Parliamentary Debates
(HANSARD)

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LEGISLATIVE ASSEMBLY

Wednesday, 27 October 2021

Legislative Assembly

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THE SPEAKER (Mrs M.H. Roberts) took the chair at 12 noon, acknowledged country and read prayers.

PAPERS TABLED

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

POLICE — NEWMAN REMEMBRANCE CEREMONY

Statement by Minister for Police

MR P. PAPALIA (Warnbro — Minister for Police) [12.03 pm]: This weekend just passed, I travelled to the Pilbara to attend the Newman police remembrance ceremony marking the twentieth anniversary of the tragic loss of four Western Australia Police Force officers who were killed in a plane crash on Australia Day, 26 January, 2001. I would like to acknowledge the member for Pilbara, Hon Kevin Michel, MLA, as well as Deputy Commissioner Gary Dreibergs and Deputy Commissioner Darryl Gaunt, who were also in attendance.

On that day in 2001, Senior Constable Donald Everett 4600, Senior Constable Philip Ruland 7877, First Class Constable David Dewar 9178 and Constable Gavin Capes 10305 were on a return flight to Newman after attending an incident at the small community of Kiwirrkurra, approximately 130 kilometres from the Northern Territory border, when their aircraft, Polair 64, crashed 2.6 kilometres south-east of Newman Airport. The impact of this tragedy upon families, friends, the WA Police Force and the Newman community continues to be profound.

In response to the tragedy, the Newman community and the WA Police Force, in particular the local Newman police staff, established and continue to deliver the Bloody Slow Cup, which is an annual fundraising event in support of Western Australian Police Legacy and the wonderful work it does in providing support to the families of our police officers who are impacted most of all by the loss of their loved ones in the service of protecting Western Australians. The Bloody Slow Cup incorporates a number of sporting events, including golf, netball, cricket, touch rugby and soccer, that are held over three days and brings people together with an inspiring community spirit. The final event held on the Saturday night is the rugby match between the Australian and New Zealand teams, with the victor awarded the Bloody Slow Cup.

The quality of the match and the spirit of the players was truly inspirational to watch, and although our Australian team was victorious, with an outcome of 29–0, I want to acknowledge the New Zealand team for making our boys earn every yard and try; we would expect nothing less from our Kiwi friends. For a small town, the atmosphere, participation and sense of community are something I have not seen rivalled, and I commend the people of Newman and all who travelled and participated in support of the event.

PERTH ZOO — GIRAFFE BREEDING PROGRAM

Statement by Minister for Environment

MS A. SANDERSON (Morley — Minister for Environment) [12.06 pm]: I would like to inform the house of recent successes at Perth Zoo in its work to contribute to global efforts to breed giraffes and ensure the survival of the species. In the last two months, Perth Zoo has welcomed two giraffe calves, a male and a female, the first time two calves have been born at the same time. Giraffe numbers in the wild have suffered a 40 per cent decline in the last 30 years, making zoo breeding efforts more important than ever before. With fewer than 80 000 wild giraffe roaming the African plains, these two arrivals are an important contribution to successful breeding efforts helping to fight extinction. The births are the culmination of hard work and collaboration with other zoos across Australia and New Zealand.

Perth Zoo plays a very important role in the regional giraffe breeding program, and giraffes previously born here have been moved across the region to make sure that there is continued genetic diversity and breeding success. Adult female Kitoto gave birth to her third calf in September. The female calf is developing well and will become an important member of the regional breeding program once she reaches maturity. Zoo visitors are already enjoying watching her grow and start to explore her environment. Perth Zoo received almost 14 000 submissions from the community suggesting a name for the young female, and I had the great pleasure over the weekend in announcing that her name is Zahara, which has its origins in Swahili, an East African language. In English, Zahara means blossoming flower. The male calf, born in early October, is adult female Ellie's first calf. Ellie is a nervous new mum and she has struggled to feed the young male. Perth Zoo zoologists and veterinarians supported Ellie through her first few days of motherhood in the hope that she would allow the calf to suckle. When this was not successful, staff attempted to introduce the male calf to Kitoto to see whether she would take him on as a surrogate. Unfortunately, this was also unsuccessful, so the male calf is now being hand reared.

The work carried out at Perth Zoo to save species is to be commended. I thank Western Australians for the support shown to this important community asset and the work it does in the conservation and breeding of wildlife. Hopefully, both young giraffes will soon be running around the Perth Zoo savanna, being enjoyed by all visitors.

ACCESS CULINARY COURSE — GRADUATION

Statement by Minister for Disability Services

MR D.T. PUNCH (Bunbury — Minister for Disability Services) [12.08 pm]: I rise today to inform the house of my recent attendance at a very special event to recognise the 2021 graduates of an access culinary course delivered by Vision Australia and the Annalakshmi Cultural Centre restaurant. Annalakshmi has a social welfare not-for-profit approach and is largely staffed by volunteers and managed by Mr Arun Natarajan, the director of the centre. The Annalakshmi access culinary science program was established about three years ago by Ms Mallika Jegasothy—Dr Jega. Using her physiotherapy and rehabilitation background, Dr Jega had a dream to provide cooking skills to people with disability. In early 2020, Annalakshmi and Vision Australia, an organisation that provides services and advocacy for people who are blind or vision impaired, worked together to create a 13-week cooking course tailored to Vision Australia's National Disability Insurance Scheme participants. Course participants are assisted by Annalakshmi instructors and Vision Australia occupational therapists to extend their culinary knowledge of Indian and Asian cuisines. The skills gained help participants prepare meals in their own kitchens and also to seek future employment. Like everyone else, people with disability have aspirations and the desire to contribute to their local communities and the Western Australian community more broadly.

A Western Australia for everyone: State disability strategy 2020–2030 has many actions relating to the education, training, employment and social participation of people with disability. The state disability strategy outlines the state's whole-of-community commitment to changing the lives of people living with disability, and is key to achieving more inclusive, caring and accessible communities that enable people to live well. The state disability strategy also aims to protect people who may be vulnerable, and to ensure everyone is treated with the dignity and respect they deserve.

Fourteen people who are blind or have vision impairment graduated from this cooking course, and they are all fine examples of people taking on challenges, working hard, and gaining new skills. The Vision Australia course at Annalakshmi focuses on supporting people with disability to achieve their goals and to live their lives on their own terms. This is integral to building an inclusive and equitable society through health, wellbeing, social and economic participation. As Minister for Disability Services, it gave me great joy to see firsthand the graduation of Perth's next master chefs, and I warmly congratulate Annalakshmi, Vision Australia and all involved in this positive example of inclusion and equity in our community.

INTERNATIONAL DAY OF PEOPLE WITH DISABILITY

Statement by Minister for Disability Services

MR D.T. PUNCH (Bunbury — Minister for Disability Services) [12.11 pm]: I rise today to inform the house that on 3 December 2021, we will celebrate International Day of People with Disability. Held on this date each year, International Day of People with Disability is a United Nations–sanctioned day to increase public awareness of the importance of access and inclusion, to promote understanding and acceptance of people with disability, and to celebrate their achievements and contributions to our community. There are around 411 500 people with disability in Western Australia and approximately 230 000 carers. This is a significant cross-section of our very diverse Western Australian community.

I am incredibly proud to inform members that the state government is making $100 000 available in sponsorships for inclusive events and activities to mark International Day of People with Disability in 2021. The Department of Communities has funded Developmental Disability WA to provide 100 grants of up to $1 000 for community organisations to recognise people with disability and celebrate this important day. Events and initiatives eligible for sponsorship will raise awareness and educate and inform the broader community about people with disability in Western Australia. Initiatives and events that empower people to achieve their goals and emphasise the importance of access and inclusion for people living with disability will also be eligible. Events held for International Day of People with Disability in previous years have included public awareness sessions, fun fairs, picnics and art exhibitions. The sponsorship funding aligns with the vision of *A Western Australia for everyone: State disability strategy 2020–2030* to build a more inclusive Western Australia and empower people with disability to be part of all areas of society. Applicants will have to align their events or activities with the state disability strategy. Further information on the grants available can be found on Developmental Disability WA's website, with applications closing on 9 November 2021.

I rise today to encourage all of you to actively spread the word about International Day of People with Disability 2021 and the grants available to help the community celebrate this special day. I also encourage members to start thinking about what they, as elected representatives of the Western Australian community, can do to celebrate the day. Let us make International Day of People with Disability 2021 the most memorable yet!

BUSHFIRE PREPAREDNESS

Statement by Minister for Emergency Services

MR R.R. WHITBY (Baldivis — Minister for Emergency Services) [12.13 pm]: I would like to take this opportunity to inform the house about the state's preparedness for the upcoming bushfire season and urge all Western Australians to act now to prepare their properties for the threat of fire. We have seen a range of extraordinary

weather events this year, with our emergency services responding to bushfires, floods, storms and cyclones. We are again expecting a very challenging bushfire season. The Bureau of Meteorology and CSIRO are predicting a longer fire season, especially in the south, with more extreme fire danger days; elevated fire risk; increased frequency, intensity and duration of heatwaves; and greater rainfall and flooding.

The Department of Fire and Emergency Services is doing everything it can to prepare, including organising rural–urban interface exercises; hosting a metropolitan volunteer pre-season forum, which brought together more than 150 volunteers; commissioning the state's first purpose-built incident control centre in Collie, the Koolinup Emergency Services Centre; and allocating extra appliances across WA, based on risk. DFES and the Department of Biodiversity, Conservation and Attractions air operations have also commenced training. The state also has 38 aerial firefighting and intelligence aircraft for the upcoming fire season, including the Beechcraft Super King Air Linescanner. I recently attended a level 3 preformed team bushfire exercise in Collie, where people carried out real-time scenario-based training. It took place at the brand new $13.4 million Koolinup Emergency Services Centre, which is also an incident control centre for large-scale emergencies in Collie. The way everyone involved swung into action was impressive.

Our career and volunteer emergency services do everything they can to keep our communities safe, but it is up to all of us to do our bit. We cannot wait for a text message or a fire truck to arrive; everyone must take responsibility for their own safety. I urge all members in this house to encourage their communities to prepare their properties for the upcoming bushfire season. There is also help available to make a bushfire plan: visit the Department of Fire and Emergency Services' My Bushfire Plan WA website at www.mybushfireplan.wa.gov.au, or download the My Bushfire Plan app, which I have on my phone. By knowing when to leave, where to go, and how to get there, our community will have the best chance of survival. In closing, I wish all our emergency services personnel a very safe season ahead, and I encourage all Western Australians to do everything they can to prepare themselves.

POSEIDON NICKEL AGREEMENT AMENDMENT (TERMINATION) BILL 2021

Consideration in Detail

Clauses 1 to 6 put and passed.

Clause 7: Schedule 3 inserted —

Dr D.J. HONEY: This is just a general question on something that we explored earlier: the termination of the agreement. I am interested in contextualising this bill in respect of how common terminations are. I am not going to exhaust this point; I am interested, specifically, to know whether it is a common occurrence to terminate and revert to the Mining Act, or is this quite unusual?

Mr R.H. COOK: Member, I am informed that it is certainly becoming more common for agreements to be terminated for the purposes of transition to the Mining Act. This may come down to some of the comments I made last night; that is, the Mining Act is globally considered as benchmark legislation for mineral extraction. From that perspective, I think, increasingly, companies will look to the Mining Act as opposed a more complex state agreement model.

Dr D.J. HONEY: Thank you very much. The Minister for Mines and Petroleum in the background was looking very pleased with his work.

Mr W.J. Johnston: It's not my work.

Mr R.H. Cook: Claim it.

Mr W.J. Johnston: Yes, I'll claim it.

Dr D.J. HONEY: Claim it; people will criticise him.

At the top of page 6, by way of explanation, I want to explore some of the detail around the original closure plan and then the detail of what will be the closure plan going forward for this Poseidon Nickel Agreement Amendment (Termination) Bill. The minister will see a common theme in some of the questions going forward. I do not plan to drag this out, but seek to get a little bit of that detail on the record. Where it refers to the mine rehabilitation site, it states —

> Plan—Final Version 2005" initialled by or on behalf of the parties to this Agreement for the purpose of identification.

What is that plan referring to?

Mr R.H. COOK: I am advised that it refers to the original mine closure plan under the 2005 agreement.

Dr D.J. HONEY: Thank you very much. I refer to clause 4(2) on page 8. I will not go through it exhaustively, but it states —

> With effect on and from the Operative Date the Company is released from its obligations under clauses 3.2(a) and 3.2(b) of the Deed …

As I asked in my contribution to the second reading debate—I did not plough through the whole deed—is it possible to give a brief summary of the obligations that are being released.

Mr R.H. COOK: This, essentially, refers to the transition of the mining company's obligation under the state agreement to its obligations under the Mining Act. The bill replaces this release through a number of interlocking arrangements, in short, by a mine closure plan under the Mining Act 1978. The $3.5 million bond has been transitioned to a bond under the Mining Act and the company has been required to enter the mining rehabilitation fund we discussed last night during the second reading debate. In detail, these arrangements include clause 4(4) of the termination agreement, applies the Mining Act to the mining lease and a mining proposal approved under the Mining Act authorises the activities on the mining lease and a mine closure plan approved under the Mining Act authorises closure activities on the mining lease. The mine closure plan includes all the rehabilitation and remediation activities assigned to the company under the deed of covenant and the security of the $3.5 million is transitioned to be a Mining Act security applicable to the entirety of the mining lease, and the mining rehabilitation fund is applied to the entirety of the mining lease in addition to all of the above.

Dr D.J. HONEY: Specifically, clauses 3.2(a) and 3.2(b) refer to some of those remediation requirements. I am interested in what they specifically referred to. As I say, I do not need an exhaustive explanation, just a general explanation of what they cover.

Mr R.H. COOK: Member, it may take a little while to refer to those sections of the agreement, so bear with us.

I am advised that after the cessation of works in the early 1990s, Western Mining Corporation carried out extensive closure works between 1994 and 1997. After a five-year monitoring period in 2005, WMC produced a closure finalisation plan, which documented the remaining outstanding closure works. Clause 3.2(b) requires the company to carry out and complete the closure finalisation works to the minister's satisfaction prior to 31 December 2008 or at a later date agreed to by the minister, with this date being extended to align with the extended term of the state agreement—currently 31 December 2021. It requires monitoring of any closure finalisation works after they have been completed as per the mining closure plan and to the minister's satisfaction; submission of a closure finalisation works report to the minister within two months of the completion date of the closure of finalisation works; and submission of a five-year post-closure monitoring report within five years and two months of the completion date of closure finalisation works.

Dr D.J. HONEY: Thank you very much. I assume clause 3.2(a)—I do not need the minister to respond again—is on the same thing. In relation to clause 4(3), I was just after an explanation in layperson's language of what that paragraph means in the agreement.

Mr R.H. COOK: I am advised that, essentially, this paragraph deals with liabilities after the passage of this legislation and it means that Poseidon will remain liable for its activities and indemnities under the state agreement and the deed of covenant in relation to any past breaches.

Dr D.J. HONEY: Thank you very much. On page 9, clause 4(4)(d) states in part —

> the mine closure plan contained in the Mining Proposal shall be deemed to be a mine closure plan within the meaning given to that term in section …

I am looking for an assurance that that mine closure plan would be at least to the standard of the previous mine closure plan. I am assuming that will be the case, but can the minister confirm that or otherwise?

Mr R.H. COOK: Member, that is correct. The previous mine closure plan was done to the standards consistent in 2005. The current mine closure plan is a contemporary plan consistent with the Mining Act.

Dr D.J. HONEY: Thanks, minister. At paragraph (f), it states —

> for the purposes only of this Agreement the application of the Mining Act is specifically modified as follows:

There are two sections I am interested in. First is subparagraph (i), which states in part —

> "(1b) Paragraph (ca) of subsection (1) shall apply to Mining Lease …

For the sake of the minister's time, the corresponding paragraph at the bottom of the page at subparagraph (ii) states —

> "(1a) This section applies to Mining Lease …

Again, I only need *Reader's Digest* detail, but what does that apply to, please?

Mr R.H. COOK: Member, it is suggesting that the standard conditions as detailed under section 82 of the Mining Act 1978 will apply to the specific references in relation to the state agreement. It is essentially transferring those that were captured under the state agreement and nailing them to section 82(1)(ca) of the Mining Act which, I am advised, means that the lessee cannot utilise ground-disturbing equipment on the mining lease without permission from the minister under the mining proposal.

Dr D.J. HONEY: Thanks, minister; that was certainly sufficient clarity.

I refer to paragraph (h) on page 10, which states —

> for the avoidance of doubt, the Mining Lease shall be deemed to be a mining authorisation for the purposes of the *Mining Rehabilitation Fund* …

I have seen this referenced but I want to be clear about this. The initial deposit of $3.5 million will be refunded under the state agreement, but will that surety be reapplied and what is the operation's requirement—I am assuming it is codified—for funding of the rehabilitation fund going forward?

Mr R.H. COOK: As the member alluded, the $3.5 million bond will be transferred under the Mining Act. This provision explicitly states that the mining lease will be subject to all the levies that are appropriate under the mining rehabilitation fund.

Dr D.J. HONEY: Minister, I refer to page 11, clause 5 of the agreement—we are almost home—which is headed "Cessation of Bank Guarantee and provision of Security under Mining Act". The subsequent clause—in fact, it might be a bit before that clause, but it does not matter—states that the company is responsible for a 20-year period. What level of surety does the government have about the company's capacity to meet that obligation? This goes back to the concern I expressed during my contribution to the second reading debate. Obviously, there is some surety with very large companies—although it is not certain—but the government can be less certain that a smaller company will be around for a long time.

