flat on Stirling Highway, as we mentioned before, opposite the home of a former Premier. Technically, I think it is in Claremont. Two years after the murder, Mr Beamish was convicted by a jury and sentenced to death by hanging. It was a crime he did not commit. It took more than 40 years and six appeals to establish his innocence. During his trial, respected detective Owen Leitch said he had four confessions from Beamish. Owen Leitch later became a police commissioner. Darryl Beamish spent 15 years in jail after his death sentence was commuted to life imprisonment, and he was finally released in 1977. He was free, but still guilty of a brutal murder. Forty years later, the Court of Appeal ruled Beamish had not committed the murder, saying it believed that serial killer Eric Edgar Cooke had committed the crime. The appeal decision created at the time the longest gap between a conviction and an appeal victory anywhere in Australia. After his exoneration, Mr Beamish said —

> "All I ever wanted was truth and justice. I have just wanted everyone to know for sure that I did not kill anyone. Now they know.
>
> "The appeal court judges say that they believe me. I always told the truth. The deaf have many problems being understood by people who can hear. There are always mix-ups. I did not understand what was happening at the police station, or at my trial in court."

In five previous appeals, Cooke's account of how he killed Ms Brewer was discounted by the court as the work of a "palpable and unscrupulous liar". We know that at the time before his hanging in Fremantle Prison, Eric Edgar Cooke made a wide range of confessions of murders and serious crimes. But for the judiciary of the day, they were an inconvenient truth; the courts already had their men for those crimes. After hearing this example, is there any doubt at all that this bill is needed? Our courts get it wrong—very wrong—and sometimes they get it wrong again and again and again.

John Button was a teenager in 1962 when he confessed to the hit-and-run death of his beloved fiancée Rosemary Anderson. Mr Button served 10 years in jail and was exonerated 44 years later. He was accused of running down his then fiancée on Stubbs Terrace in Claremont along the railway line, where Shenton College stands today. Mr Button said after his successful appeal, 44 years later —

> "I really thought that if I made a confession it wouldn't be of any good to them, because there was no evidence to back it up," … "I hadn't run Rosemary down, so in order to get away from them I said, 'OK, whatever you say. If you want me to say I did it, I did it.'"

And, of course, there is Andrew Mallard. Mr Mallard's crime was to explain to police how he thought Pamela Lawrence might have been bashed to death in her Mosman Park shop in 1994. It was a theory, not a confession, but it was enough to convict him of a murder he did not commit.

Those are three Western Australians whose lives were ruined by wrongful convictions. All three of them were vulnerable: a young deaf-mute man; a young teenage boy, bullied and under pressure; and a loner and drifter who was on cannabis. We rely on our police and justice systems to carry a very great burden—to find the perpetrators of crime. Human failings mean that they will not always get it right. Our system needs to be resilient enough to accept this truth and offer avenues to justice for those innocents who fall through the cracks during the initial investigation and prosecution. The right to appeal, to smooth the way to accept fresh and new evidence, has already been introduced in South Australia and Tasmania, and now Western Australia is at last moving forward. We know the record in our state on these issues. Now, with this bill, we will have an extra safeguard. It is not to prevent wrongful conviction, but to provide a more efficient way out of the nightmare of conviction of the innocent. I commend the bill to the house.

MR S.A. MILLMAN (Mount Lawley) [4.06 pm]: There is a reason that the symbol of justice is a set of scales. The reason is that the administration of justice is a fine balancing act. I rise to speak in support of the Criminal Appeals Amendment Bill 2019. I suspect that my contribution will be relatively brief because a lot of what is necessary to say in support of this bill has already been said in the excellent and erudite comments by the member for Kalamunda, who outlined a sound philosophical foundation for this bill; by the member for Armadale, who recited with great alacrity the legal precedent that forces this Parliament to consider such innovative legislative reform; and by the member for Baldivis, who with his lengthy service to the community in the media knows all these cases so well, as he just outlined to us this afternoon. I thank the Attorney General for bringing this bill before the house. I also thank my parliamentary colleagues who have demonstrated once again that on this side of the chamber we bat very deep.