Mr R.H. COOK: I am advised that obviously it is a long-term indemnity. There are obviously commercial risks associated with any long-term agreement, but from the perspective of, I guess, the interests of the Western Australian people, it is better than not having any indemnity at all. It is essentially a balance between the obligations that we expect it to provide through legal means versus the capacity to make it accessible for companies of this nature.

Clause put and passed.

Title put and passed.

[Leave granted to proceed forthwith to third reading.]

Third Reading

MR R.H. COOK (Kwinana — Minister for State Development, Jobs and Trade) [12.34 pm]: I move —

That the bill be now read a third time.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [12.34 pm]: Obviously, the Poseidon Nickel Agreement Amendment (Termination) Bill 2021 is a small bill in the scheme of the world but, first of all, I thank the minister for providing the briefings and the courteous and full way that he has answered my simple questions today. I also thank the advisers, who were very forthright and helpful during the briefing.

The project is not a multibillion-dollar project but it will make an important contribution to the local economy. The thing I am reassured about having read the bill and after going through the consideration in detail stage is that the government has made sure that the community will not face ongoing liability for remediation—or as best that it can make that surety. As I said before, that is very important. I also am reassured that the retreatment process that will be carried will reduce the inherent risk in particularly the tailing ponds of that operation, and that is definitely a win–win for not only the local community, but also the state in the longer term.

I know that the purpose of the third reading debate is not to debate the second reading debate. I can see that the Minister for Mines and Petroleum is anxious to leap up! I will keep it brief. As we all know, and as was discussed widely in this room, nickel was substantially used in stainless steel and obviously stainless steel manufacturing will continue to be a massive consumer. We are obviously moving more into the renewable area. The gold that will be recovered from the deposit is an extremely valuable asset; we certainly welcome that. It is extremely pleasing to see the almost rebirth of nickel mining and the associated cobalt mining industries in the state. During the debate, the member for Willagee said that something like 90 per cent of the state is unexplored. He quoted a map that is in the Minister for Mines and Petroleum's office.

Mr W.J. Johnston: It's 80 per cent.

Dr D.J. HONEY: I stand corrected. I will let the member for Willagee know. Nevertheless, there is enormous potential in the state of Western Australia and it certainly gives us this enormous lifestyle on which we all depend.

Mr W.J. Johnston: I've just got to say that last year we became the world's largest gold producer—not just Western Australia, but the nation.

Dr D.J. HONEY: Excellent point, minister.

Mr W.J. Johnston: We surpassed China as the largest gold producer in the world.

Dr D.J. HONEY: Absolutely. The minister would know well being a student of these things that South Africa is lagging behind. Unfortunately for that country, that is a reflection on governance. We are fortunate in this state to have had good governance in this industry for a long period. I recognise that that continues under this government. This is an area in which we have mutual agreement and respect for the importance of the sector. That being said, as I said before, we are happy to support this bill and commend it to the house.

MR R.H. COOK (Kwinana — Minister for State Development, Jobs and Trade) [12.38 pm] — in reply: Once again, I thank everyone for their contributions last evening. In particular, thank you to the team from the Department of Jobs, Tourism, Science and Innovation and the State Solicitor's Office for guiding us through consideration in detail. I thank the member for Cottesloe for his contribution to the debate. As I said last night, the members for Cottesloe and Scarborough provided some good insights into the chemical and physical engineering associated with nickel mining and their contributions certainly enriched the debate.

This is an important piece of legislation. As the member for Cottesloe said, it is another chapter in which Western Australia, through Parliament and government, provides great and safe opportunities for people to invest in this state. I happily hand the legislation over to the Minister for Mines and Petroleum under his regime. I am sure that he will do a cracking job. I am disappointed that the Premier and I will not have an opportunity to star in the sequel to *Nickel Queen*; nevertheless, I am sure that other opportunities will come along! As I said last night, this is another chapter in a famous nickel deposit. We very much wish everyone involved in that project all the very best as they continue to develop it.

I commend the bill to the house.

Question put and passed.

Bill read a third time and transmitted to the Council.

CIVIL PROCEDURE (REPRESENTATIVE PROCEEDINGS) BILL 2021

Second Reading

Resumed from 18 August.

MR S.A. MILLMAN (Mount Lawley — Parliamentary Secretary) [12.40 pm]: It gives me great pleasure to speak in support of this important legislation that the Attorney General brought before the house. The current version of the Civil Procedure (Representative Proceedings) Bill 2021 is in large part similar to a previous bill that was brought before the Parliament for debate—the Civil Procedure (Representative Proceedings) Bill 2019, which, unfortunately, did not pass as a result of the prorogation of the fortieth Parliament.

At the outset, I wish to put on the record my thanks to the member for Roe, who has indicated that the opposition is likely to support this bill. I will not verbal him on that. I will wait for the member for Moore to give his contribution, but I understand he is otherwise occupied at the moment. That reflects the position that was taken by the opposition in the fortieth Parliament, when it supported the legislation that was brought forward by the Attorney General.

My starting off point in my support for this legislation is contained in the Attorney General's second reading speech. When he introduced the 2019 bill before the Parliament, he stated —

> There are many in our community with meritorious claims for compensation but they are unable to access the courts because they cannot afford to bring an action. In particular, there are situations in which a legal wrong has been committed which affects many people, but each person's individual loss is not such as to make it economically viable to bring an individual action. A strong and sustainable mechanism for bringing representative proceedings enhances access to justice.

I emphasise those last few points because that is a salient recurring feature of the legislative reform agenda that has been prosecuted by this Attorney General in the five years he has been in that role. I start by putting on the record my gratitude for the Attorney General once again bringing legislation to this chamber that enhances access to justice.

The second point I would like to make is that this is not revolutionary; this is a sensible administrative and procedural change backed up by authoritative research and tried and true experience in other jurisdictions. The bill is not substantially but in large part based on the equivalent class action proceedings in the Federal Court of Australia. Part IVA of the Federal Court of Australia Act 1976 was amended in 1991 to provide for representative proceedings in the federal jurisdiction. When it was first introduced in 1991, the regime in part IVA of the Federal Court act was met with some concern. Some critics feared that such regimes would throw open the floodgates of litigation, which is a point that the former member for Hillarys made in his contribution to the second reading debate in 2019. However, 30 years on, it is clear that this eventuality has not occurred; rather, the regime in part IVA of the Federal Court act has allowed those who have been wronged to gain access to justice and be awarded compensation for wrongs they have suffered. In a 2017 speech, Justice Bernard Murphy, an eminent judge of the Federal Court of Australia, observed that the regime in part IVA of the Federal Court act "has proved flexible and adaptable", provides "real, practical and broad-based access to justice" and "it is a regime of which we should be proud".

Introducing legislation to reform the way in which the Supreme Court of Western Australia operates to meet those key objectives is incredibly important. It is flexible and adaptable and provides real, practical and broad-based access to justice and is a regime of which we should be proud. This bill seeks to implement a representative proceedings scheme modelled on that successful federal regime. Some members might say that that might be appropriate at a federal level, but there are examples of other state jurisdictions where the regime has also been substantially adopted. I refer to the state of Victoria in 2000, which adopted a similar regime; New South Wales in 2011; and Queensland in 2017.

This raises an interesting point, which was raised by the member for Kalamunda in his contribution to the debate in 2019. In his contribution to the second reading debate, in speaking about similar legislation, he said —

> The new legislation … will modernise Western Australia's class action regime, which the legal profession regards as being outdated, uncertain and silent on many important procedural aspects of representative proceedings. The regime had been developed … by the commonwealth and a number of other states.
>
> …
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> If passed, the bill will bring Western Australia more or less in line with the class action procedures that apply federally and in other states on the east coast of Australia. Western Australian class actions that attract federal jurisdiction will likely still be instituted in the Federal Court. This legislation will not replace that pathway; it will still be determined based on jurisdiction.

This is the important point —

> However, the modernised procedures provided by the reforms contained in the bill will provide a clearer and more certain pathway; therefore, it is anticipated there will be an increase in the uptake of representative proceedings for state-based causes of action such as contract and tort.

That is not an unarguable proposition. I want to point to some of the evidence that was relied on to support the proposition. The member for Kalamunda said —

> As we have heard, large-scale class actions are now a common feature of the legal landscape in Australia. It was not always the case. The Federal Court has become the forum of choice for such actions. However, over the last 10 years or so there has been an increase in the number of representative proceedings —

Or class actions —

> in the state courts of Victoria and New South Wales, and more recently Queensland, as these jurisdictions have made legislative provisions for representative proceedings.

In fact, we are making sure that the Western Australian legal landscape stays appropriately abreast of developments that are taking place in other jurisdictions. It is a good benchmark to see what reforms are being undertaken in state jurisdictions such as Queensland, New South Wales and Victoria, to cautiously wait and observe how those reforms unfold and the implications that they might have for the justice systems in those states and then look to replicate those reforms in Western Australia. It is based on the experience of other jurisdictions. It is also supported by our own eminent professionals and academics in Western Australia.

This bill has a long gestation period. Back in 2011, the then Western Australian Attorney General referred to the Law Reform Commission of Western Australia the issue of representative proceedings. It published a discussion paper in 2013 and a final report in June 2015. It is fair to say that I have a slight source of pride in the work that was put forward by the Law Reform Commission of Western Australia because the principal project writer was my good friend and former colleague at Slater and Gordon Lawyers Tim Hammond, now the barrister that many people know. The report that was handed down in 2015 stated —

> In July 2011, the then Attorney General asked the Law Reform Commission of Western Australia … to examine and report upon whether, and if so in what manner, the principles, practices and procedures pertaining to representative proceedings being commenced in the courts of Western Australia require reform, in particular giving close consideration to:
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> i. The need for a detailed guiding framework for the manner in which representative proceedings are to be conducted or concluded;
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> ii. The need to reduce the uncertainty and lack of clarity in the area;
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> iii. The adoption of an appropriate and effective model, either through amendment to the Supreme Court Rules or statutory reform, taking into account recent developments regarding representative proceedings in other jurisdictions both nationally and internationally;

I will return to point iii shortly because one of the topics for discussion is whether a legislative response was more appropriate than, say, changing the practice directions of the Supreme Court. I will highlight that for members, because I propose to return to that point shortly. It continues —

> iv. the need to ensure that representative proceedings are conducted in a fair manner which gives those who will be bound by orders made in the proceedings a reasonable opportunity to decide whether or not to participate in the proceedings and to be heard in relation to issues affecting their rights;

The commission released a discussion paper in February 2013 and made the following proposals —

> (a) that Western Australia should adopt legislation to create a scheme allowing representative actions in substantially similar terms to Part IVA of the *Federal Court of Australia Act 1976* (Cth); and
>
> (b) Order 18 Rule 12 of the *Rules of the Supreme Court 1971* (WA) should be retained in its current form as a surviving alternative.

I should pause to interrupt myself to make the point that —

Mr D.A.E. Scaife: Would you like me to interrupt you?

Mr S.A. MILLMAN: No, not yet. I will come to the member for Cockburn shortly. I interrupt myself there to say that order 18, rule 12 of the Rules of the Supreme Court is the previous prohibition by which plaintiffs might seek to gather together a class action but it had not been particularly effective. It continues —

> The Commission sought submissions on the above proposals, as well as on all and any aspects of the Terms of Reference. Specifically it sought comment on three key issues:
>
> 1. If a new regime is appropriate, should such amendment be effected by amendment of the rules of the Supreme … Courts …

That is what we just talked about. It continues —

> 2. Should Western Australia adopt a legislative representative proceedings regime substantively similar to that existing in Part IVA of the *Federal Court of Australia Act 1976* (Cth)?
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> In respect of this second issue, the Commission recognised that there were two fundamental points of difference between Part IVA of the *Federal Court of Australia Act 1976* (Cth) and Part 10 of the *Civil Procedure Act 2005* (NSW). The first is the extent to which the legislation should allow representative actions to automatically proceed on a 'closed class' basis, as prescribed by s 166(2) of Part 10 of the *Civil Procedure Act 2005* (NSW). While such a provision does not exist in either the federal or the Victorian legislation, the Commission is aware that closed class representative actions are relatively common in both federal and New South Wales proceedings.
>
> The Commission therefore invited submissions on whether any legislative amendment in Western Australia should include an equivalent provision to s 166(2) of Part 10 of the *Civil Procedure Act 2005* …
>
> 3. The other key difference in the Civil Procedure Act … is the extent to which there is an express permission to issue a representative action against multiple defendants …

Again, ordinarily, the case would be that if a tortfeasor or wrongdoer, by their actions or omissions, had caused a loss for a class of people, the plaintiffs would then come together as a class. The question at issue here is whether several defendants, by their combination of actions, might have caused or contributed to that loss. It continues —

> In respect of this third issue, the Commission understands that in circumstances where the Philip Morris issue presents in the federal and Victorian jurisdictions —

That is the lung cancer class action that was ultimately unsuccessful —

> the practice routinely adopted is that multiple actions are issued and thereafter consolidated. The Commission specifically invited comment on whether a provision equivalent to s 158(2) … should be included in any final recommendation for legislative reform in Western Australia.

Members can see the reason I recite that relevant history is to locate the context in which the current bill has been formulated—formulated by reference to existing operating and effective commonwealth legislation; formulated by reference to what was going on in other state-based jurisdictions; and formulated based on advice that had been provided by the experts on the Law Reform Commission. For those members who are interested, the commission determined —

> 5. that a provision equivalent to s 158(2) of the *Civil Procedure Act 2005* (NSW) be included in the legislative scheme.
>
> 6. that a provision equivalent to s 166(2) of the Civil Procedure Act 2005 (NSW) not be included …

The next point that I want to raise concerning what was countenanced by the Law Reform Commission is the seventh recommendation of its report —

> that, in conjunction with any implementation of the above recommendations, consideration be given by government to whether the torts of maintenance and champerty should be abolished or whether the law in relation to their operation should be otherwise modified in Western Australia.

Last week, the Attorney General tabled the Law Reform Commission's project 110 final report. I was referring to the Law Reform Commission's report 103 on the issue of representative proceedings. The Law Reform Commission has also had tabled in this Parliament report 110, which is *Maintenance and champerty in Western Australia: Project 110: Final report*.

I want to go to Fleming's *The Law of Torts*. It is a very old edition, unfortunately. It is the sixth edition, but the commentary is still good. At page 590, Fleming defines maintenance and champerty in this way. He said —

> The promotion or support of contentious legal proceedings by a stranger, who has no direct concern in them, is a wrong actionable at the suit of the other party, in the absence of justifying circumstances. This tort, known as maintenance, stems from a time when officious interference in litigation was a widespread evil,

> practised by powerful royal officials and nobles to oppress their vulnerable neighbours. But after the Tudors had crushed the baronage and purged the judiciary, the prevalence of maintenance as an "engine of oppression" rapidly diminished, and later cases reveal it rather as a deplorable mode of paying off a score against an adversary. Its survival in modern law, though in greatly attenuated form, must be attributed to a persisting, if perhaps exaggerated, fear that it is still needed as a safeguard against blackmail and speculation in lawsuits prone to increase litigation.

I refer to what I said earlier about the concerns some expressed about floodgates —

> This policy against maintenance is, on the whole, amply safeguarded by the availability of penal sanctions and by the continued refusal to recognise assignment of causes of action in tort.

That is, someone cannot pass their action to another person. Someone has to bring the action themselves. I make the point that reforms that the previous Gallop Labor government passed allowed for the continuation of claims after victims succumbed to their asbestos-related diseases, but that was an example in which the cause of action died with the plaintiff, so they are not assignable. It continues —

> Accordingly, the modern tendency has been to discourage the civil action almost to the point of extinction; in England and Victoria it has been abolished entirely.

I am going to skip over the next paragraph because it is not relevant to this, and talk about champerty. It continues —

> Usually maintenance consists in financial assistance, such as giving or lending money, bearing the whole or part of the cost of the action or saving a litigant expenses that he might otherwise incur. An aggravated form of maintenance, known as *champerty*, consists in unlawfully maintaining a suit in consideration of a bargain to receive, by way of reward, part of anything that may be gained as a result of the proceedings, or some other profit. This has attracted special condemnation because of the imagined temptation for the champertous maintainer to suppress or manufacture evidence or even suborn witnesses for his own special gain. Hence solicitors, though in other respects free to make any arrangements they like with their clients regarding costs, may not stipulate for remuneration proportioned to the amount recovered in the action, like the customary "contingent" fee of American plaintiffs' attorneys in tort actions.

That is the background of these two torts of maintenance and champerty.

[Member's time extended.]

Mr S.A. MILLMAN: The issue is that the idea of maintenance and champerty was specifically adverted to by the Law Reform Commission in project 103 *Representative proceedings*, because there might be a circumstance in our modern legal market in which litigation funders provide assistance to the plaintiff class in order to make sure that the class action can be prosecuted. That would not sit well with the idea of maintenance and champerty. One of the issues that the Law Reform Commission identified back in 2015, when it finalised its report, was that a future Law Reform Commission would need to examine this issue, which, happily, is what happened. In February 2020, the Law Reform Commission produced its final report on *Maintenance and champerty in Western Australia*. I acknowledge the chair, Dr David Cox, and members, Ms Kirsten Chivers and my great friend Dr Sarah Murray, who is an eminent constitutional lawyer at the University of Western Australia, who was also part of the Law Reform Commission and helped with this report. I also acknowledge my great friend and constituent Sarah Burnside, principal policy officer, strategic reform, at the Department of Justice, who was also part of the inquiry into maintenance and champerty.