I want to expand on a theme that I have raised when making my contributions to the Attorney General's impressive legislative agenda. As members in this place are well aware, I am a strong believer in the rule of law, the separation of powers and other important traditions that are vital to the well-functioning of a free society. I am also a strong believer in democratic accountability and an activist government. The McGowan Labor government was elected with a strong law and order, and community safety platform that was overwhelmingly endorsed by the voters. The evidence of that is the number of members of the Labor Party who were elected to this chamber. We have delivered on that platform and continue to deliver. Without doubt, one of my proudest moments in the short time I have been a member of Parliament was speaking in favour of the legislation that lifted the statute of limitations on claims arising from what are known as historical sexual abuse cases. This legal innovation was designed to deliver justice. In much the same way, the current bill is also designed to deliver justice. Our Attorney General, as the member for Armadale has quite rightly said, is well qualified for his role because he came to this place with a long history as a fearless advocate. It is a reputation enhanced by the work he did as a member of Parliament seeking justice for those wrongly accused. It is not often that one sees a member of the executive branch readily cede power or authority, but this Attorney General has a deep appreciation of the fine balance between the executive and legislative branches of government, and our legal system. He recognises that although he may enjoy the power of the royal prerogative of mercy or the power of petitions—powers that stretch back centuries—it is more just for people wrongly convicted to not have to have recourse to the executive branch of government, but rather to have legislative protection. This is precisely the point raised by the member for Kalamunda, the member for Armadale and the member for Baldivis. These are the very last sorts of claims that we want to politicise. The Attorney General gets the point.

The current process was described by the member for Hillarys in his contribution as difficult and cumbersome, and I do not cavil at that. But worse than that, the current process is arbitrary. The legislation before this chamber delivers legislative protection. I want to touch on the fine balance that is struck by this bill, because it is a delicate response. On one hand, it is an important principle of the justice system that there be finality in litigation. Other members have discussed this principle at length, so I will not go over it again. Endless litigation serves neither the parties to the litigation, the court system, nor the community generally.

The member for Hillarys touched briefly on this element of the justice system. It is an unarguable proposition of administrative law that an inflexible application of policy may give rise to a denial of natural justice. I would describe the finality principle as a policy imperative. This legislation ensures that that principle is not applied inflexibly.

I was concerned that the member for Hillarys in his contribution appeared to be somewhat lukewarm on what is proposed by the Attorney General on account of the opposition's expressed concern for victims of crime. I challenge the member for Hillarys to identify any Attorney General who has done more than this Attorney General to comfort and support victims of crime. He has left no stone unturned in his pursuit of a criminal justice system that rebalances the scales of justice firmly in favour of the victims of crime.

Members, let me recite the impressive legislative record of the Attorney General in the short time he has been in office: the Statutes (Minor Amendments) Bill 2017; the Sentence Administration Amendment Bill 2017; the Child Support (Adoption of Laws) Amendment Bill 2017; the Coroners Amendment Bill 2017; the Domestic Violence (National Recognition) Bill 2017; the Corruption, Crime and Misconduct and Criminal Property Confiscation Amendment Bill 2017; the Dangerous Sex Offenders Amendment Bill 2017; the Courts Legislation Amendment Bill 2017; the Court Jurisdiction Legislation Amendment Bill 2017; the Corruption, Crime and Misconduct Amendment Bill 2017; and the Historical Homosexual Convictions Expungement Bill 2017; numerous bills in respect of the suitors fund; the Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017, which I have already spoken about; the Financial Transaction Reports Amendment Bill 2018; the Criminal Law Amendment (Intimate Images) Bill 2018, otherwise known as the revenge porn legislation, for which we have seen the first prosecution this week; the Child Support (Commonwealth Powers) Bill 2018; the Gender Reassignment Amendment Bill 2018; the Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018; the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018; the Consumer Protection Legislation Amendment Bill 2018; the Legal Profession Amendment (Professional Indemnity Insurance Management Committee) Bill 2018; the Sentence Administration Amendment (Multiple Murderers) Bill 2018; the Criminal Code Amendment (Child Marriage) Bill 2018; the Bail Amendment (Persons Linked to Terrorism) Bill 2018; and even today, the Criminal Law Amendment (Uncertain Dates) Bill 2019.

When we look at the no body, no parole legislation, the National Redress Scheme and justice for victims of child sex abuse, the expungement of historical homosexual convictions and the revenge porn legislation, there can be no doubt that there has never been an Attorney General who has been so focused on ensuring justice for victims.

The member for Hillarys has recognised the efforts of our Attorney General by congratulating him on the legislation that he has introduced. We know that he appreciates the Attorney General's efforts on behalf of victims because he said, in respect of the Criminal Code Amendment (Child Marriage) Bill 2018 —

> I congratulate the Attorney General for bringing this bill to the house. It has the full support of the opposition, obviously.