I am going to put on the public record the recommendations of the Law Reform Commission of Western Australia's report. Recommendation 1 states —

> That Western Australia legislate to abolish the torts of maintenance and champerty and to preserve any rule of law under which a contract is to be treated as contrary to public policy or as otherwise illegal.

Recommendation 2 states —

> In the event that the Civil Procedure (Representative Proceedings) Bill 2019 is passed, —

I just need to make the point that the bill that this Law Reform Commission report refers to is the 2019 bill, not the 2021 bill we are currently debating. In a material sense, they are the same —

> that the Western Australian Government recommend that the Supreme Court consider:
>
> - implementing a requirement that litigation funding agreements be disclosed to the Supreme Court and other parties to representative proceedings in similar terms to paragraph [6] of the Federal Court of Australia's Class Actions Practice Note;
> - implementing notification requirements for representative proceedings in similar terms to paragraphs 5.3–5.5 of the Federal Court of Australia's Class Actions Practice Note; and
> - providing guidance for the appointment of an independent costs expert by the Supreme Court to assist in the assessment of legal costs and litigation funding fees in representative proceedings.

The Law Reform Commission report then lists a number of options. Option 1 states —

> That Western Australia legislate to give the Supreme Court the power to make common fund orders in representative proceedings.

Option 2 states —

> That Western Australia legislate to provide a statutory presumption that third-party litigation funders who fund representative proceedings will provide security for costs in any such proceedings in a form enforceable in Australia.

Option 3 states —

> That Western Australia legislate to expressly provide that courts can award costs against parties and third-party litigation funders and insurers who do not assist in achieving the just resolution of disputes according to law and as quickly, inexpensively, and efficiently as possible.

I emphasise that point because it brings me back to the proposition I started with; that is, this legislation is designed to improve access to justice, particularly for those who otherwise might not be able to bring their claims. The options provided in the Law Reform Commission report went to government for contemplation in its finalisation of this legislation. I want to take members back to the Attorney General's second reading speech, in which he said —

> … the Law Reform Commission's final report titled *Maintenance and champerty in Western Australia: Project 110: Final report*. The Law Reform Commission made three recommendations and provided four options for the government on litigation funding.

I have just taken members through those three recommendations and four options. The Attorney General continued —

> This bill will implement the Law Reform Commission's first recommendation by abolishing the torts of maintenance and champerty, whilst preserving the rule of law as to the circumstances in which a contract is to be treated as contrary to public policy or as otherwise illegal. The torts are considered to be a barrier to justice in that they can be used by defendants to stymie class actions when litigation funders assist plaintiffs on the basis that they interfere, without justification, in another's action—known as maintenance—and for a share in the proceeds, known as champerty. The majority of stakeholders supported the abolishment of the torts during the commission's review, and the torts have long since been abolished by most Australian jurisdictions, as they are widely considered to be out of date.

I pause to make a point that I have often made when speaking in support of legislation that has been brought to this Parliament by this Attorney General; that is, we are modernising the statute book to make sure that it properly reflects contemporary attitudes. This legislation will modernise the statute book to provide greater access to justice and greater fairness in the way in which our legal system operates. Another very important point is that it will also provide flexibility and allow for speedier resolution of disputes. If we consider the number of cases that come before the courts, anything that we do in order to promote the speedy resolution of disputes, which will reduce costs on parties and the expenditure of unnecessary resources by the courts, is a worthwhile endeavour.

That is probably sufficient; I suspect if I go any further, I will probably cut across what the member for Cockburn is going to say. I want finish with this point. The way in which the legal system in Australia has operated has evolved over the last number of decades. We saw firms like Slater and Gordon at the leading edge of legal innovation, often at significant cost, or significant criticism, from more established parts of the profession. These legal innovations have served to increase the ability of people who have suffered wrongs, often significant wrongs, who might otherwise not have the chance to have their day in court to do so. These innovations have assisted victims of wrongdoing to bring forward reasonable claims, and supported in the evidentiary foundation and by the laws of the land, they have been delivered justice. Anything that we can do as a Parliament, particularly anything that builds upon the extensive research of the Law Reform Commission, plus the experience of other jurisdictions, including the commonwealth, can only be to the benefit of participants in the legal process in Western Australia. It is the next iteration, the next step, and a substantial body of reform that this Attorney General has brought to the Legislative Assembly. Once again, I am very proud and pleased to be able to support this important reform, buttressed as it is by the excellent work of people like Sarah Burnside, Sarah Murray and Tim Hammond. I commend the bill to the house.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [1.05 pm]: I rise to make a contribution on behalf of the opposition on the Civil Procedure (Representative Proceedings) Bill 2021. I am the lead speaker on this bill, even though I have no particular expertise whatsoever in the legal field. I am standing here talking on a very, very important matter that touches on the lives of many people, I am sure. The opposition will be supporting this legislation. I have been given some advice on the bill by the shadow Attorney General. With his indulgence, I will be reading out some of the information that he has provided to me, as if I had some understanding of the matters that we are talking about.

The bill deals with representative proceedings in Western Australia, commonly known as class actions, which I believe have been available in the Federal Court since around 1992. Members will no doubt be aware of a number

of significant cases over the years. Basically, the idea behind a class action is that people who have sustained loss or damage can seek redress more cheaply and efficiently together than if they were to take action on their own. In fact, it is probably unaffordable for many people to make applications for smaller claims on their own, and class actions are a useful device for that purpose. I note that the Attorney General in his second reading speech for an earlier iteration of the bill in 2019, made the point —

> In particular, there are situations in which a legal wrong has been committed which affects many people, but each person's individual loss is not such as to make it economically viable to bring an individual action.

Members can see that there is merit in individuals being able to participate in class actions. I have a personal experience in this regard. Back in, I think, the late 1990s, there was an incidence of salmonella poisoning in Kraft peanut butter. Three of my children had consumed Kraft peanut butter. One in particular was very badly affected and put in hospital. That child had to be isolated because it was thought for a while that they had some terrible infectious disease, but it turned out that the common link was the consumption of Kraft peanut butter. A class action was initiated; it was by Slater and Gordon, if I remember correctly. Slater and Gordon contacted people whom it was considered may have been affected by this particular matter. Our family contacted those lawyers and we joined the class action. Three of my children received small amounts of money that was to be used for their benefit. Of course, it was used for their benefit over the years.

It was a very small amount of money when one considers the investment one makes when raising a child. It was several thousand dollars for one particular child who manifested quite a serious illness. I am sure that a number of families around Australia at the time would have been involved in that case. I assume it was mainly kids who ate peanut butter, but I am sure some adults had eaten it, too. Perhaps I should have eaten some peanut butter and then I might have got a little more money! That was the first time I had any real experience of a class action, although it has been quite common, I think, in America for a bit longer than it has been here. We have all seen various movies and read various books involving famous class actions in the past in that particular jurisdiction.

One of the very interesting things I learnt was that there is such a thing as a tort and there is such a thing as a tort of maintenance and champerty. I had to look up what "champerty" was. Luckily I did, because it was very interesting reading, going back to the days of Richard the Lionheart and others. I learnt a little bit. The Law Reform Commission put out a very good discussion paper in September 2019. I read the background to this issue. I will quote from it because it was instructive to me. It states —

> Maintenance is defined as 'assistance or encouragement, by a person who has neither an interest in the litigation nor any other motive recognised as justifying the interference, to a party to litigation' and champerty as 'a particular form of maintenance, namely maintenance of an action in consideration of a promise to give the maintainer a share in the proceeds or subject matter of the action'. That is, maintenance takes place where a person finances litigation undertaken by another party, and champertous arrangements are those in which the maintainer is to receive a share of any of the damages ultimately awarded by the Court.

It goes into the history of the tort and why it came about, and states —

> From the time of Henry VI to the death of Richard III there was much disorder in the realm and the authority of the Crown seemed to have collapsed. Barons abused the law to their own ends and it was common for rich lords to profit from supporting litigation and fostering quarrels. Bribery, corruption and intimidation of judges and justices of the peace became widespread. Perjury was not a crime and thus for a price false evidence could easily be procured. The barons kept bands of retainers in their service which gave them the brute power necessary to protect their excesses. However with the strong monarchy of the Tudors the Courts began to denounce maintenance and gave the statutes prohibiting it a wide effect.
>
> The language used to define maintenance and champerty carries overtones of moral judgment; it is not simply the *funding* of an action that has been considered inappropriate, but the *meddling* or *stirring up* of such conflict: maintenance has been characterised as 'intermeddling with litigation in which the intermeddler has no concern', while champerty was 'maintenance aggravated by an agreement to have a part of the thing in dispute' or 'a species of maintenance; but…a particularly obnoxious form of it'. A person who routinely meddled in the litigation of others was engaging in 'barretry' and was 'a common mover or stirrer up or maintainer of suits'.

That is a little of the background of what that particular tort was there to dissuade people from engaging in. We know that the bill that came to the house back in 2019 did not have within it a provision to abolish that particular tort. The final report by the Law Reform Commission was released, I think, in February 2020. It concluded —

> Having considered the submissions made to it, in the context of case law and commentary, the Commission is persuaded in the present instance that reform of the law is merited. Accordingly, it has recommended that the torts of maintenance and champerty be abolished …

This bill has within it an additional clause that was read in in 2019 providing for the abolition of that tort. There is a slight difference in the matters that have come about.

Turning to the information provided by the shadow Attorney General to me, I will run through some things. I am sure the many lawyers in the room know this, but it is important to outline for the record that we have some idea of what this bill is about and that we have sought to acquaint ourselves with the importance of it. The bill introduces a legislative representative proceedings regime in the Supreme Court of Western Australia, which is substantially modelled on part IVA of the Federal Court of Australia Act 1976 and it seeks to expand on the current rules-based system of the Supreme Court, which can be found in order 18, rule 12 of the Rules of the Supreme Court 1971. It is to include plain English in the drafting to enhance its ability to be understood by people like myself and a provision based on section 33T of part IVA of the Federal Court act. It allows the court to remove and substitute a representative party when it is seen to be in the interests of justice to do so, and it expands the definition of "representative party" to include a person who is substituted as a representative. It provides a more comprehensive definition to reduce the risk of possible challenges to the legitimacy of a substituted representative party. It allows representative action to be commenced against multiple defendants regardless of whether each of those persons to the representative action has a claim against every other defendant. That last point addresses the issue that manifested in the case of Philip Morris (Australia) Ltd and Ors v Nixon and Ors (2000) when it was held that the representatives had to have an action against each of the multiple defendants. The bill also provides for a review of the operation of the new regime on its fifth anniversary and seeks to abolish the torts of maintenance and champerty.

As I have said before, a bill was read into the fortieth Parliament in 2019. It got through the Legislative Assembly on 26 September 2019. It was received and read into the Legislative Council on 15 October 2019, but it was not brought on again for debate after that date. That seems quite a long time. It was at least a full parliamentary year when something could have happened, but, unfortunately, it did not, so the bill lapsed. We now have the opportunity to again address this matter and to include that other matter, the abolition of the tort, which was not in the first bill.

We know that it is possible to start a class action in the Supreme Court or the District Court via order 18, rule 12 of the Rules of the Supreme Court, but it is a process that has been rarely used in the past. Consequently, this bill seeks to implement a regime that will make it clearer and perhaps encourage people to seek to use the court in that way.

As I said, there are a few changes from the previous bill, mainly based on the implementation of the abolition of the tort. As I understand it, the Attorney General has supplied to the shadow Attorney General some information around consultation. The Attorney General asked the Law Reform Commission in July 2018 to provide advice and recommendations for consideration by the government about whether the torts of maintenance and champerty should be abolished or whether the law for their operation should be modified. As I said, that discussion paper was released. There was consultation with the Australian Lawyers Alliance; IMF Bentham Ltd; Justin McDonnell, partner at King and Wood Mallesons; the Law Society of Western Australia; and Maurice Blackburn Lawyers. A briefing was provided to the shadow Attorney General on 6 September 2021. Several questions were taken on notice. On 22 October 2021, the government provided the responses to those questions, including some details of the stakeholder consultation. However, it has not disclosed any feedback it has received from the Supreme Court about the bill. I understand that the shadow Attorney General is still interested in seeking a meeting with the Chief Justice to discuss concerns the Supreme Court might have had or feedback that the Supreme Court may have given. Perhaps the Attorney General, if he is listening, might be able to look at that, but perhaps not, as he is obviously not listening. Attorney General, the shadow Attorney General was seeking to meet with the Chief Justice to discuss the Supreme Court's feelings around the bill, but as of Tuesday, such a meeting had not been arranged. That request is there so that the opposition can be more fully briefed on all matters pertaining to the background of the bill.

With that, I will conclude our discussion and reiterate that the opposition will support the bill in its passage through the house. We expect to be discussing some of the matters in the consideration in detail stage.

MR D.A.E. SCAIFE (Cockburn) [1.21 pm]: I am pleased to rise today to speak in support of the Civil Procedure (Representative Proceedings) Bill 2021. As the member for Mount Lawley said, this is yet another bill brought into this house by this Attorney General, whom I think could be regarded as a prolific legislator.

Mr P. Papalia interjected.

Mr D.A.E. SCAIFE: I think the Minister for Police is suggesting that other words could be applied to the Attorney General. I went back and read the Attorney General's first speech the other day. I have to say that I very much enjoyed it.

The ACTING SPEAKER (Ms M.M. Quirk): That's what Rohypnol is for, member!

Mr D.A.E. SCAIFE: I do not know whether that is correct, Acting Speaker, because having read it, it seems to me that there was a lot of action happening in the chamber during the Attorney General's first speech!

The ACTING SPEAKER: Red and yellow cards, if I recall.

Mr D.A.E. SCAIFE: There were red and yellow cards, Acting Speaker; you are quite right. In fact, a point of order was taken on the Attorney General in his first speech by the future Premier of Western Australia, Hon Colin Barnett. I think the phrase that the Attorney General used was along the lines that he would not miss the Leader of the Opposition once, while he was in this place. In that respect, the Attorney General has been true to his words over

the last 20 years and certainly has never missed a shot when one could be fired, certainly across the chamber. He promised, actually, in that speech, that he would fire only at those across the chamber from him. Of course, the problem with that now is that he is at risk of hitting the member for Victoria Park and the member for Mirrabooka, but hopefully that does not happen!

In all seriousness, the Attorney General has been a great reformist. He really keeps this house busy with the legislation that he has introduced. This bill is yet another example of the great reformist agenda legacy that he will leave for the people of Western Australia. Part of the Attorney General's legacy will be that his law reform has always been focused on access to justice. This is an Attorney General and a government that takes very seriously ensuring that ordinary people have access to the courts and access to the quick and low-cost resolution of their claims. Class actions are an important part of ensuring that that principle is adhered to in our legal system.

As previous speakers have noted, class actions have been happening in Australia for quite some time. Perhaps the pre-eminent jurisdiction for class actions in Western Australia is the Federal Court. The bill that is before us today is based on the Federal Court jurisdiction under the Federal Court of Australia Act 1976. The Federal Court jurisdiction has proven to be a very effective tool in facilitating access to justice. Many class actions have been successfully pursued in the Federal Court. When that regime was first introduced, many alarmist calls were made about the class actions regime. Commentators were saying they thought, as the member for Mount Lawley said, there would be a flood of litigation and that it would bankrupt businesses and lead to all sorts of terrible consequences. Of course, none of that turned out to be true. The reason for that is the criticism of the introduction of that regime was made by people who essentially had vested interests in protecting themselves from the risk of litigation at the expense of ordinary people who would be seeking to pursue claims against them.

Until the development of class actions, many people could not afford to pursue claims, particularly claims that may be of a fairly small amount. When I say a fairly small amount, it is important to bear in mind that I do not mean to say that the amounts are not significant. Often, to people who have lower incomes or have suffered from debilitating illnesses as a result of corporate negligence, an amount of $10 000, $20 000 or even less can be an amount of great significance in their lives. I can certainly say, having practised as an industrial relations lawyer prior to being elected to this place, that for my clients, amounts of $5 000 or $50 000 in settlements or court judgements were very significant to them in managing day by day. I remember I had one client who had been underpaid. She was a cleaner and she had been underpaid serially by a few dollars an hour for six years. Members can imagine that, essentially working full-time hours for six years and being paid two or three dollars below the award rate would add up to a pretty significant amount of money, but because of how low those award rates are, the amount was about $45 000 to $55 000. Of course, to her, that was the equivalent of a year or 18 months of wages. When we are talking about the types of claims that can be pursued in class actions, it is important to bear in mind that although the amounts may be small, they are often very significant to the individuals concerned. More importantly, the reason that the size of the claim matters in litigation is that it affects the commerciality of being able to bring proceedings.

I am the first person to say that lawyers in Australia are far too expensive, as a general rule. By and large, they are out of the reach of ordinary people. I even have one of my former clients in the room here, the Minister for Mines and Petroleum. He is one of the people who could afford my legal fees, but even working as a competitive labour lawyer in the market in Perth, I always felt the hourly rate of lawyers in Australia was really probative. I went to great lengths to try to keep my costs down, to control costs and to ensure that ordinary people could access my services, but it was a constant challenge. It is painfully clear, when we look at the number of self-represented litigants in our courts, that most ordinary people on ordinary incomes would struggle to afford a good-quality lawyer to represent them in a proceeding. Running a case to trial, even a relatively straightforward case, costs in the order of $30 000, perhaps less if it is a very straightforward claim such as an unfair dismissal claim, but the legal fees in all likelihood still run into the tens of thousands of dollars. Imagine a person with a claim worth only $10 000 pursuing a claim and retaining a lawyer and paying them $20 000 or $30 000 for the pleasure. It is really not a sensible economic decision. Class actions have changed the commercial calculation that individuals have to make in deciding whether to pursue a claim. It is not sensible for a person with a claim of a few thousand dollars against a company that has been negligent in providing a particular product, or against, for example, a bank that has overcharged fees that should not have been charged—as often came out during the royal commission—to retain a lawyer for even $10 000 or $15 000; even to get advice, it is prohibitive. Pooling a claim with other people who share your claim provides a cost-effective way of accessing justice. That is really what has underpinned our class actions regime in Australia for many years.

We only have to look at the types of claims that have been pursued to know that the class actions regime has been put to very good use in the Federal Court. I refer to the example of Pearson v State of Queensland [2017] FCA 1096, which was a class action in the Federal Court on behalf of an estimated 10 000 Aboriginal workers in Queensland who, between 1939 and 1972, had their wages given to the state under The Aboriginals Preservation and Protection Act. Aboriginal Queenslanders essentially had their wages stolen despite working very significant hours and giving significant labour to the state of Queensland. I also refer to the example of Gray v Cash Converters International Pty Ltd, which was an action in which it was alleged that Cash Converters had engaged in unconscionable conduct by charging annual interest rates in excess of 48 per cent on loans worth between $600 and $2 000. Working people

are often reliant on providers of credit, like payday lenders or pawnbrokers like Cash Converters, and the interest that is charged by those creditors can be really obscene. It was good to see in this case the Federal Court approve settlement at a hearing in 2015 for a reported amount of $23 million. I think we can very confidently say that the Federal Court's class actions regime has been very successful in facilitating people to pursue very worthy claims—claims that would not otherwise have been pursued by the individuals affected.

As I said, one criticism of class actions is that there will be some kind of explosion of litigation and that it will make things too costly for businesses or other parties that might be exposed to the risk of litigation. All I say in that respect is that the best way to control or manage that issue is to introduce better controls on the costs that are charged by lawyers. Of course, as we saw in the introduction of the legal profession uniform bills earlier this year, this bill introduces rules of conduct in sections of the governing act that will put more pressure on solicitors to ensure that their fees are well communicated and controlled. I welcome that, because rather than putting extra regulation on things like class actions, which facilitate access to justice, in my opinion we should be putting the onus on lawyers to ensure that they control their costs and do the work that is proportionate to its value and make sure that lawyers really put front and centre the financial interests of their clients, as they are obviously required to do by their fiduciary duties. That contrasts, unfortunately, with the approach currently being taken by the federal Liberal–National government on class actions. It has been pursuing a program of reforms for the class actions industry that really has the effect of undermining access to justice. It seems to be motivated by some sort of, I assume, lobbying by insurers, no doubt, and other businesses that are exposed to the costs of litigation. That lobbying, obviously, has been successful because the federal Liberal–National government introduced last year some reforms that have been very poorly received in the legal and political communities, and I will go to why that is the case in a moment.

The federal Liberal–National government is also in the throes of introducing further reforms to litigation funding. Litigation funding is the practice by which a company will stump up the capital that is required to run a class action. Obviously, law firms can only take on the risks of class actions and the recoverable costs in some cases. In very large cases in which millions of dollars are at stake, a law firm might not be able to take on that risk. In that case, a litigation funder can step in and pick up the costs of litigation, usually for some return when the matter is settled or when judgement is entered, if it is entered in favour of the plaintiffs.

No doubt, there are complex issues around litigation funding and all sorts of conflicts of interest can arise. Conflicts of interest arise between members of classes that bring class actions. Conflicts also arise between the interests of the litigation funder and those who are represented. Those conflicts need to be dealt with in mature ways, but I have to say that the approach to class actions taken by the federal Liberal–National government is not responsible and has not been well thought out. It contrasts very poorly with the approach of this government, which has been to introduce this bill, which is a sensible framework for facilitating class actions in Western Australia. I refer to the example of the reforms announced by the federal Liberal–National government last year in relation to class actions. On 22 May 2020, federal Treasurer, Hon Josh Frydenberg, MP, announced that from August 2020, litigation funders would need to hold an Australian financial services licence. Essentially, in order to operate, litigation funders would need to hold the same licence as is held for something like a managed fund or another trader of financial securities.

[Member's time extended.]

Mr D.A.E. SCAIFE: This stems from a 2009 decision of the Federal Court in the case of Brookfield Multiplex Ltd v International Litigation Funding Partners Pty Ltd. The Federal Court made a quite surprising decision in that case; that is, litigation funders essentially would now be treated as though they were managed investment schemes, so in the same way that a person might invest in shares or a managed fund, and manage those assets and then expect a return on them as the manager of the fund, class actions would now be treated as managed investment schemes. The upshot of that was that litigation funders were suddenly caught by the financial securities regulatory net, which they had not previously been thought to be captured by. As I say, that decision was surprising. It caught a lot of people off-guard. In response to that decision, in July 2013, the then federal Labor government introduced the Corporations Amendment Regulation 2012 (No. 6), which exempted litigation funders from all the requirements that are applied to managing investment schemes, including the requirement to have an Australian financial services licence.

It took about four years from the Federal Court's decision for those regulations to be brought in. No doubt, very significant consultation and thought was put into those regulations, which is in complete contrast to what happened when the federal Treasurer introduced the new regulations last year. They came completely out of the blue and actually came off the back of a number of inquiries—Law Reform Commission inquiries and the like—that had not recommended that these regulations be introduced.

There are a series of unintended consequences from the rushed implementation of those regulations by the federal Treasurer. One consequence is that the requirement to have a financial services licence now applies completely indiscriminately to any litigation funder. Anybody who turns up to fund a class action suddenly needs to have this licence. That licence is not easy to get, and it has a series of conditions attached to it, which puts it out of the reach of many organisations. Although many litigation funders are large companies that make very significant profits, there are also a number of not-for-profit litigation funders who have been caught by these rules. I refer to the report of the Parliamentary Joint Committee on Corporations and Financial Services titled *Litigation funding and the*

regulation of the class action industry, which was published in December last year. This report was generated by a committee of the commonwealth Parliament that was looking at the issue of regulating class actions generally. In the minority report, the Labor members of the committee said —

> 1.35 … as the majority report recognises (at least implicitly), the Treasurer's new regulations are not tailored. For example, the new regulations apply indiscriminately to for-profit and not-for-profit litigation funders.
>
> 1.36 There is no evidence that the impact of the regulations on not-for-profit litigation funders was even raised in the Treasurer's office, let alone considered, before the Treasurer made his announcement on 22 May 2020. Indeed, it's not clear that the Treasurer was even aware that not-for-profit funders existed.
>
> 1.37 In any event, because of the very high cost of complying with the AFSL regime, Mr Frydenberg has made it more difficult (if not impossible) for not-for-profit organisations like the Australian Farmers Fighting Fund and the Grata Fund to bring class actions in the future. Whether deliberate or not, this represents a direct attack on public interest litigation and access to justice in Australia.

I really want to endorse those comments made there in the minority report, because that is my experience of what these changes have done. In addition to funders like the Australian Farmers' Fighting Fund and the Grata Fund, another class of not-for-profit litigation funders is trade unions. It does not happen frequently, but it is not uncommon for a trade union to fund a class action on behalf of its members, and it has certainly become more frequent in recent years as we have seen a rise in the number of class actions being pursued for things like the underpayment of wages or the misclassification of workers. This regulatory change has meant that trade unions cannot fund class actions taken on behalf of their own members unless they hold one of these Australian financial services licences, which, clearly, unions do not. It is an absurd scenario whereby trade unions cannot represent and cannot pay for or fund the costs of their members in industrial relations litigation, despite the fact that trade unions are not-for-profit bodies that are required by their objectives and by the Fair Work (Registered Organisations) Act 2009 to act in the interests of their members. I am certainly aware of at least one case in which a company is using the new regulations to try to stymie a trade union from funding a claim that, on its merits, is a very decent claim, all because of a procedural technicality introduced by Mr Frydenberg, seemingly without any real cognisance of the consequences.

I think it is worth pointing to another part of the minority report to show just how ill-conceived these federal regulations are. The committee's minority report states —

> 1.39 Not a single submitter to this inquiry—including submitters who claimed to support the new regulations—could explain how the managed investment scheme rules would operate in practice in the context of funded class actions.
>
> 1.40 Not even ASIC could explain it. And evidently, ASIC still can't explain it.
>
> 1.41 In response to questions on notice, ASIC admitted that—as recently as 16 November 2020—it was still receiving advice from external counsel about how basic concepts under the managed investment scheme rules could possibly be applied to class actions.

The report continues —

> 1.43 That means that, for the last three months, funded class actions have been subject to a regulatory scheme that not even the regulator understands.

That is a completely absurd proposition. It points to the piecemeal and kneejerk way that the federal Liberal–National government deals with law reform, and it is a real shame.

As I said, one area of class actions that has attracted a lot of attention in recent times has been the industrial relations space. A number of class actions have been pursued in relation to, for example, sham contracting. I know that cases have been pursued by organisations over things like rideshare applications, and also charity organisations that employ people to go out and seek donations from people, whereby the employment relationship is characterised as a contract between an independent contractor and the company when, in reality, it is more like an employment relationship. There have also been claims in relation to the underpayment of wages and entitlements.

What has received a lot of media attention is cases about whether workers who were allegedly employed as casual workers were, in fact, casual workers for the purposes of our industrial relations regime. These workers have been employed for very long periods on very predictable rosters, have perhaps acted as though they have continuing obligations to their employer, and yet have not been afforded entitlements like annual leave, personal leave and the types of entitlements that are afforded to permanent employees. Those class actions were based upon a line of authority that goes back further, but first attracted attention in a case known as WorkPac Pty Ltd v Skene in the Federal Court. However, members may be aware that quite recently the High Court, in the case of WorkPac Pty Ltd v Rossato, actually found that the line of authority in Skene was misconceived. The question is actually to look at the terms of the contract rather than to look at the predictability or the firm advance commitment to work. That is a shame, but I accept the High Court's ruling in that matter.

I note that there are still many workers out there who probably have these types of claims. I give the example of a client of mine, Raymond Moate, who I represented in proceedings in the Industrial Magistrates Court of Western Australia. Raymond did not have a written contract of employment, but he worked for upwards of 20 years for the same employer. He worked day in, day out, week in, week out. He asked for permission to take leave and regarded himself a permanent employee, yet he never received any of his entitlements to things like annual leave and personal leave. I was very pleased to represent Raymond in his matter, which was concluded successfully; penalties were imposed on the employer and entitlements were paid to Raymond.

That was a great victory, but it is only through regimes like class actions that we can ensure that access to justice is afforded to more people like Raymond, who might not otherwise be able to afford the services of a solicitor, or find a solicitor who has the capacity to take on a case on a pro bono or conditional basis. I commend the bill to the house.

MR M. HUGHES (Kalamunda) [1.51 pm]: I rise to contribute to the second reading debate on the Civil Procedure (Representative Proceedings) Bill 2021. I am very conscious of the fact that I am speaking after a number of members of the legal profession, but I have an interest in this area as a layperson.

I was delighted when, on 26 June 2019, the Attorney General introduced the 2019 version of this bill in the Legislative Assembly. Here we are, more than two years later, debating effectively the same bill. Why, one might ask? I would suggest it is because of the delaying tactics and general huff and puff of the Liberal and Nationals members of the Legislative Council in the fortieth Parliament. Many pieces of legislation that entered and passed this house in the fortieth Parliament got stuck in the arcane activity and filibustering tactics of Hon Nick Goiran and others.

However, the bill before us is substantially the same as that which was introduced in 2019, except for some editorial drafting changes and the government's response to the Law Reform Commission's February 2020 report, *Project 110 final report: maintenance and champerty in Western Australia*. The commission made three recommendations in that report and provided four options for the government on litigation funding. This bill secures the implementation of the Law Reform Commission's first recommendation by abolishing the torts of maintenance and champerty while preserving the rule of law under circumstances in which a contract is to be treated as contrary to public policy or as otherwise illegal. The commission's other two recommendations, dealing with litigation funding, are essentially matters for recommendation by the government to the courts, to be administered by the courts, and do not require legislation to be implemented.

The torts that have been abolished are considered to be a barrier to justice in that they can be used by defendants to frustrate class actions when litigation funders assist plaintiffs, on the basis that they interfere, without justification, in another's action—that is the area known as maintenance—and for a share of the proceeds, known as champerty. I believe that is the correct pronunciation; my Norman French from which that term derives is probably not accurate!

As the Attorney General confirmed in his second reading speech, the majority of stakeholders supported the abolishment of those torts during the Law Reform Commission's review. In fact, those torts have long since been abolished in most other Australian jurisdictions, as they are widely considered to be out of date. The most recent jurisdiction to enact a representative proceedings scheme is Tasmania, which has abolished those torts in recognition of the fact that litigation funding is now a modern reality and has the potential to improve access to justice when the costs to initiate an action are prohibitive. I need not go on about the assault on that principle that has arisen in the federal Parliament; the member for Cockburn has gone through that in quite some detail.

The Civil Procedure (Representative Proceedings) Bill 2021 seeks to modernise Western Australia's class action regime, which is both outdated and uncertain. The existing regime is silent on many important procedural aspects of representative proceedings developed by the commonwealth government and other states. As we heard from the Attorney General, the proposed Western Australian regime is substantially modelled on part IVA of the Federal Court of Australia Act 1976. This bill will bring Western Australia more or less into line with the class action procedures that apply federally and in other state jurisdictions. Members will be aware that class actions in Australia are generally permitted in all areas of law—subject to exceptions in Victoria, I believe—and include claims by investors and shareholders, product liability claims, mass tort claims, consumer protection claims, claims for employees' underpayment, claims against government, claims by alleged victims of cartels, and claims by native title holders. The full gamut of law is subject to class actions in the various Australian jurisdictions.

Western Australian class actions that attract federal jurisdiction will likely still be instituted in the Federal Court, but whether a claim is brought in a state or federal court will largely depend upon the nature of the claim and strategic factors such as the procedures applicable in each of the courts' applicable litigation periods, and the types of remedies sought. The modernised procedures provided by the reforms contained in this legislation will result in a clearer, more certain pathway for state-based courses of action.

As we have heard from previous speakers, large-scale actions are now a common feature of the Australian legal landscape and settlements often involve significant sums of money, but they represent a fairly small proportion of the broader litigation landscape. Between 1992 and 2019—this is the most recent data I can find—there were

634 representative proceedings filed in Australia. This represents about 24 class actions filed each year over that period. Of that number, 78 per cent of proceedings were filed in the Federal Court and the rest in state courts, so we can expect roughly 25 per cent of class action proceedings to emerge in our jurisdiction.

The Federal Court has become the forum of choice for class actions, but over the last 10 years or so there has been an increase in the number of representative proceedings in the state courts of Victoria, New South Wales, Queensland and Tasmania, as a consequence of those jurisdictions making legislative provisions for representative proceedings. Therefore, we can expect a similar increase in the number of representative proceedings in Western Australia following the long-awaited passage of this legislation.

In researching my contribution I came across the paper "Access to Justice and the Evolution of Class Action Litigation in Australia", by Murphy and Cameron. In that paper the origins and purposes of class action proceedings in Australia are examined, recognising the policy and purpose underlying part IVA of the Federal Court of Australia Act. The underlying principles of part IVA of the Federal Court of Australia Act 1976 became obvious in the amendment bill's second reading speech, which states —

> The Bill gives the Federal Court an efficient and effective procedure to deal with multiple claims. Such a procedure is needed for two purposes. The first is to provide a real remedy where, although many people are affected and the total amount at issue is significant, each person's loss is small and not economically viable to recover in individual actions. It will thus give access to the courts to those in the community who have been effectively denied justice because of the high cost of taking action.

The core principle of the legislation is to provide access to justice to those who would otherwise be prohibited from such access because of the high cost of action faced by individuals.

Debate interrupted, pursuant to standing orders.

[Continued on page 4905.]

VISITORS — MAZENOD COLLEGE, EMMANUEL CHRISTIAN COMMUNITY SCHOOL AND CHRIS AUBREY

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.01 pm]: I would like to make some brief acknowledgements. Firstly, I acknowledge the students and teachers from Mazenod College's leadership team on behalf of the member for Kalamunda. I also acknowledge the year 5 students from Emmanuel Christian Community School, who are in the public gallery, on behalf of the member for Mirrabooka. Most importantly, I acknowledge the member for Scarborough's mum, Chris Aubrey! Welcome to the Speaker's gallery.

QUESTIONS WITHOUT NOTICE

CORONAVIRUS — VACCINATIONS — TARGET

675. Ms M.J. DAVIES to the Premier:

Welcome to the member for Scarborough's mum, who is in the Speaker's gallery; that is very special!

I note the Premier's refusal to release a plan to safely reopen our borders.

(1) What percentage of Western Australians has the Chief Health Officer advised must be double vaccinated before the Premier can relax border restrictions?

(2) How long after attaining the vaccination rates that are required will the borders be relaxed, and has the Chief Health Officer provided the Premier advice on this?