In respect of the Criminal Code Amendment Bill (No. 2) 2013, he said —

> Suffice to say that I am supportive of the bill before the house. I congratulate the Attorney General and the government for bringing it before us …

Frankly, the member for Hillarys has not been anywhere near as effusive as the Attorney General's extensive work deserves. I call on the member to be more congratulatory in future for the Attorney General's tireless efforts on behalf of victims.

Mr A. Krsticevic interjected.

Mr S.A. MILLMAN: This is an activist government that is doing a fantastic job, as the member well knows. I had the opportunity to refer to that only yesterday when I was commending the work of the Minister for Police.

I want to remind the member for Hillarys of the numerous times that he has invoked—he knows this—the golden thread, or cardinal principle, of our criminal justice system. Remember, member, that an accused is innocent until proven guilty. This legislation balances the scales of justice ever so finely. It continues the McGowan Labor government's commitment to a fair, efficient and effective criminal justice system and does so in a way that delivers justice for all parties and for the community as a whole. On that basis, I commend the bill to the house and congratulate the Attorney General.

MR J.R. QUIGLEY (Butler — Attorney General) [4.15 pm] — in reply: I would like to thank members for their contributions to the debate on the Criminal Appeals Amendment Bill 2019. I particularly want to thank the opposition spokesperson, the member for Hillarys, for his contribution. It was very helpful and I will address some of those matters that he raised in short form. I thank the member for Roe for his support. I thank the member for Kalamunda, who was mentioned by the member for Mount Lawley, for his approach to the philosophical basis of this bill. There was a nice contribution from the member for Baldivis; he went through some of the injustices we have witnessed in Western Australia. I would like to thank very much the member for Armadale, Dr Buti, for his analysis of the bill and the apposite law around fresh evidence and new evidence. I shall not traverse that; I thought that was laid out very well by the member for Armadale.

The member for Mount Lawley was very effusive in his praise of me. He read out a lot of bills, which made me feel old and tired, actually. Although one never likes to interrupt someone who is praising or speaking well of them, or wants to criticise such a speech, I want to say this in response: it is a very humbling and deeply held honour and privilege to be the Attorney General in Western Australia, and, more so, that I am Attorney General in a government that is so committed to a law reform agenda. I came to office not wanting to be a shopkeeper, as it were, and maintain the status quo, but to do what Paul Keating said to do; that is, if you ever find yourself in office, do not waste your time, pull those levers that make a difference, try to improve society and move it on.

I am particularly proud of this bill, because, as has been mentioned by more than one speaker, two other states have similar legislation—not exactly the same as this. The first of those is South Australia and the second is Tasmania. I would like to briefly mention the background of those particular pieces of legislation and why I am so proud of this legislation. The first legislation in South Australian related to the conviction of Mr Keogh for murder, at least, of his fiancée or girlfriend, who drowned in a bath. At trial, there was no admission by Mr Keogh—he always maintained his innocence—but there was bruising on the deceased's body, and a pathologist gave evidence that these were markings of a handprint and that she had been held under water and drowned. Mr Keogh appealed, and his appeal was knocked back. I believe the pathologist in question ultimately was struck off the medical register for his professional incompetence. In fact, the bruises were not bruises at all. From memory, I believe they were caused by lividity. When a body settles, the blood settles and there is a circumstance called lividity—it looks like bruising but it is the settling of the deceased's blood. Once the work of this particular pathologist was exposed, Mr Keogh sought to appeal again, and his only pathway was by petition to the Attorney General. Attorneys General generally seek to protect the conviction and the integrity of the court. That is their default position, and rightly so. When Mr Keogh petitioned the Attorney General of South Australia—more than one Attorney General was involved in South Australia—the second last Labor Attorney General, Mr Atkinson, was strident in his opposition to the petition given to him and refused to refer the matter to the Court of Criminal Appeal. A member of the Parliament then introduced a private member's bill, not a government-sponsored bill, to allow for a second appeal. That private member's bill got through. It was not a government bill. Subsequently, Mr Keogh did appeal. As the member for Armadale has pointed out, his appeal was allowed and the conviction was overturned. Mr Keogh is now a free man in South Australia, having spent many years in custody. There was a case of an Attorney General who did everything he could to protect the conviction, whereas once it got back to the court and the judges looked at the evidence, they overturned the conviction.

In Tasmania, a woman by the name of Sue Neill-Fraser was convicted of murdering her partner on a yacht moored in Sandy Bay in January 2009. She was convicted of murdering her partner by belting him over the head with some object—never proven—and then throwing him overboard and scuttling the yacht to sink it. The coastguard, or whatever it is there, saw the partly submerged yacht. The woman's partner was missing. Nine months later, she was charged with murder. She appealed, but was knocked back by the High Court. Then, new evidence came to light, being that the police had found DNA of another person on the yacht—a vagrant woman. The Attorney General in Tasmania refused to refer the matter to the Court of Criminal Appeal and so, in Tasmania, like in South Australia, a member of Parliament brought forward a private member's bill to allow second appeals, and that legislation passed. The members of Parliament in both those states could see the wisdom in allowing a subsequent appeal when there was fresh and compelling evidence. That case has recently been back before the court. Indeed, one of our own local famous Queen's Counsels, Mr Tom Percy, travelled to Hobart and appeared pro bono for Sue Neill-Fraser. We congratulate Mr Percy for donating his time pro bono to this cause. He won leave to appeal. The judge there referred it on to the court to determine the case.

There we have the only other two states that have this legislation. To cut back to the point of why I am so proud, this government has taken it on as a government bill, introduced by the Attorney, not a private member's bill, to seek to find another route to filter cases that are seeking a second appeal, other than under the hand of the Attorney General. I do not know what to do. I have had a number of these come forward to me. Sitting in my office, there are masses of paper, and it is for the Attorney General to sift through and work out whether there is a reasonable prospect of an appeal and its basis et cetera. All the while, we have criticism from the opposition for having done so. This happened in the Austic case, which I referred to the court and which is before the court at the moment. My shadow was critical; he had refused to refer Austic when he was Attorney General. When I became Attorney General, I took advice from the Solicitor-General, and I abided by his advice and referred it to the Court of Appeal, but I was criticised for having done so. That case will be heard in July.

Members have correctly pointed out that this bill allows a different way for a convicted person who has fresh and compelling evidence, not to mount an appeal, but, instead of asking the Attorney General for leave to appeal, to ask a judge of the Supreme Court for leave to appeal. We will place our faith in the justices of the Supreme Court. As the member for Hillarys has always pointed out, the state always retains a reserve power to make a reference in an exceptional case. I think that such a case would be really rare. I cannot imagine that a person who has gone to the Supreme Court with fresh evidence and asked a judge for leave to appeal to the Court of Appeal would, having been knocked back, then go to an Attorney General who then exercises what has been known as the prerogative of mercy and makes the reference contrary to the decision of a judge.

We have sought to balance this by requiring the convicted person to seek leave to appeal. They do not have an appeal of right. There is another provision in the bill for leave to appeal not to be heard at the same time as the appeal. Usually when a person seeks leave to appeal, the court hears the whole case and at the end of the case says that either leave to appeal is granted and the appeal is allowed, or leave to appeal is refused and it would, in any event, have refused the appeal. Under this bill, a person must go down to the court at stage 1 and seek leave to appeal. We think this will lighten the burden on the Supreme Court and give it the capacity to filter out those who

are just the normal suspects coming back again and again, without bearing down too heavily on the resources of the state.

The member for Hillarys raised a very good point, and that is the consideration of victims. This is what Attorneys General do in these situations. When the petition comes, the secondary victims are advised. The secondary victims then write to the Attorney General saying that it is disgraceful that this person is agitating for an appeal, and it is causing the family immense grief, and ask for the appeal to be rejected. Attorneys General say, while thinking of the secondary victims, that this is all too disturbing for them, and there will be no appeal. This overlooks the fact that amongst the secondary victims—not only mum, dad and the sisters, but also the class of people who are secondary victims—could be an innocent person who has been wrongfully convicted of murder, like Andrew Mallard. He was a secondary victim. He suffered over 10 years' imprisonment for a crime that —

Mr P.A. Katsambanis: I'd say he was a primary victim.

Mr J.R. QUIGLEY: Pamela Lawrence was the primary victim of the murder, but he was a victim and suffered 10 years' imprisonment as a victim. When we talk about victims, we are talking about not only the relatives of the deceased, but also those rare occasions upon which an innocent person is incarcerated.

After Andrew Mallard's conviction was overturned by the High Court, I remember that people were still going around calling him a murderer. When the Director of Public Prosecutions said that he would not be charging him again, people still said that Mallard was a murderer they could not get the evidence on. Then there was a Corruption and Crime Commission inquiry. During that inquiry, a cold case review identified another set of fingerprints. There was no physical evidence of Mallard having been at the late Pamela Lawrence's shop. There was a palm print of Simon Rochford down there, who had been convicted of murdering his girlfriend in Scarborough two weeks after Pamela Lawrence's death. They were able to associate the forensic death at Pamela Lawrence's shop with Simon Rochford, the prisoner in Albany. As soon as he got wind of this, he committed suicide in Albany, because he had nearly served the minimum term for the murder of his girlfriend. He realised that he was about to be charged again and suicided.