Mr M. McGOWAN replied:

(1)–(2) Obviously, we have been consistent along this road; that is, we will bring down the border with the COVID-infected states of New South Wales and Victoria when we get to very high levels of vaccination. We plan on setting an exact date when we get to between 80 and 90 per cent two-dose vaccination of Western Australians who are over the age of 12 years. That will give us greater certainty about what that date will be. We do not want to do it prematurely. We do not want to do it too early. The Leader of the Opposition might have noted that we now do not have a border with Queensland, Northern Territory, South Australia and Tasmania, so if people want to go on a holiday to those jurisdictions, or if people from those jurisdictions want to come here, that is fine. That is entirely possible, provided that people fill out the G2G PASS and follow the requirements. As far as I am aware, there has not been any exact formal advice on these points, except for what I have said. We have regular conversations—I mean, virtually daily—with the Chief Health Officer and other health officials about these things to resolve these matters. I do not want to rush things in a way that allows for COVID to come to Western Australia and for us to have to put in place lockdowns and other restrictions that are occurring elsewhere around Australia. I want us to get through Christmas, have a free society and community, have business activity as normal and allow people to go through a COVID-free Christmas period.

CORONAVIRUS — VACCINATIONS — TARGET

676. Ms M.J. DAVIES to the Premier:

I have a supplementary question. Can I just clarify that the Premier has had no specific advice from the Chief Health Officer on the specific percentage of Western Australians who must be double vaccinated—a specific number—and how long after attaining that vaccination rate the borders will be relaxed?

Mr M. McGOWAN replied:

As I have said repeatedly, when we reach between 80 and 90 per cent we will be able to set a date, and I would expect that would be at very high levels of vaccination. Obviously, because we include the 12 to 16-year-old cohort in our calculations, our level of vaccination will be higher than that in other states. I know that South Australia has made some announcements about these things. As part of its announcement, it will have a whole range of restrictions in place. When South Australia opens its border to Victoria and New South Wales, it will have a whole range of restrictions, including three-quarter density for seated activities, half density for non-seated activities and one-quarter density for indoor fitness facilities. It will have seated food and beverage consumption only at defined public activities, a gathering-at-home cap of 20 people, a private-activity cap of 150 people and mask wearing for a whole range of services and settings across the state. In fact, it has pages of restrictions; I cannot go over them all because there are too many. That is what South Australia is doing. If we follow the course of action that I am being urged to by some people, that is what will happen. Is that what we really want over Christmas? According to the ABC, businesses in South Australia, particularly in the hospitality sector, are saying things like Christmas has been cancelled for an entire industry. One hospitality business in Adelaide said —

> "Just imagine going into Christmas not knowing if you have an income, going into Christmas having to fire people, stand people down."

That is what is happening in Adelaide, South Australia. I understand why the South Australian government is doing this. It has decided to move earlier, but it runs the risk of lockdowns. It will have to have all sorts of restrictions in place and there will be dire consequences for large parts of the economy. We want to avoid that. Leader of the Opposition, do you want to avoid that or not? What is your view? All your questions are saying, "Let's bring it all down". What is your view? Do you want us to avoid it?

Ms M.J. Davies: We are asking you for a date and a plan.

Mr M. McGOWAN: I have told you when we will set the date. But I do not want to allow travel from the infected states and therefore have to put in place all these restrictions; I do not want that to happen. It is pretty straightforward. We have a bit of a different view from South Australia, Queensland and Tasmania, but I am happy to explain the view repeatedly. I have explained it to the Leader of the Opposition many, many times. If she wants to keep on asking the same question, I will keep explaining it to her.

CORONAVIRUS — STATE ECONOMY

677. Mr S.N. AUBREY to the Treasurer:

On behalf of the member for Bicton, I welcome the principal and board chair of Palmyra Primary School; and, on behalf of myself, I again welcome my mother to Parliament!

I refer to the McGowan Labor government's strong response to the COVID-19 pandemic and its efforts in keeping Western Australians safe. Can the Premier outline to the house how this strong health response to COVID-19 has supported the Western Australian economy and Western Australian jobs?

Mr M. McGOWAN replied:

I thank the member for Scarborough and the member for Scarborough's mother for providing us with the member for Scarborough. That is a great contribution to Western Australia, Mrs Aubrey!

I will make a few points and then refer to some new information that has just come to light. Firstly, we put in place a strong health response. What has happened in the eastern states over recent months has been estimated by commonwealth Treasury to have cost the economy $20 billion in the September quarter. There has been a fall in the gross domestic product of over three per cent and, obviously, pandemic payments to the COVID-infected states of New South Wales, Victoria and a small part of South Australia are in excess of $12.5 billion. That is $12.5 billion that taxpayers are providing to those states, predominantly coming out of Western Australia. In contrast, Western Australia has retained the top spot on the NAB business confidence survey. That is the fifth quarter in a row that that has been in place. The number of internet jobs has risen. They have increased in annual average terms by 62.5 per cent and job vacancies are significantly higher than the pre-COVID level. According to CommSec's *State of the states* report, Western Australia was the strongest on economic performance and economic growth, with the fastest nominal economic growth of any jurisdiction in Australia and, as we all know, it has the strongest economy in Australia. Standard and Poor's has just released a report into Western Australia's finances. This happened when I was answering the last question. Standard and Poor's has reaffirmed the AA+ credit rating and provided an upgraded outlook from stable to positive. That means that there is now a one in three chance that we could regain the AAA credit rating within the next year or two. Members will recall that the AAA credit rating was lost by the last Liberal–National

government. The thing about the AAA credit rating is that it is easy to lose, but it is very hard to get back. However, Standard and Poor's has given a big tick of confidence to Western Australia's financial management. Standard and Poor's said, and I quote —

> Supporting Western Australia's ratings are its track record of robust financial management …

It referred to "solid operating expense control". It has recognised that our "fiscal balance has also strengthened" and that we have "healthy operating surpluses". Standard and Poor's said, and I quote, that is —

> … a rare feat given the scale of the COVID-19 shock.

Standard and Poor's also referred to our record infrastructure program. It also said —

> The state of Western Australia's budgetary performance is superior to that of most peers …
>
> …
>
> Western Australia is outperforming its domestic peers as well as most comparable German and Canadian peers at state or provincial level …

That is when it comes to our financial management. In other words, Western Australia's financial management is leading the nation and is outperforming similar jurisdictions in Germany and Canada. This is great news and a big tick of approval for Western Australia's financial management. It shows that we have the fiscal and financial strength to respond to crises when they arise. Other jurisdictions do not, and that is why we need a government that will continue to deliver strong economic and financial management. The restoration, in part, of our credit rating is terrific news for the state.

Visitors — Emmanuel Christian Community School and Mazenod College

The SPEAKER: Before the next question, I think I acknowledged all the students a bit prematurely, so year 5 students from Emmanuel Christian Community School, on behalf of the member for Mirrabooka, welcome to Parliament today. Also welcome to the students of Mazenod College's leadership team, on behalf of the member for Kalamunda. You are very welcome here in the public gallery today.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — NEW SOUTH WALES

678. Mr R.S. LOVE to the Premier:

I refer to the conditions or categories set out in the controlled border arrangements that place any jurisdiction with a rolling average of more than 500 cases for more than five days in the extreme risk category. Given that New South Wales has had a rolling seven-day average of fewer than 500 cases for 14 days since 13 October, what threshold must it meet to be reclassified as high risk?

Mr M. McGOWAN replied:

We have sought advice from the Acting Chief Health Officer in relation to New South Wales. We want to be very cautious about New South Wales. As it goes through its version of an opening up process, we want to see what occurs. At this point in time, it has not gone back above the 500 cases per day mark on a 14-day rolling average. That is a better performance than I expected out of New South Wales, but we will continue to monitor what happens. We will get further advice from the Chief Health Officer and we will be able to make a decision on whether we take from it from extreme risk to high risk. So that people understand, "extreme risk" and "high risk" are not that different. Basically, under extreme risk, people are required to quarantine in a hotel. Under high risk, people can quarantine at home if they meet one of the exemption criteria. Under both categories, very few people meet the exemption criteria.

CORONAVIRUS — INTERSTATE BORDER RESTRICTIONS — NEW SOUTH WALES

679. Mr R.S. LOVE to the Premier:

I have a supplementary question. With New South Wales classified as extreme risk, there is no provision for entry on compassionate grounds, but I understand that if New South Wales were re-categorised, it would allow that compassionate consideration to be made. I ask again: when might the Premier consider that decision?

Mr M. McGOWAN replied:

As I said, we sought the advice from the Acting Chief Health Officer in relation to the matter of New South Wales, and when we get that advice, we will be able to make a further decision.

CORONAVIRUS — VACCINATIONS

680. Ms C.M. ROWE to the Minister for Health:

I refer to the McGowan Labor government's success in keeping Western Australians safe throughout the COVID-19 pandemic.

(1) Can the minister update the house on the rollout of Western Australia's COVID-19 vaccine program?

(2) Can the minister advise the house if he is aware of anyone seeking to threaten the health and safety of Western Australians?

Mr R.H. COOK replied:

(1)–(2) I thank the member for Belmont for the question. In addition to the information the member seeks, I am very proud and pleased to say that today is an official doughnut day. That means that we have no active cases of COVID-19 in Western Australia in either the community or SHICC facilities or hospitals.

Mr W.J. Johnston interjected.

Mr R.H. COOK: Honestly! It is the hotel quarantine facilities.

That has happened only three times during the entire experience of the global pandemic. It is an important day and one that gives us another opportunity to acknowledge the great work that has been undertaken by everyone in the health system, the emergency services and the Western Australia Police Force—a great, great effort. In addition, to date, over three million Western Australians have now done the right thing and been vaccinated. That puts us at 59.4 per cent of people aged over 12 years fully vaccinated, and 76.8 per cent now have had one dose. That puts us ahead of Queensland and the Northern Territory, and slightly behind South Australia, but, of course, it counts only people aged 15 and above. We count people aged 12 and above because we think kids matter as well. From that perspective, we are making good progress.

I am particularly heartened by the dedication of most people in the community, who are listening to the health advice and the science that backs it up and are protecting themselves, their families and their community. We can achieve great things when we work together. I want to thank all those people who have had the leadership to stand up and get themselves vaccinated. I want in particular to draw people's attention to the fact that Tony Galati from Spudshed got himself vaccinated over the weekend. That is not amazing in itself other than the fact that Tony Galati was one of those people we would call vaccine hesitant. He said that in his comments to the media. He said that at first he was not quite sure, but he listened to the advice and the science—and his wife!—and he did the right thing and got himself vaccinated. That is what we require. We require everyone to show leadership and to make sure that they do the right thing. That is not what we are seeing outside this place today.

We are seeing members of Parliament and staff bullied, intimidated and menaced by those outside who are seeking to divert the community's attention and our intent to make sure that we protect Western Australians. Through their physical and menacing behaviour, they are trying to intimidate members of Parliament and the government. Of course, we will not be intimidated. We will not be intimidated because everyone in this place is a leader and everyone in this place has an obligation to stand up against these people. That is the reason why it is disappointing when we see leaders in our community failing that very test that is on all of us. In particular, I note the comments from the spokesperson from Dr David Honey's office, who identified himself in social media comments outside this place just earlier today or yesterday. I am not sure which day it was; it does not matter. What matters is the comments that were made. He has been encouraging —

The SPEAKER: Minister, you do need to refer to people by their seat rather than their name.

Mr R.H. COOK: He is from the member for Cottesloe's office. I apologise, Madam Speaker. He referred to himself as from the office of Dr David Honey in his capacity as Leader of the Liberal Party. In those comments, this particular member gave more encouragement to these people outside the building. We accept their democratic right to protest. We do not accept their right to intimidate, physically menace and bully members of Parliament who are coming into this place. We do not accept their right to intimidate and bully those people who are coming here to work, doing their duty as members of Parliament or staffers in this place. We do not accept the comments from the member for Cottesloe's spokesperson that encourage this sort of behaviour and, once again, seek to undermine public confidence and public unity around these issues. What this person says is, "I think it is important to express their views directly here at the parliamentary precinct and to the members of Parliament", providing direct encouragement of this sort of behaviour. In addition to that, he says that the moment for restrictions in Western Australia—I assume he is referring to our border controls that have kept Western Australians safe and have led us to this position where we now have zero cases—that time, is over. A spokesperson for the member for Cottesloe, the Leader of the Liberal Party, is joining the honourable —

Point of Order

Dr D.J. HONEY: There is no spokesperson for me, and the member is —

Several members interjected.

The SPEAKER: Sorry; are you making a point of order or are you attempting to enter the debate?

Dr D.J. HONEY: No, Madam Speaker; I am saying —

The SPEAKER: What is your point of order? You cannot enter a debate. A disagreement with what the minister is saying is not a point of order.

Dr D.J. HONEY: Madam Speaker, the member is misleading the house. There is no person who speaks on my behalf other than me.

The SPEAKER: That was not a point of order.

Questions without Notice Resumed

Mr R.H. COOK: This particular individual identified himself as a staffer from "Dr David Honey's office" so he is clearly attributing his comments to his position in that office. What did he say to the protesters? He said, "Well done." While we are trying to encourage everyone to get vaccinated, this individual is encouraging protesters to undermine that effort. Once again, the test is there for the Leader of the Liberal Party. Once again, we see representatives from his corner trying to undermine the public's effort to get people vaccinated.

The member for Cottesloe might take offence that we attribute these comments to his office, but maybe we can look to the words of Mr Ian Goodenough, MP, who, in his own social media commentary, is trying to undermine the McGowan government's efforts to get people vaccinated. The test is here, Madam Speaker. It is time for the Leader of the Liberal Party to lead. He should stop being curtailed by the factional warriors that actually run his party, and actually lead—join the McGowan government in getting people vaccinated and protecting Western Australians. For once in your life and for once in your time in this position, stand up and be counted!

The SPEAKER: Members, just to be clear, question time is a time for questions and responses to those questions. It is not a time for debate across the chamber. Debate happens when there is a matter of public importance or when there is private members' business or when there is a bill before the house. Points of order are not an opportunity to enter debate; points of order are for a genuine point of order. They should not be used spuriously to try to engage in debate because you disagree with something a member has said. If you want to make a personal explanation, you are entitled to do that, providing you meet the criteria. If you want to debate something, bring it on as a motion. Give us a notice of motion and an item can come on appropriately for debate. But question time is not a time for debate.

NATIVE FOREST — LOGGING — CARBON SEQUESTRATION

681. Dr D.J. HONEY to the Minister for Climate Action:

I refer to the Intergovernmental Panel on Climate Change's fourth assessment report. In relation to carbon sequestration, it says —

> … a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit …

Can the minister confirm that a sustainable native forest industry is an important measure for sustained carbon mitigation?

Visitors — AshfieldCAN

The SPEAKER: Before I give the Minister for Climate Action the call, I acknowledge on behalf of the member for Bassendean, the members of the AshfieldCAN in the public gallery.

Questions without Notice Resumed

Ms A. SANDERSON replied:

I am very pleased to answer this question. What the member for Cottesloe did not outline is that that IPCC report also outlined how deforestation is one of the biggest contributors to emissions and therefore climate change. That is what he did not read out; he read out one single line. Our forests are one of four incredibly important carbon sinks around the world, and if we stop deforestation around the world or slow it down, we could actually get to one-third of the reduction in emissions that we need to get to by 2030. That is science, member for Cottesloe; it is not spurious comments. We know what the member's side of the chamber thinks about climate change.

We have seen an absolute circus in Canberra in the lead-up to what is possibly the most important meeting of the last decade around setting targets for the future of our planet. We have seen the Prime Minister outsource his responsibility to Barnaby Joyce and Matt Canavan to write the climate policy. That is what we have seen with the Nationals and the Liberals. We have seen Western Australia cut out of that conversation. Where is the Leader of the Liberal Party? Is he standing up for this state and the future industries required in this state to tackle climate change and the job transition? Where is the Leader of the Liberal Party and where are the Nationals? We are not represented in federal Parliament, and federal members are going to that most important international meeting.

Dr D.J. Honey: That's why they've agreed to net zero by 2050.

Ms A. SANDERSON: With no plan to get there. I heard Anthony Albanese describe the plan as "a vibe, not a plan", and that is exactly what it is. It was a 15-page PowerPoint presentation with a bunch of slogans and a vibe of how the federal government is going to reduce emissions. We saw, I think, over 700 investors from around the world call on the leaders of major nations and major economies to articulate a plan. The business community is leaps ahead. Federal government members are looking like dinosaurs, and the Leader of the Liberal Party is backing them in with these ridiculous questions.

NATIVE FOREST — LOGGING — CARBON SEQUESTRATION

682. Dr D.J. HONEY to the Minister for Climate Action:

I have a supplementary question. Will the minister table the scientific evidence that justifies her claim that stopping native forest management will increase carbon sequestration, or is it simply another one of the minister's unfounded assertions?

Ms A. SANDERSON replied:

What an extraordinary contribution? The science is clear around climate change. The science is clear around the contribution of deforestation. Carbon sequestration is an important part of our challenge, which is why we are putting $350 million into the softwood estate. That is what we are doing; the previous Liberal–National government just let it die.

Dr D.J. Honey: That is separate.

Ms A. SANDERSON: It is not separate; it is absolutely connected. The Leader of the Liberal Party has exposed himself as the climate denier and science denier that he is. He has exposed himself as that, and he is doing himself and our community no favours.