Until that time that Rochford was identified, a lot of people—I am not looking for sympathy—were really angry at me. I am talking about the family. I am talking about Pamela Lawrence's daughter. They were really angry at me and others for re-agitating this whole Mallard case and for the additional grief that I was causing this family. When all this came out and the ABC produced an *Australian Story* segment on the case, members can imagine the grief that the family felt then. All their anger had been directed to an innocent, mentally infirm person and to me, not that I do not deserve people's anger from time to time—I get it regularly—and they realised that all I was doing was advocating for justice. When we talk about victims, we always have to bear in mind that a victim can be an innocent person wrongly convicted and incarcerated. None of us would like to endure that.

I thank members of the opposition for coming into Parliament and indicating that they would not be opposing this bill. It just makes sense. If an error has occurred in the criminal justice system and in the courts, let it be corrected in the courts, not in a politician's office. Let the action start in the courts, not in a politician's office.

As to resources, member for Hillarys, this has been a matter of much discussion because there are two areas of resources that we have to think of—firstly, the resources of the court itself. As the member knows, we have done a jurisdictional shift, having taken all crime out of the Supreme Court, apart from homicide, to lighten its load, and we did that with this in mind. I will soon present another bill to Parliament. I will not go into it at the moment. That will change the resource burden on the office of the DPP.

Mr Z.R.F. Kirkup: Bill 35.

Mr J.R. QUIGLEY: I have leave from caucus to introduce a couple of bills next week. They do not include bill 35 but I will get there. This other bill will be important. I will tell members about it afterwards. We are looking at lightening the burden of the DPP and some of her responsibilities. We have lightened the burden of the Supreme Court to a degree. We expect there might be a little spike to start with, as the member for Hillarys rightly pointed out. In South Australia, I think there were two or three in the first year and then maybe one a year. The numbers have been very low, and there have been only two in Tasmania on my information. We are not expecting a flood of applications here. We expect that a few will come forward to seek leave for appeal, but whether they pass the first test that there is a strongly arguable case is another matter. Prisoners in their cells dream up all these fanciful arguments as to why the prosecution case against them was full of holes, but a Supreme Court judge can soon sift those out and decide. We have a review clause in this bill. We hope that things will pan out like this with the bill, but it depends upon the rules of court and how the judiciary conduct themselves. We are hopeful that it will pan out something like, member for Hillarys, applying to the High Court for special leave. Special leave applications do not take days and days to be determined. Points have to be made in front of the High Court counsel and they then determine whether it is a matter that attracts their attention.

Mr P.A. Katsambanis: Two hours, if you're lucky.

Mr J.R. QUIGLEY: They get two hours if they are lucky and if they do not attract their attention, there is no special leave and no reason is given for the decision—it is just the end. We have put these provisions in the bill to at least offer the court a process by which it can filter out the unmeritorious applications.

Finally, a distinction was drawn between fresh evidence and new evidence. I thought the member for Armadale fleshed that out very well. I do not want to take up the chamber's time traversing that again, but when we were working through the final preparation to bring this bill into Parliament, we had yet a further look at it. We were left uncomfortable with the proposition of new evidence, as opposed to fresh evidence, as pointed out by the member for Armadale, that was available at the time and passed this hugely high test of compelling of innocence whereby fresh evidence is the lesser test. What about those cases in which new evidence was available at the time but, for one reason or another, as pointed out by the member for Armadale, a counsel overlooked it? It was not a strategic decision to keep it out of the trial, but counsel overlooked it and we can say that it was incompetence. In my day, we used to get a murder brief that was about an inch thick. Today it contains masses of forensic evidence.

Mr P.A. Katsambanis: It's about one million documents.