PUBLIC HOUSING — INVESTMENT

683. Ms R.S. STEPHENS to the Minister for Housing:

I refer to the McGowan Labor government's effort to create jobs and deliver more public housing for Western Australians through its record investment in social housing across the state. Can the minister update the house on the work being undertaken with the community housing sector to help fast-track the delivery of social housing across the state, given the current heated housing construction market?

Mr J.N. CAREY replied:

I want to thank the member for her question. I am deeply proud to be part of a McGowan government that is making a record investment of $875 million into social housing, which is the biggest injection of funds in our state's history. That is $2.1 billion over the next four years, and 3 300 new homes. As at 30 September, we had 682 social homes under construction. Of course, I am looking at every opportunity to drive reform to accelerate delivery. In particular, that is working with the community housing sector. There are 266 community housing organisations in Western Australia and they cover 22 per cent of the state's social housing. That is why I am working with the sector; we have a fantastic positive relationship. In fact, Deb Zanella gave us nine out of 10 for our budget response to social housing. I am working with the sector to deliver a reform program.

I recently hosted a formal roundtable meeting to discuss a range of changes that we can do to leverage better from this sector. I announced at that roundtable that we are increasing the loan-to-value cap for providers under community housing agreements with the Department of Housing, from 30 to 50 per cent. In short, that means that these providers can borrow substantially more money to purchase, lease or build new social housing and affordable housing. We are also looking at lazy land as an opportunity for the community housing sector to leverage from. But we also understand this: the community housing sector faces the same challenge that public housing faces, and that is ageing stock. So we are also providing direct financial assistance to the community housing sector. To date, we have announced 44 community housing maintenance grants to help them refurbish and do essential maintenance. Right now, we also have $93 million as part of the social housing economic recovery package for the community housing sector to assist it to deliver new social housing and refurbish the ageing stock. That is $33 million to build 100 new social houses, $46.5 million for 500 refurbishments and $13.3 million for remote Aboriginal community maintenance works.

I want to be very clear: we have an incredibly positive relationship with the community housing sector. As part of our reform of accelerating delivery, we are looking at the policy mechanisms we can use to help the sector leverage and grow. We are also providing clear, direct financial assistance so that they can build new community housing but also help them meet the challenge that we as a state government face—that is, to keep housing in the system through maintenance and refurbishment grants.

CORONAVIRUS — INTENSIVE CARE UNITS — SURGE CAPACITY

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

I refer to the government's COVID-19 intensive care unit surge capacity, as raised in the budget estimates, which revealed that there were 363 ventilators on standby in the event of an outbreak. Given the specialist training required to nurse ventilated ICU patients, how many extra ICU nurses is WA likely to need in the event of an outbreak, and where will they come from?

Mr R.H. COOK replied:

We need more intensive care unit nurses, theatre nurses and emergency department nurses. That is a specific focus of our recruitment program, which, I might add, is part of our $76.1 million staffing support package, including

$2 million for a recruitment campaign that has been running to date but which, on the weekend, went into overdrive as we launched our multimedia campaign to support those recruitment processes. We will continue to recruit and train. At the moment, we are undertaking a lot of work to train nurses who want to get experience in an ICU setting and making sure that they have the necessary skills.

The Western Australian community has been gifted with the most extraordinary gift in relation to COVID-19—it is called time. We have time to make sure that we get everything in place that we need to. We are making sure that we make the very best of that time. The best way we can spend that time as members of the community is to get ourselves vaccinated, which is the reason why it is so disappointing that those opposite are seeking to undermine that program, whether it is Hon Nick Goiran, Hon Ian Goodenough, MP, or the spokesperson for the member for Cottesloe. We see that right across team blue. They do not support the McGowan government's campaign to get everyone vaccinated and to keep everyone safe. Once again, members, and specifically the Leader of the Liberal Party, do the right thing and support the government. Let us do this together to get everyone vaccinated because that is the way we will keep them safe.

CORONAVIRUS — INTENSIVE CARE UNITS — SURGE CAPACITY

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

I have a supplementary question. Can the minister confirm that despite the benefit of time we do not have the ICU nurses required for surge capacity, which will inevitably put patients at risk?

Mr R.H. COOK replied:

As the member well knows, because I have told her about it in every single question time and every matter of public interest that she has moved in this place over the last two to four weeks of sitting, we have been undertaking a significant recruitment campaign. We have increased the number of nurses, midwives and nursing assistants by over a thousand since January this year, and we will continue to skill up that particular group as well as the nurse graduates. We are recruiting an extra 1 270 graduate nurses in 2021 and 1 200 in 2022. We are using the precious time that we have to great effect, making sure that we have the beds, the capacity and the doctors and nurses to stand by the patients in those beds when we need them.

NELSON POINT TUG HAVEN AND LUMSDEN POINT — PORT HEDLAND

686. Ms L. DALTON to the Minister for Ports:

I refer to the McGowan Labor government's strong investment in job creation and driving economic projects across regional Western Australia. Can the minister update the house on the projects currently underway in Port Hedland to support trade in the Pilbara, including Nelson Point Tug Haven and Lumsden Point, and can the minister outline how this government's investment in the regions will deliver greater economic prosperity and more jobs for Western Australians into the future?

Ms R. SAFFIOTI replied:

I thank the member for Geraldton for her question.

As part of the economic recovery from COVID-19, we are seeing projects being rolled out across the state. We have a booming economy in Western Australia, and, across regional WA, record regional investment from this government, including throughout the Pilbara and Port Hedland. I often talk about our roads, but, of course, our port expansions and new facilities will facilitate more trade, investment and jobs into the future. Last week, we awarded a $29 million contract to Austral Construction for the design and construction of a new revetment wall for the Nelson Point Tug Haven. Those works will continue to facilitate further expansions at the port and further trade. Importantly, millions of dollars of work will be going to a local Pilbara-based company.

Yesterday, another key asset of the Pilbara and Western Australian economies became operational with the first cargo vessel's arrival at Lumsden Point. Thanks to FMG and the Pilbara Ports Authority working together, this is a multi-user facility and logistics hub that will continue to support cargo imports into the port and direct shipping services to facilitate further trade. Other works include a record amount of roadworks and the Spoilbank Marina. The member for Pilbara is not here, but the Spoilbank Marina is progressing very well. Those who have been up there will see the significant work that is happening there. This is part of our strategy of protecting the WA economy by protecting Western Australians' health. We are making sure that we emerge from this COVID pandemic stronger than ever before. Everything we are doing is all about making sure that we protect Western Australians' health and protect our economy.

I am sorry, members, but look at that sad bunch on the other side. I do not know who writes the questions for those five—maybe it is the anti-vaxxers out there—but they are pathetic. They look at their phones, never actually engage in the debate and they asked questions on climate change, which I thought were Dorothy Dixers! We will continue our program of protecting the health of Western Australians and the health of the economy to make sure that we emerge stronger and better than ever. Wherever we look in Western Australia, we can see throughout the economy booming demand, booming exports and jobs being created for all Western Australians.

HYDROGEN PROJECTS

687. Dr D.J. HONEY to the Minister for State Development, Jobs and Trade:

I refer to the welcomed announcement regarding the blue hydrogen project that will be based in the Kwinana and Rockingham strategic industrial estates. Why is the government able to facilitate a blue hydrogen development based on gas but is unable to provide industrial land for a 100 per cent renewable-powered green hydrogen project development with Fortescue Future Industries?

Mr R.H. COOK replied:

It is just not true. We work with any proponents, and we work with them very effectively. Can I correct the member? It is not blue hydrogen. That particular plant will feed off the renewable energy inputs into the south west interconnected system and the project will use that peak generation, particularly during the day, to flatten and stabilise the demand and supply curves of the SWIS during the day.

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

Mr R.H. COOK: The member might say it is blue, but it is probably blue and green; does that make yellow?

Several members interjected.

Mr R.H. COOK: Purple, turquoise—I like that. We could be turquoise, but it is clean energy and a great development that will provide over 2 000 jobs in construction and 200 jobs in operation. I cannot speak for Fortescue Future Industries and the projects it is putting forward or the way that it engages with the state government. Clearly, Woodside, a great Western Australian company, has done a great job in bringing this project to its construction phase. We are very much looking forward to working with them and all other proponents around the state to make sure that we get this, with this great new period of Western Australian economic growth around hydrogen and other renewable forms of energy for the future.

HYDROGEN PROJECTS

688. Dr D.J. HONEY to the Minister for State Development, Jobs and Trade:

I have a supplementary question. Why has the minister failed to develop the critical infrastructure necessary for green hydrogen projects in the midwest, which promise to address the state's greenhouse gas emissions issue?

Mr R.H. COOK replied:

We are already undertaking a range of projects around the state, whether it is the Asian Renewable Energy Hub in the north west. The Minister for Hydrogen Industry is working assiduously to make sure that we can build on our renewable energy hub in the midwest. As the member can see from our announcement on Monday, we are going full-tilt in the south west and will continue to grow these companies, industries and projects right around the state as we move forward. The McGowan government has a clear vision for the energy transition in this state; that is, to make sure we realise the potential of green energy through renewable energy and its combination with green hydrogen, and blue hydrogen has its role to play. Also, the Minister for Mines and Petroleum is doing great work in critical minerals and battery energy. Just quietly, minister, I think some of that work is where we are really going to get rubber on the road. From that perspective, I am very excited about the future. It is a future that the McGowan government is determined to realise and will make sure that we realise the green energy transition that is coming to Western Australia and the great economic opportunities that will come with that. We will work with any proponents, wherever they come from, to make sure that we realise this goal. We are working day and night to ensure that it happens.

SCHOOLS — VIRTUAL POWER PLANTS

689. Dr J. KRISHNAN to the Minister for Energy:

I refer to the McGowan Labor government's commitment to delivering a clean, green energy future for Western Australia and targeting net zero carbon emissions by 2050.

(1) Can the minister update the house on the rollout of virtual power plants in schools, including Rossmoyne Senior High School in my electorate of Riverton?

(2) Can the minister outline to the house what virtual power plants mean for the reliability and stability of the local electricity grid?

Mr W.J. JOHNSTON replied:

(1)–(2) I thank the member for the question and I congratulate him on attending Rossmoyne Senior High School yesterday with the Premier and the Minister for Education and Training to launch the installation, as part of the $66.3 million renewable energy investment from the McGowan government that we announced as part of the recovery plan. With the Premier and the Minister for Education and Training, I was pleased to make this announcement in July last year. I am pleased that we are installing batteries in 10 schools across the state. Not only is Rossmoyne part of this program, so is Kalgoorlie–Boulder Community High School; Baldivis Secondary College; Belridge Secondary College, member for Hillarys; Butler College; Coastal Lakes College; Success Primary School; Gilmore College; Joseph Banks Secondary College; and Comet Bay Primary School.

These virtual power plants bring together renewable energy in a battery to allow controllable energies so it can give bi-directional flow of electricity that provides support to the grid at a local level and also allows that energy to work in concert with the entire system. This is all about transitioning to a high renewable future. Already in Western Australia this year, on a number of occasions, we have had nearly 70 per cent of all the electricity in the south west interconnected system being provided by rooftop solar. We are the single largest renewable grid for any isolated grid in the world. We are a renewable energy success story. Virtual power plants are going to play an important part in the future of our high renewable energy content system. The *Distributed energy resources roadmap* acknowledged that virtual power plants will play a critical role, which is why I am also pleased to say that we are rolling out an additional six sites for $4.8 million in Geraldton and Kalgoorlie, at the edge of the grid and where this new technology will play a very significant part of our energy future. We have just started Project Symphony to bring together virtual power plants in the south eastern suburbs to bring together individual homes as well as businesses in that corridor. We are investing in these new technologies and investing in the systems that are going to underpin the move to a high renewable–energy future. That is unlike the member for Cottesloe who is still committed to building a 1 500-megawatt renewable energy project over 1 000 kilometres north of Perth, which would mean there would be no more renewable energy on the rooftops. It would squeeze out all the future mum-and-dad investments in distributed energy. No-one would be able to put solar panels on their roof if the member for Cottesloe had his way. That is not our future that we are designing. We are designing a future in which families, businesses and schools can share in the renewable energy future.

The SPEAKER: Member for Vasse, with the last question.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION — INQUIRY INTO THE DELIVERY OF AMBULANCE SERVICES IN WESTERN AUSTRALIA

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

I refer to the obvious conflict of interest regarding Hon Pierre Yang who is leading a parliamentary inquiry into the delivery of ambulance services in Western Australia —

Ms A. Sanderson interjected.

The SPEAKER: Order, please! Minister for Environment, please do not interject.

Ms L. METTAM: I refer to the obvious conflict of interest regarding Hon Pierre Yang who is leading an inquiry into the delivery of ambulance services in Western Australia. Will the minister ask the chair to step down, given his conflict as a member of the United Workers Union; and, if not, how can the minister reassure the public that this inquiry is not operating with a predetermined outcome, much like the Ministerial Expert Committee on Electoral Reform?

Point of Order

Mr W.J. JOHNSTON: I have a point of order on behalf of the absent Leader of the House. The minister can only be asked questions around his ministerial responsibilities. The decision about the chair of an upper house committee is not a matter under the purview of the Minister for Health.

The SPEAKER: The minister's point of order is upheld. The member for Vasse's question is out of order.

Ms L. Mettam: Can I rephrase it?

Several members interjected.

The SPEAKER: Order, please, members! You have a quick opportunity to rephrase it, yes.

Questions without Notice Resumed

Ms L. METTAM: Minister for Health, I refer to the inquiry looking into the delivery of ambulance services in Western Australia. Will the minister rule out the union sector's support for a public sector takeover of ambulance services in this state?

Point of Order

Mr W.J. JOHNSTON: I have a point of order.

The SPEAKER: I will listen to the point of order, yes.

Mr W.J. JOHNSTON: Again, the member is asking the minister to reflect on the outcome of a Legislative Council committee inquiry and I do not understand how that would be the minister's responsibility.

The SPEAKER: I do not believe that the member for Vasse referred to the inquiry this time around. I think she was just asking about —

Ms L. Mettam: That was the topic of the inquiry.

The SPEAKER: I will give the minister the opportunity to respond. I am sure the minister knows what is appropriate and inappropriate. I will ask him to provide a brief response but not reflect on the upper house or its inquiry.

Questions without Notice Resumed

Mr R.H. COOK replied:

I certainly would not, Madam Speaker, reflect on any of the activities of any of the committees of Parliament. That is not what governments do. Parliamentary committees are masters of their own destinies and, certainly, committees in the other place are very much not the business of a minister in the lower house to tell them what they should or should not be doing. I will reflect on the member for Vasse —

Several members interjected.

Mr R.H. COOK: I will reflect on the member for Vasse and what she is essentially alleging in terms of this particular question. What she is alleging is that there is somehow some sort of conspiracy to cook up some sort of concocted parliamentary committee outcome in order to fit some sort of narrative from a union that has a particular position. I must say that rivals some of the conspiracy theories of those camped outside this building as we speak. It is extraordinary that the member should invite us to waste the Parliament's time on such subject matter. She should, perhaps, spend more time on her feet disavowing the Liberal Party of any connection with what the shadow Attorney General is saying and actually for once do the right thing—support the government in its efforts to protect Western Australians and stop this trivial ridiculous behaviour, which just really exposes the flaws in her own actions not those of others.

The SPEAKER: Before I call the supplementary—I will give you a supplementary—I take it that what the minister was doing was reflecting on the question asked by the member for Vasse rather than reflecting on member for Vasse.

Mr R.H. COOK: Absolutely, Madam Speaker.

The SPEAKER: Keeping that in mind, I ask the member for Vasse to ask her supplementary.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION —
INQUIRY INTO THE DELIVERY OF AMBULANCE SERVICES IN WESTERN AUSTRALIA

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

I have a supplementary question. Given the Productivity Commission's report, which highlights the efficiencies of St John, what assurance will the minister provide that he will reflect on the report in the best interests of the patients and the volunteers of Western Australia?

The SPEAKER: Minister, it is quite a hypothetical question; the report has not yet been delivered. If you do respond, I would ask you to do so briefly.

Mr R.H. COOK replied:

I simply draw the Parliament's attention to some very important statistics. In 2019, St John Ambulance had 8 145 call-outs. In 2021, that has now reached almost 10 000—9 751—a 20 per cent increase since 2019. This is putting untold pressure upon our ambulance services and the hospitals that they take patients to. As a result of that, I am not surprised that Parliament has seen fit to examine St John Ambulance: Are we doing enough to support it? Are there other ways that we can better support the great work that it does?

I was advised of a statistic the other day by the South Metropolitan Health Service, which said that 60 per cent of ambulance arrivals at Rockingham General Hospital are not admitted—that is, well over half the people who are brought to the hospital by ambulance walk away or drive themselves home from the hospital. There is something going on out there that I think it is important to inquire into. I do not reflect, as the member for Vasse is doing, that somehow St John Ambulance is letting us down or that we need to attack it. I think it is doing a great job. It is one of the best ambulance services in this country, and if there is more that we can do to support it, then we will take the opportunity to do so.

The SPEAKER: Members, that concludes question time.

MEMBER FOR COTTESLOE

Personal Explanation

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [2.53 pm]: I rise under standing order 148 to make a personal explanation.

The SPEAKER: I am going to give the member for Cottesloe the call. I reiterate that a matter of personal explanation is just for that purpose: it is not to debate. If that is what you attempt to do, I will sit you down.

Dr D.J. HONEY: I appreciate your indulgence, Madam Speaker. Today, in question time, the Minister for Health made an assertion that a person spoke on my behalf on the steps of Parliament House, that that person was encouraging protesters to threaten the safety of staff in Parliament House and that on my behalf that person was encouraging people not to be vaccinated. I make it very clear that no statement has been made on my behalf whatsoever by any person on the steps of Parliament House or otherwise. I abhor any behaviour that threatens the mental or physical wellbeing of parliamentary staff and I have consistently supported vaccination in the state of Western Australia.

CIVIL PROCEDURE (REPRESENTATIVE PROCEEDINGS) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

MR M. HUGHES (Kalamunda) [2.54 pm]: Prior to question time, I was referring to the second reading speech of the Federal Court of Australia amendment bill, which deals with class actions.

The SPEAKER: This is not an opportunity for everyone to start talking. If you need to move out of the chamber, I ask you to do so quietly. We would like to be able to hear the member for Kalamunda and I would like Hansard to be able to transcribe.

Mr M. HUGHES: Thank you, Madam Speaker. The quote continues —

> The second purpose of the Bill is to deal efficiently with the situation where damages sought by each claimant are large enough to justify individual actions and a large number of persons wish to sue the respondent. The new procedure will mean that groups of persons, whether they be shareholders or investors, or people pursuing consumer claims, will be able to obtain redress and do so more cheaply and efficiently than would be the case with individual actions.

The second reading speech of the federal Attorney General underscores that facilitating access to justice is the main aim of the class action regime. Class actions provide the means by which individual citizens are able to seek redress through the courts for civil wrongs committed by the big and powerful in our society, which include governments, corporations and other defendants that are more powerful than any individual claimant. Clear and certain access to such a mechanism is of fundamental importance in the globalised economy in which civil wrongs are often committed on a mass scale by large and powerful entities and those nearer to home who emulate them. Such entities—large corporations—in effect have all the advantages that accrue to those in litigation and dispute resolution, which sheer size and wealth commands. The rebalancing of this power differential is important and it is the clear aim of class action legislation. It provides the means by which a solitary person with a grievance that is shared in common with others can combine in a way that would be non-existent if claims were pursued individually. It provides a mechanism by which a greater number of those claims can be litigated.

In a second reading contribution two years ago I commented that this legislation was long overdue. It remains the case that this bill is essentially an important step forward to bringing fairness into our judicial system for ordinary folk who seek redress before the courts in Western Australia. It is another indication of the hard work of our Attorney General and the McGowan Labor government in tackling and delivering on social justice issues that were known to the previous government but, rather than acted on, were consigned either to the too-hard basket or suffered from the characteristic all-too-lazy indifference of the previous Attorney General. With the efficiency measures adopted by the Legislative Council in the forty-first Parliament to end the filibustering and grandstanding of the now shadow Attorney General, Hon Nick Goiran, and his colleague Hon Peter Collier, happily this legislation will now see the light of day.

The bill has had a long gestation. The bill is being introduced in response to the recommendations of the *Representative proceedings: Project 103—Final report* tabled by the Law Reform Commission of Western Australia on 25 October 2015. Commenting on the recommendations of the commission, Herbert Smith Freehills, on 25 March 2016, in one of its legal briefings, remarked —

> Uncertainty surrounding the class actions or 'representative proceedings' regime in Western Australia make such claims a rarity but a new report by the state's Law Reform Commission could see this change.

It was expected that the commission's recommendation that the Western Australian government should seek to introduce class action legislation based on the federal regime would likely result in a measure of uniformity with Australian jurisdictions and would have —

> … a significant effect on the litigation landscape for defendants who are faced by a large class of plaintiffs in Western Australia.

In other words, it was hoped that the introduction of such legislation would be imminent and would finally bring greater fairness to play in Western Australia. That was in 2015. Predictably, nothing happened. What is of interest to me is that as far back as July 2011, the then Attorney General, the beleaguered Hon Christian Porter, directed the Law Reform Commission of Western Australia to investigate and report on representative proceedings within Western Australia. This was to become project 103. In particular, the commission was tasked to give close consideration to —

(i) the need for a detailed guiding framework for the manner in which representative proceedings are to be conducted or concluded;

(ii) the need to reduce the uncertainty and lack of clarity in the area;

(iii) the adoption of an appropriate and effective model, either through amendment to the Supreme Court Rules or statutory reform, taking into account recent developments regarding representative proceedings in other jurisdictions both nationally and internationally;

(iv) the need to ensure that representative proceedings are conducted in a fair manner which gives those who will be bound by orders made in the proceedings a reasonable opportunity to decide whether or not to participate in the proceedings and to be heard in relation to issues affecting their rights; and

(v) any related matter.

Following that, in February 2013, the commission released a discussion paper. In it, the commission made the following proposals —

(a) that Western Australia should adopt legislation to create a scheme allowing representative actions in substantially similar terms to Part IVA of the *Federal Court of Australia Act 1976 (Cth)*; and

(b) Order 18 Rule 12 of the Rules of the *Supreme Court 1971* (WA) should be retained in its current form as a surviving alternative.

In relation to the terms of reference, the commission sought comment on three key issues —

1. If a new regime is appropriate, should such amendment be effected by amendment of the rules of the Supreme and/or District Courts only, or by the passage of legislation?

2. Should Western Australia adopt a legislative representative proceedings regime substantively similar to that existing in Part IVA of the *Federal Court of Australia Act 1976* (Cth)?

…

3. The other key difference in the *Civil Procedure Act 2005* (NSW) is the extent to which there is an express permission to issue a representative action against multiple defendants, irrespective of whether or not the persons affected have a claim against every defendant in the action …

This commonly referred to as the Philip Morris issue. The issues addressed by this commission were well known in the first term of the Liberal government, but here we are—we are still discussing in this state whether we should be reforming our representative proceedings and access to them by our citizens.

A representative proceeding in the Supreme Court of Western Australia is, as I have mentioned, defined at rule 12(1), under order 18 of the Rules of the Supreme Court 1971. The commission research indicated that "representative proceedings" at rule 12, order 18, are rarely begun in Western Australian courts. Further, a review of WA cases revealed that there is no published authority on the proper interpretation of rule 12, order 18, of the Rules of the Supreme Court either on the procedural mechanisms that are contained or said to be contained within the rule or on how it may impact upon the substantive rights of the litigation parties. Rule 12(1), under order 18 of the Rules of the Supreme Court, states —

> Where numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13 —

That is, pertaining to the representation of interested persons who cannot be ascertained —

> the proceedings may be begun, and, unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

I cannot get my head around that particular subrule; no doubt, the judges can. But it is not surprising that very few representative proceedings are initiated in Western Australia under the terms of rule 12, order 18, of the Rules of the Supreme Court. The commission's final report, which I mentioned was released in late 2015, found that rule 12, order 18, of the rules was inadequate to facilitate large representative actions in Western Australia and lacked clarity, as I think I have demonstrated, for those who wish to bring a class action to the court.

[Member's time extended.]

Mr M. HUGHES: The commission recommended that a new legislative scheme be introduced in order to allow for more efficiency in the realm of representative actions. The aim of the scheme would be to assist in reducing interlocutory disputes, lowering costs and alleviating procedural barriers. The commission recommended that the legislative scheme should be based on the commonwealth Federal Court of Australia Act 1976 and include various provisions from the New South Wales Civil Procedure Act 2005.

Since 1992, part IV of the federal act has provided for a legislative regime under which representative proceedings can be commenced in the Federal Court. It lists the requirements and tests for a class action to be brought before the Federal Court. Since its implementation, similar schemes were adopted in Victoria in 2000, in New South Wales in 2011, in Queensland in 2017, and, more recently, in Tasmania in 2019. As I understand it, the starting point for the consideration of the benefits of a representative proceedings regime is a comment by Hon Justice McHugh in Carnie v Esanda Finance Corp Ltd (1995) 182 CLR 398. At paragraph 10 of his judgement, he said —

> The cost of litigation often makes it economically irrational for an individual to attempt to enforce legal rights arising out of a consumer contract. Consumers should not be denied the opportunity to have their legal rights determined when it can be done efficiently and effectively on their behalf by one person with the same community of interest as other consumers.

In June 2013, the Law Council of Australia took the opportunity to comment on the Law Reform Commission of Western Australia's discussion paper on representative proceedings. The Law Council stated —

> It is suggested that it is likely that these actions —

Referring to the many thousands of individuals and companies and the way in which they attempt to recover losses —

> benefit the wider community by making wrongdoers accountable and thereby improving compliance with corporate standards and consumer safety standards whereas absent a facilitated class action procedure, very few claims have been made for compensation by groups of claimants.

Successful Australian class actions have compensated people who have suffered injuries from defective products and those who have been misled into poor investments. Class actions have also successfully sought compensation for a range of other reasons, and a number of actions for victims of mass torts have been successfully concluded.

Justice Bernard Murphy delivered a keynote address titled "Class Actions—Current Issues After 25 Years of Part IVA" in a seminar titled "Access to Justice Under the Part IVA Regime" held at the University of New South Wales on 23 March 2016. He said —

> It is important to remember that, before the class action regime —

That is, in part IVA of the Federal Court act —

> was introduced, it was either impossible, or at least exceedingly rare, for consumers, cartel victims, shareholders, investors and the victims of catastrophe to recover compensation, even where the misconduct was plain.

Importantly, he noted —

> Since 1992 the regime has permitted claimants to recover more than $3.5 billion in compensation for civil wrongs they have suffered.

In the time remaining, I will have a closer look at the bill. The Civil Procedure (Representative Proceedings) Bill 2021 will provide for a new representative proceeding scheme that implements a clearer set of processes in order to govern the commencement and conduct of class actions in Western Australia to ensure fairness and efficiency in the system. The bill makes provision for the minimum threshold requirements in commencement of representative proceedings; the right to opt out of or formally discontinue proceedings; the settlement of individual claims; the discontinuance of proceedings; and the distribution of payments. Representative actions will be available when at least seven people have claims against the same person or entity, in situations in which the claims arise out of the same or a similar set of circumstances and give rise to a common question of fact or law. This is the same threshold that applies under the federal regime.

The system proposed for WA adopts an opt-out model for group membership of a class action. This means that consent to be a group member is not required, except for specified state entities and public corporations. However, members must be given an opportunity to opt out of a class action before the action reaches a certain stage. The bill also provides that it will be open for a class action to be commenced against multiple defendants, regardless of whether the lead plaintiff and all other group members have a claim against every defendant. I understand that in this way, Western Australia seeks to avoid the so-called Philip Morris issue, in which all representative plaintiffs must have a claim against each defendant named in the proceedings, which is how the federal regime had been interpreted up until 2014.

Under the provisions of the bill, the WA Supreme Court will have the power to disband a class action when it is satisfied that it is in the interests of justice to do so because the cost of the action is likely to make it uneconomical or inefficient, or because it is an ineffective or inappropriate means of resolving the class action claims—although it is anticipated, based on the experience of other states, that this power will be exercised rarely. The bill will also give the court the power to substitute the lead plaintiff in a class action with another group member when the plaintiff does not adequately represent the interests of the group, or if it is in the interests of justice to do so; that is a provision that largely mirrors the Federal Court equivalent. The WA provision allows for greater flexibility by also permitting the court to act in the interests of justice rather than being limited to considering only the interests of the group. Such an order, however, can only be made on the application of a group member.

With regard to limitation periods, on the commencement of a representative proceeding, any applicable limitation period that applies to the claim of a group member will be suspended. This will apply unless a group member either opts out of the group, or the proceeding is discontinued without determining the group member's claim. In keeping with other class action regimes across the commonwealth of Australia, a class action will only be able to be settled or discontinued with the approval of the court. Class action judgements bind all group members except those who have chosen to opt out of the proceedings.

There are, as we heard from the Attorney General in his second reading speech, some notable differences from the commonwealth legislation. Firstly, the courts will have additional powers to remove and substitute a representative

party when it is in the interests of justice to do so. Secondly, the definition of "representative party" will be expanded from covering only an individual who commences representative proceedings to include an individual who has been substituted as a representative party. The expansion of this definition reduces the risk of possible challenges to the legitimacy of a substituted party. Finally, the bill will allow for representative action to be taken against multiple defendants, regardless of whether each individual in the action has a claim against every defendant.

The Attorney General commented in his original media release on the previous version of the bill in 2019 —

> "Class actions, at its heart, is an access to justice issue.
>
> …
>
> … there are situations where a legal wrong has been committed which affects many people, but each person's individual loss is not such as to make it economically viable to bring an individual action.
>
> "Without a strong and sustainable mechanism for bringing class actions, countless individuals will not see justice and their losses will go uncompensated.

Until now, the uncertainty surrounding the class action mechanism in Western Australia has led to such claims being a rarity in our courts. With this bill, that position is expected to change. At long last, the provisions of this bill will make it simpler for plaintiffs to establish and efficiently pursue representative proceedings in the Supreme Court of Western Australia. Yet again, the McGowan Labor government and our hardworking and reforming Attorney General are to be congratulated on the energy directed in the fortieth Parliament towards attempting to improve access to justice for the people of Western Australia; that will now be brought to fruition in this, the forty-first Parliament. I commend the bill to the house.

MR J.R. QUIGLEY (Butler — Attorney General) [3.15 pm] — in reply: I thank members for their contributions to the second reading debate on the important Civil Procedure (Representative Proceedings) Bill 2021, which will increase access to justice for Western Australians and fulfil a McGowan Labor government election commitment. In particular, I thank the member for Mount Lawley, who took us through contributions to the 2019 version of the bill and reminded us all of the broad support it enjoyed on a bipartisan level. The member reflected upon the experiences of other jurisdictions as a useful predictor of what our own experience might be. I share the member's warm words about the excellent work of our Law Reform Commission in examining these issues and leading us to the bill before us today. I also thank him for taking us through how the bill responds to the commission's recommendations.

I thank the member for Moore, the lead speaker for the opposition, for his contribution and for indicating the opposition's support for the bill. He is correct that class actions are useful for individuals with small claims to band together to pursue justice as part of a group. I was sorry to hear about his children's experience in the Kraft peanut butter salmonella case, and I am glad to hear that his family was able to avail themselves of a class action in that matter. I am sure that it was a distressing experience for them. I appreciate him taking us through the history of maintenance and champerty, all the way back to Henry VI! I note the member's advice that the shadow Attorney General sought a meeting with the Chief Justice. I will just say that the shadow Attorney General emailed us, seeking a meeting with the Chief Justice, and my office properly responded that the courts are completely independent of the government and that it is not for me to arrange meetings with the Chief Justice or to deter anyone from meeting with the Chief Justice. The courts are an equal and third arm of government. The member can approach the Chief Justice anytime he wants.

I thank the member for Cockburn for his contribution to the bill. He touched upon similar issues to previous speakers, particularly with regard to access to justice for people with small claims. I appreciate his making the very important point that what might be a small claim to one person may well be a significant claim to another. He gave examples of some of his clients from his time as a lawyer to illustrate the point. The member also gave examples of the types of actions that have been pursued, including the Pearson matter in Queensland regarding wage theft from Aboriginal workers, and Cash Converters International Limited v Gray, regarding unconscionable conduct by lenders. The ability to pursue matters like these en masse is really important to individuals. The member for Cockburn also touched upon the federal government's ongoing program of reform to class actions that may result in decreasing access to justice, with a particular focus on litigation funding.

I share the member's concerns about some of those federal reforms and note, for the benefit of this house, that I am actively engaged in discussions with the federal government about these issues. I also note that the federal Attorney-General has proposed some changes to litigation funding, but that the laws around litigation funding are quite separate from the laws around representative class actions, although they do intersect, because often people pursuing representative class actions are funded by a litigation funder. However, the structure of laws regarding representative class actions stand by themselves.

I also acknowledge the contribution by the member for Kalamunda—his second contribution to this bill after its original introduction in 2019. He took us through the key differences between the two bills and explained the importance of the abolishment of the torts of maintenance and champerty in the 2021 bill, which I have presented to this Parliament. He also mentioned that Tasmania is a relatively new addition to the host of Australian jurisdictions that adopted legislative representative proceedings in 2019.

In summary, I thank all members for their contribution to the second reading debate and support for the bill. I also thank them for supporting the McGowan Labor government as it seeks to increase access to justice for all Western Australians.

I commend the bill to the house.

Question put and passed.

Bill read a second time.

[Leave denied to proceed forthwith to third reading.]

Consideration in Detail

Clause 1: Short title —

Mr R.S. LOVE: This is an opportunity for the Attorney General to provide an understanding of the legislation that he is seeking to pass in this place. I understand that similar legislation has been enacted in Victoria, New South Wales and Queensland. Since the enactment of that legislation, have any of those jurisdictions had any problems or challenges, or have any amendments been made; and, if yes, does this bill reflect those amendments?

Mr J.R. QUIGLEY: The member mentioned the commonwealth and Queensland. This bill before the chamber today is a direct take from part IVA of the Federal Court of Australia Act, which was passed in 1992. We have not identified any particular issues as having arisen from that legislation. The issues that are of concern to the federal government at the moment concern litigation funders and their level of remuneration, not part IVA of the Federal Court act.

Clause put and passed.

Clause 2: Commencement —

Mr R.S. LOVE: As I understand, there is variance between this bill and the 2019 bill with regard to the date on which the act comes into effect. It varies from the 2019 bill because the rest of the act will come into effect on the day after royal assent rather than the day fixed by proclamation, which was to allow rules and practice directions to be prepared. Has this process already occurred entirely? Is that not now necessary?