Mr J.R. QUIGLEY: It is one million documents. It is like that clever chap who worked out that one little faint word on the $50 note was misspelt. All of Australia overlooked it, but one nerd looked at the note under a microscope and said, "There's a spelling error there", and the newspapers were onto it. In those one million documents, one could overlook one little thing that could be compelling of the innocence of the accused. We changed the definition to bring new evidence, which was there all the time but was overlooked by the incompetence of counsel, into the basket of fresh evidence so that it has the more liberal test than new evidence has. I have discussed that with the Director of Public Prosecutions. We discussed all of this with the stakeholders. In fact, I sent the bill to the leading Queen's Counsel defenders of the city—Mr McCusker, Mr Vandongen, Mr Percy and maybe one or two others—for their feedback. Of course, I also consulted with the Director of Public Prosecutions and the Chief Justice about the bill's suitability. It was only at the last gasp, as it were, when I was looking at this again that I said I was not happy with it. If an incompetent counsel overlooked something, it could not be classed as fresh evidence because it was there to be found but, through incompetence, it was not, so in fairness we should call that fresh evidence and have the more liberal test. For that reason, we will need to go into consideration in detail, at least to give me the opportunity to move the proposed amendments that stand in my name on page 11 of today's notice paper. I ask to go into consideration in detail.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clauses 1 to 3 put and passed.

Clause 4: Part 3A inserted —

Mr J.R. QUIGLEY: I move —

Page 3, line 17, to page 4, line 14 — To delete the lines and substitute —

35D. Terms relating to evidence

(1) For the purposes of this Part, evidence relating to an offence of which an offender was convicted is ***fresh*** —

(a) if, despite the exercise of reasonable diligence, the evidence was not and could not have been tendered at the trial of the offence or any previous appeal; or

(b) if —

(i) the evidence was not tendered at the trial of the offence or any previous appeal but, with the exercise of reasonable diligence, could have been tendered at the trial of the offence or any previous appeal; and

(ii) the failure to tender the evidence was due to the incompetence or negligence of a lawyer representing the offender.

(2) For the purposes of this Part, evidence relating to an offence of which an offender was convicted is ***new*** if the evidence was not tendered at the trial of the offence or any previous appeal but, with the exercise of reasonable diligence, could have been tendered at the trial of the offence or any previous appeal.

(3) Despite subsection (2), evidence is not new evidence if it is fresh evidence under subsection (1)(b).

(4) For the purposes of this Part, evidence relating to an offence of which an offender was convicted is ***compelling*** if it is highly probative in the context of the issues in dispute at the trial of the offence.

Mr P.A. KATSAMBANIS: The Attorney General gave a pretty good explanation of what changes have been made to the definition of "Terms relating to evidence", both fresh evidence and new evidence, in his summing up of the second reading debate. We do not need to repeat that. I note that there has been a bit of a change in the style of drafting. Previously, there had been a separate proposed section 35D defining "fresh and compelling evidence" and a separate proposed section 35E defining "new and compelling evidence", whereas now it has all been incorporated into one proposed section. That way "compelling" does not have to be defined twice. In fact, in subclause (4) it makes it very clear that the term "compelling" means exactly the same as "fresh and compelling" and "new and compelling". That is all fine and good. Both the term "fresh" and the term "new" are defined primarily in the same way that they were defined in the original draft of the bill, except for one important difference. One discrete type of evidence that would have been deemed to be new evidence will now, by this amendment, be deemed to be fresh evidence.

Mr J.R. Quigley: Correct.

Mr P.A. KATSAMBANIS: I will read from new proposed section 35D(1)(b), which states —

if —

(i) the evidence was not tendered at the trial of the offence or any previous appeal but, with the exercise of reasonable diligence, could have been tendered at the trial of the offence or any previous appeal; and

Essentially, that is the definition of new evidence. It has that character, plus the following character —

(ii) the failure to tender the evidence was due to the incompetence or negligence of a lawyer representing the offender.

Mr J.R. Quigley: It can't be a strategic move.

Mr P.A. KATSAMBANIS: Yes. We hope that in those instances, the appropriate action had been taken against that lawyer if they were still practising and subject to any form of action. That part would have already been ventilated. I think that is a good move, for what it is worth. It is my personal opinion.

Mr J.R. Quigley: Thank you, member.

Mr P.A. KATSAMBANIS: I think it is a good move because, as the Attorney General pointed out, the test for fresh evidence upon appeal is slightly more beneficial to the appellant than the test for new evidence, or more small "l" liberal, whichever way he wants to put it. That is fair enough. We should not hold people to account for the incompetence or negligence of someone they hired purporting to be an expert in that area. The only question I have, and I realise we are looking at very rare, minute possibilities, is: was any consideration given to including actions not taken by the representatives of the defendant at first instance or the appellant at first appeal, for that matter—the accused person—but also actions taken by either the prosecution, or evidence gatherers before the prosecutors got to this, that may well have also kept what otherwise would have been new evidence, bar this provision, from being ventilated at the original trial or the original appeal? I guess that is the nub of the question.

Mr J.R. QUIGLEY: Yes. I believe and am sure that that category of evidence in which the prosecution has been negligent or the investigators have been negligent and subsequently discovered will be classed as fresh evidence, as indeed it was in the Mallard case when the prosecutor had a 32-page brief from the police. In that brief, it said that the forensic pathologist said the spanner could not have been the murder weapon. The prosecutor did not disclose that document to the court. The court held that that was a negligent failure. In fact, the practitioner lost his spot as a prosecutor and ended up being disciplined. He is a good bloke; he is a nice chap, but he did not do that case right. I will not name him here. He now practises as a solo practitioner. But his failure to disclose—I think it answers the member's question—was categorised by the High Court as fresh evidence.

Mr P.A. KATSAMBANIS: I think it is important to put it on the record, because although it was a High Court determination, in this legislation we are now co-defining a definition of "fresh" and "new". As we said in an earlier debate on a bill today, it is quite important that this stuff be put on the record. It saves court time in having to argue about what the legislature meant. I thank the Attorney General for that clarification. With that, I think people could argue this either way—it is fresh; it is new. As I said, I think when a defendant and their legal team did not have the information to hand, that ought to be fresh evidence. I agree with that part. I also think that when there was negligence or incompetence by someone who was hired to represent this person, someone who purported to be an expert in the area, again, the benefit should go to the person who missed out in the first instance because of that negligence and incompetence. With that, I indicate support for the amendment.

Amendment put and passed.

Mr J.R. QUIGLEY: I move —

Page 5, lines 6 to 11 — To delete the lines and substitute —

(2) The Court of Appeal may decide whether or not to give special leave to appeal with or without written or oral submissions from the parties to the appeal.

(2A) Except as provided in subsection (3), the Court of Appeal must decide whether to give special leave to appeal before the hearing of the appeal.

Mr P.A. KATSAMBANIS: This is an issue that I raised in the briefing. I am not taking credit for that leading to this amendment, but I think it is a good amendment. The first part effectively preserves what is already there; that is, the Court of Appeal may decide whether to give special leave to appeal with or without written or oral submissions from the parties to the appeal. The second part then clarifies what was in the original draft paragraph (b), to read —

Except as provided in subsection (3), the Court of Appeal must decide whether to give special leave to appeal before the hearing of the appeal.

That amendment makes it really clear. I thought that was the intention and I hope that is the practice in the court. I see the Attorney General's adviser looking at me and smiling because we had a little bit of a chat about this. I think as lawyers we all expect that that is how it would work in practice, but this spells out that the hearing for special leave is not an opportunity to hear the appeal de novo. It is a special leave application. The amendment offers strong reassurance that that is the case.

Following on from that, in the same amendment —

Mr J.R. Quigley: That is a new amendment.

Mr P.A. KATSAMBANIS: Yes, I am going on to a new amendment, so I will leave that one until later.

I am glad this came about. As I said, I do not want to take credit for bringing it into being because I am sure it had been contemplated, but it clarifies what we all thought was the case. It spells it out in black and white so there is no argument or debate or any subsequent appeal from that later on. I thank the Attorney General for bringing this to the house.

Mr J.R. QUIGLEY: The member for Hillarys' words were taken on board in the process of workshopping this in my office and then in the back-and-forth with the Office of the Director of Public Prosecutions about how things would work. We were talking about the same cases of the usual suspects sitting in their cells and them coming up with a new appeal and a new one. We wondered how to unburden the court from this and we decided the best way was the way that the High Court does it—that is, to seek special leave as a separate matter. With normal criminal appeals in the Court of Appeal, leave is sought during the argument of the substantive appeal. As I said before in my reply to the second reading, often at the end of the judgement there will be leave granted and appeal refused or denied, so it is part of the same ruling. In this case the judges will have to make a separate and preliminary ruling about whether there is an arguable case to go to the Court of Appeal. The member will notice that the amendment states, in part —

(2) The Court of Appeal may decide whether or not to give special leave to appeal with or without written or oral submissions from the parties to the appeal.

Like in the High Court, this can be a fairly brutal and sudden thing and the court may say, "No, you are not getting special leave." There might have been somewhere at some time—I say, rarer than hen's teeth—a case in which the judge was so dismissive without listening, but we always have the backstop of the state saying that it can do a referral itself. With the quality of the judiciary in Western Australia now, I do not envisage that happening. The quality of the Supreme Court in Western Australia is outstanding. We have outstanding judges, led by Chief Justice Quinlan. I will not name them all, but we have a great President of the Court of Appeal, Justice Michael Buss. We could have left it to the rules of court and let the judges make the rules, but we thought that it was appropriate for Parliament to set out that there has to be a first stage, which can be a relatively quick stage. If a matter attracts the judge's attention, they will delve into it further before making their decision to refer. I thank the member very much for his contribution.

Amendment put and passed.

Mr J.R. QUIGLEY: I move —

Page 6, line 31 to page 7, line 1 — To delete "satisfied that in light of all the evidence," and substitute —

satisfied on the balance of probabilities that, in light of all the evidence,

Mr P.A. KATSAMBANIS: I recognise what the Attorney General is getting at here, but for completeness and for people reading *Hansard*, perhaps it is worthwhile the Attorney General putting on the record why this amendment is required, because it ensures that the test of the balance of probabilities is included. We are talking about the criminal jurisdiction and, as we know, for conviction we have a higher test of beyond reasonable doubt. Firstly,

why are we using the test of the balance of probabilities? Could the Attorney General put that on the record so that it is very clear? Secondly, in the absence of the words being inserted, what was the risk and what could the court have done in the absence of "on the balance of probabilities" that it cannot do now?

Mr J.R. QUIGLEY: The reason for the amendment was that during this workshopping process, we decided that there had to be new evidence and it had to be compelling of innocence. Therefore, the member is quite right that the appellant would bear a burden of proof in the criminal court environment. Whenever the prosecution carries an onus, it carries it beyond a reasonable doubt. We want to spell it out that we are providing a scheme for an appeal that would be allowed if the appellant could bring forward evidence compelling of innocence. We want to confirm what that standard would be. The member for Hillarys does not come from a code state, but he has been here long enough to be well apprised that whenever the Criminal Code throws a burden onto an accused person—that is, if someone pleads the defence of insanity under section 27—to prove anything during the course of the trial, it must be proven to the civil standard of the balance of probabilities. Whether it is displacing a presumption of trafficking or whatever, when the burden falls on the accused, it must be proven on the balance of probabilities. Here we have an accused or a convicted person, and the legislation is throwing a burden on that person to demonstrate that this new evidence is compelling of innocence. To what standard? It is not in the Criminal Code. We wanted to make it abundantly clear—it is as normal. The accused person or the criminal would have to prove it on the balance of probabilities.

Mr P.A. KATSAMBANIS: That is the reason I wanted that there. I do not want the Attorney General or me or anyone else to go out of this place and be accused of bringing in a weaker standard than usual. Any burden on the accused is on the balance of probabilities. It is welcome in this case. I do not necessarily think the absence of the words would have been fatal to the legislation, but since we are tidying things up and making them clearer, I welcome its inclusion. I welcome the Attorney General's explanation that it is not changing anything or making it any easier than it would have otherwise been for an accused person in any of these sorts of proceedings.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 5 to 14 put and passed.

Title put and passed.

House adjourned at 5.02 pm

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QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

WATER — HORTICULTURAL USE — GERALDTON

5158. Dr D.J. Honey to the Minister for Water:

(1) What are the tariff rates for horticultural water supply in the Geraldton region?

(2) How much additional water is available to supply horticultural users in the Geraldton region, and what tariffs would apply to any additional supply?

(3) Are there any grey water supplies available for reuse in the Geraldton region? If so, what plans are in place to utilise this resource?

(4) Are there any additional efforts being made to identify other affordable water supplies for horticultural enterprises in the Geraldton region? If so, what work is being carried out?

Mr D.J. Kelly replied:

(1) For potable water services provided by the Water Corporation using up to 49 kilolitres per day, the standard non-residential prices apply for horticultural use. The usage prices charged depend upon the location of the service within the Geraldton Region and range from $2.534/kilolitre to $8.353/kilolitre.

(2) There is limited fresh groundwater available for self-supply in the areas where horticulture is currently established. Scheme water can be accessed, and the same tariffs as provided in question (1) would apply (for usage up to 49 kilolitres per day).

(3) The Department of Health approves greywater systems.

(4) Groundwater resources were previously investigated in Irwin in 2016–17, south of Allanooka, under the Water for Food Initiative. The study found shallow saline groundwater occurs primarily near the Irwin River and its tributaries, and it is unsuitable for irrigated agriculture.

Western Australia submitted an Expression of Interest to the Commonwealth Government's National Water Infrastructure Development Fund – Drought Round to expand the Geraldton horticulture area to support existing and new horticulture industries, however the Commonwealth advised it would not support the project. Another Expression of Interest was submitted to the Capital Round closing April 2019 and Western Australia has not been advised of an outcome.

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