Mr J.R. QUIGLEY: Thank you very much, member. The act as a whole will not come into operation on receipt of royal assent because additional time is required to prepare the rules and practice directions to support the new representative proceedings regime. It is difficult to predict the time that will be required between passage of the legislation and the commencement of the new representative proceedings because there will be changes to the Rules of the Supreme Court 1971 as the development of new practice directions are set out. That work has not been done since the last bill because that bill did not pass Parliament before prorogation. It was pointless—the work cannot be done until the law comes into force.

Clause put and passed.

Clauses 3 to 5 put and passed.

Clause 6: Commencement of representative proceeding —

Mr R.S. LOVE: The Attorney General said that this bill reflects commonwealth legislation in this area, but can he explain why clause 6(1)(a) specifically refers to seven or more people having claims against the same person? What is magic about the number seven? Why it that number sufficient? Why is it not three, six or 10 persons? Is there some historical or astrological reason—seven days of the week—for seven persons? Can the Attorney General outline why seven is the number?

Mr J.R. QUIGLEY: The requirement that there be seven or more persons in order to commence a representative proceeding in section 33C stems from the recommendations of the 1988 Australian Law Reform Commission's forty-sixth report titled *Grouped proceedings in the Federal Court: Summary of report and draft legislation.* During the 1988 review, stakeholders raised concerns with the Australian Law Reform Commission that if no minimum number was specified, the procedure might be used for cases that were inappropriate to be dealt with in the Federal Court. The Australian Law Reform Commission acknowledged that while differences will increase as the potential number of a group increases, grouping is also advantageous if there are small numbers involved. Therefore, the Australian Law Reform Commission considered that establishing a minimum number would promote efficiency to the procedure and ensure that cases are not grouped when a joinder or consolidation is more appropriate. While the choice of the figure is arbitrary, the Australian Law Reform Commission considered the grouping procedure should be available so long as there are at least seven group members, otherwise under the rules of court, there can still be proceedings, if there are fewer than seven people, they will be proceedings like there was in the Toodyay bushfire case rather than a class proceeding.

Mr R.S. LOVE: As I understand it, the bill will give the Supreme Court a similar arrangement to that of the Federal Court, even though the Supreme Court already has rules that allow for representative actions. Do the rules in the Supreme Court have a particular number or is this a new thing for Western Australia?

Mr J.R. QUIGLEY: No, but there is not grouping either. Lawyers do not act on behalf of a group; rather, they act on behalf of individual people, which was the problem with the Toodyay fires. I think they had to book a room

at the Perth Convention and Exhibition Centre so that they could take instructions from individual plaintiffs, not from a group. The representative proceedings in the Supreme Court provide that when numerous persons have the same interest in any proceedings, not being such proceedings as are mentioned in rule 13, the proceedings may be begun and, unless the court otherwise orders, continued by or against one or more of them as representing all except one or more of them. This really will introduce an efficient class action system and provide clarity on the minimum number of people who have to join before a representative class action can commence.

Mr R.S. LOVE: This introduces representative proceedings. We are dealing with part 2, "Conduct of representative proceeding". Can the Attorney General explain to me and members of the house: if this matter exists already in the Federal Court of Australia, why do we need such a measure in the Supreme Court of Western Australia? What actions could be taken in the Supreme Court that someone could not ordinarily produce in the Federal Court? I ask because most of the actions that I am aware of seem to be against persons who are covered by federal legislation and can proceed within the Federal Court. Are there circumstances in which someone would want to go to the Supreme Court, rather than the Federal Court, and what would they be?

Mr J.R. QUIGLEY: Certainly under the Constitution, the introduction of a state-based legislative proceedings regime is necessary to increase the access to justice for all Western Australians so that the representative proceedings that are relevant to Western Australia are dealt with by our state and our judges and lawyers who know Western Australia best. Furthermore, a state-based regime will ensure that Western Australians are no longer burdened with having to commence proceedings in the Federal Court. Also, the Federal Court has a jurisdiction over federal matters, for example, the case that the member cited in his second reading speech about contamination of peanut butter. We did not hear whether his family preferred smooth or crunchy!

Mr R.S. Love: I think it was the crunchy.

Mr J.R. QUIGLEY: That is what I go for too. But anyway, the proceedings would be taken against the corporation that is manufacturing or selling the crunchy peanut butter, and that comes within the corporations power, and so someone can sue the corporation. If we take, for example, a bushfire commenced by a government agency—I think that the Margaret River bushfire was found to have been caused by a controlled burn by a Western Australian agency—it would not come within the federal regime. Similarly, with Western Power or Synergy or someone, the pole fires that started and the actions out there in Toodyay would not come under the federal regime. That is why the plaintiffs in the Toodyay bushfires, which was heard and determined by, I think, the senior puisne judge Hon Justice Le Miere, had to proceed under the Supreme Court Rules. The case had lots of plaintiffs, and instructions had to be taken from lots of plaintiffs, but there will be a limited number of Western Australian-based class actions. If I could just give the member an example, I am aware that the previous government offered people a payout for the Margaret River bushfire. I forget how much that payout was, but I spoke to landholders down in the Margaret River area and the ex gratia payment or act-of-grace payment made by the government to those landowners did not cover the costs of their sheds et cetera. Once this legislation passes there could be a class action.

Mr R.S. LOVE: I appreciate that there is a bit of leeway in the discussion here and that it probably should have taken place a bit earlier. Under the Federal Court system, if someone wanted to take an action against a corporation, that is where they would go. In the case that the Attorney General has just spoken about with a government agency acting in that way, an action can now be taken in a Western Australian court that more or less mirrors what would have taken place in the Federal Court—not entirely, but more or less mirrors it. Would different agencies in Western Australia not be captured by the federal legislation in any way or would any state government–owned agencies automatically be unable to be taken to the Federal Court?

Mr J.R. QUIGLEY: Well, the government has government trading enterprises; they could be corporations, and corporations can fit within the federal scheme. Once this legislation passes, a representative class action against a corporation could commence in this jurisdiction. We predict that it will be unlikely. The Federal Court of Australia has a whole nearly 30 years of experience with class actions. All the lawyers I have spoken to would be looking to have those corporate representative class actions commence in the Federal Court of Australia because of the 30 years that the Federal Court of Australia has dealing with them, but a class action could never be commenced. There was another case, I think, that presented difficulties. I might be wrong, but it was the Wivenhoe Dam case. The dam just out of Brisbane flooded Brisbane. There was an action, I think, against the people who had to maintain the —

Mr R.S. Love: Because of the uncertainty of their status.

Mr J.R. QUIGLEY: Yes. If a representative proceeding is brought against the state government, the same issues will arise that presently arise when an action is taken against the state government. Clause 8(2) of the bill provides that a state government, its ministers and officers and bodies corporate cannot be included as group members in a representative proceeding without consent, but agencies could be the subject of an action. The member will note that clause 5 of the bill provides that it binds the Crown, while other representative proceedings legislation does not contain such a provision. The High Court in Bropho v Western Australia held that the presumption against binding the Crown provides only limited protection and gives way to an express or implied intention that legislation binds the executive. Current drafting practice in Western Australia is to include an express statement when the Crown

is to be bound for the avoidance of doubt. Once again, someone could bring an action against a WA agency in the Federal Court of Australia. Currently, they would have to proceed in the Supreme Court of Western Australia under its current representative actions, but the representative class action allows for grouping. They are open groups, so that a person does not have to opt in; they have to opt out. Those are some of the advantages of having a Western Australian–based class action scheme.

Mr R.S. LOVE: If there were some doubt as to whether an action could be taken in either the Federal Court or the Supreme Court, would there be a process of handing over to the appropriate court if a problem with the constitutional barrier between the two court systems were found?

Mr J.R. QUIGLEY: It is really up to the legal advisers to advise their clients on the appropriate jurisdiction to commence proceedings in. Obviously, if the court before which the proceeding has commenced is of the view that it does not have jurisdiction in the matter, that is the end of the matter and they will have to start elsewhere, rather than the case being transferred.

Mr R.S. LOVE: I have a final question on this particular theme. The Attorney General mentioned the Wivenhoe Dam case. If a group wants to run a class action against a local government, would that take place in the Federal Court or the Supreme Court? The context of this is that there is a bit of discussion about whether local governments are under the federal or the state industrial relations system, based on whether or not they fall under the corporations power. Could the Attorney General just outline that for me?

Mr J.R. QUIGLEY: Certainly. All actions will turn upon the facts of the case and whether some of the actions involved are interstate matters or not, but, generally speaking, if the claim is against a local government authority for negligence and there is a class action, it will be in the Supreme Court of Western Australian. A person cannot start an action and fail in one jurisdiction and then start it in the other jurisdiction. There cannot be any element of double dipping; people have to decide on their arena. A self-represented plaintiff is unlikely to start a representative class action because of the complexity of it. If it is an action against a Western Australian agency or local government agency, it is more than likely that it will be in the Supreme Court of Western Australia under the new class action rules.

Mr R.S. LOVE: The commencement of a representative proceeding requires seven or more persons involved to have a claim. What would happen if several persons at some point wish to withdraw after an action has commenced? Is there a trigger at which point the action falls over? What would happen if three of the seven or eight people in the initial class action pull out?

Mr J.R. QUIGLEY: That is covered later in the bill. It is in clause 14.

Mr R.S. Love: Okay; I will leave it until later.

Clause put and passed.

Clause 7: Standing —

Mr R.S. LOVE: This clause refers to "sufficient interest". Clause 7(1) states —

> … a person who has a sufficient interest to commence the proceeding on their own behalf … has a sufficient interest to commence the proceeding against that other person as a representative proceeding

That term is used again several times. Can the Attorney General provide some examples of or clarify how "sufficient interest" is defined for the establishment of standing under this clause?

Mr J.R. QUIGLEY: To start with, clause 7(1) provides —

> If a proceeding can be commenced as a representative proceeding, a person who has a sufficient interest to commence the proceeding on their own behalf against another person has a sufficient interest to commence the proceeding against that other person as a representative proceeding on behalf of other persons referred to in section 6(1)(a).

That is on behalf of other group members. All members of a group have to have a claim against the defendant. Clause 7(2) provides express permission to —

> … commence a representative proceeding on behalf of other persons against more than one respondent irrespective of whether or not the person and each of those other persons have a claim against every respondent in the proceeding.

That was explained by the member for Kalamunda during the second reading debate. In doing so, clause 7(2) avoids the effect of the decision of Philip Morris (Australia) Ltd v Nixon [2000] 107 ALR 487 in which the full court of the Federal Court concluded that all representative parties must have a claim against each of the named defendants in the proceedings. We get around that issue with clause 7(2). Clause 7(3) provides —

> A person who has commenced a representative proceeding retains a sufficient interest to continue the proceeding and to appeal against a decision in the proceeding even if the person ceases to have a claim against the respondent.

Mr R.S. LOVE: I got all of that, Attorney General, except the last little bit. If a person commences a proceeding, and they have a sufficient interest at that time, I assume there is some sort of test that the court will apply to allow the initiation of the matter. Who will determine that? Will that be done before the matter commences in a court and how will it be determined? What exactly is the meaning of subclause (3), because if a person no longer retains an interest, surely it would be quite illogical that they would continue the claim?

Mr J.R. QUIGLEY: Yes. As clause 7(3) states —

> A person who has commenced a representative proceeding retains a sufficient interest …

To commence proceedings a person has to have a claim against the defendant and sufficient interest to continue the proceeding and to appeal against the decision in the proceeding. It might be a decision in the proceeding that they had insufficient interest. Even though the person will cease to have a claim against a particular respondent, they might have a claim against other respondents in the action but not that particular respondent. As we have said before, there might be more than one defendant.

Mr R.S. LOVE: This clause refers specifically to a situation in which there are multiple respondents and multiple persons with a claim against them. Will it apply only in those circumstances, not in circumstances in which there might be only a single respondent?

Mr J.R. QUIGLEY: If it is against a single respondent, there still might be orders of the court made against which the plaintiff wishes to appeal. There might be orders in the running of the case against which the plaintiff wishes to appeal. Clause 7(3) will preserve that right.

Clause put and passed.

Clause 8 put and passed.

Clause 9: Person under disability —

Mr R.S. LOVE: This is the matter that refers to a person under disability. I am wondering whether the Attorney General can give some clarity about the definition of "person under disability" and the fact that they can be involved but cannot lead a representative proceeding, as I understand.

Mr J.R. QUIGLEY: Clause 9(1) provides —

> ***person under disability*** means a person who, under the rules of the Court, is not permitted to bring a proceeding except by the person's next friend.

That is, a child. The rules dealing with a person under disability are under order 70 of the Rules of the Supreme Court. Clause 9(2) of the bill provides —

> It is not necessary for a person under disability to have a next friend merely in order to be a group member.

I will take the case the member cited. One of his children would be under disability because they are under the age of 18. Normally, for a child to commence proceedings, they would have to commence it through their next friend, meaning a parent or guardian. But, to be a member of a group, a person does not have to have a next friend. It is not necessary for a person under disability to have a next friend merely to be a member of a group, because the award will be to the whole group, so that person under disability will not necessarily be running the action, but will just be a member of the group. A person under disability does not have to have a next friend or be over the age of 18. Clause 9(3) provides —

> A group member who is a person under disability may only take a step in the representative proceeding, or conduct part of the proceeding, by the group member's next friend unless the Court otherwise orders.

It is all right to be a member of a group, which the member's children were, but his children could not have taken steps in the proceedings and given instructions to the solicitors et cetera, unless by leave of the court.

Mr R.S. LOVE: "Persons under disability" is a fairly plain term that just describes people who are not able to represent themselves. The Attorney General gave the example of a child, but perhaps it could also be someone who was disabled from an injury they suffered for which they are making a claim. I assume that person would have reduced capacity at law to represent their interests. Can the Attorney General give further clarity about what is a person under disability?

Mr J.R. QUIGLEY: Certainly. Under the Rules of the Supreme Court, order 70, rule 1 defines a person under disability as —

> (a) a person who is an infant; or
>
> (b) a represented person; or
>
> (c) a person not being a person referred to in paragraph (a) or (b), who, by reason of mental illness, defect or infirmity, however occasioned, is declared by the Court to be incapable of managing their affairs in respect of any proceedings to which the declaration relates;
>
> ***represented person*** means a person in respect of whom a guardian or administrator has been appointed under the GAA Act …

Order 70, rule 2 provides that subject to subrule (4) —

> (1) … a person under disability —
>
> (a) cannot bring, or make a claim in, any proceedings except by the person's next friend; and
>
> (b) cannot defend, make a counterclaim or intervene in any proceedings, or appear in any proceedings under a judgment or order, notice of which has been served on the person, except by the person's guardian *ad litem*.
>
> (2) Subject to the provisions of these rules, anything which in the ordinary conduct of any proceedings is required or authorised by a provision of these rules to be done by a party to the proceedings must or may, if the party is a person under disability, be done by the person's next friend or guardian *ad litem*.

The definition that the member is looking for, and the explanation he is seeking, are laid out in order 70, rule 1 of the Rules of the Supreme Court.

Clause put and passed.

Clause 10 put and passed.

Clause 11: Originating process —

Mr R.S. LOVE: Clause 11(2) states —

> In describing or otherwise identifying group members for the purposes of this section, it is not necessary to name, or specify the number of, the group members.

If it is not necessary to name or specify the number of group members, how will we ensure that the court is properly or adequately informed about the identities of the people? Does the number of persons not have some influence or impact on the quantum of a case? Is that not information in and of itself?

Mr J.R. QUIGLEY: In class actions, it is possible and common as a matter of legal practice to describe an identified group of members or a potential group of members without specifying them by name or number. This is done by describing the nature of the group members' claim in respect of or arising out of the same or similar related circumstances that give rise to a substantial issue of law or fact. For example, in the Johnson & Johnson vaginal mesh class action, group members were described as "any person who was implanted, in Australia, with one or more of the tape and mesh implants" by named manufacturers in the originating documents. If the individuals were required to specify the name of, and number of, all group members, it would be difficult to commence a representative proceeding in circumstances in which a large number of people were wronged. A lot of women over many years were wronged by this particular mesh. For example, if a large number of people were injured by defective products such as in the Johnson & Johnson case, the number and identity of all potential group members may not be readily available at the time of the commencement of the proceeding. The provision is designed to support the open-class model of representative regime that aims to improve access to justice by enabling all victims of a civil wrong to participate in a class action and not just those who take active steps in relation to that action. It provides fairness and flexibility for those group members who may only be aware that they have a claim later in the proceeding, but may wish to join once they have knowledge. It also enables those who are aware of their claim to commence the proceeding without having to formally contact all affected people.

Clause put and passed.

Clauses 12 and 13 put and passed.

Clause 14: Situation of fewer than 7 group members —

Mr R.S. LOVE: The Attorney General is right; this is the clause he intimated earlier that we could discuss relating to when the number of group members falls below the magic number of seven. Biblically, I think seven is pretty significant. I am finding it very interesting that seven has been chosen. What happens if the number falls to six? It is laid out here what may happen, but can the Attorney General describe the circumstances and what the court might take into account in determining whether it would order a proceeding to continue or not continue under the future act?

Mr J.R. QUIGLEY: I think the member is referring to the seven deadly sins, but this is not drawn from that. As I said, it is drawn from a 1988 Australian Law Reform Commission report.

To get straight into answering the member's question, if the court had heard 90 per cent of the claim involving seven group members, including the representative party, before one of the group members withdrew, the court may be persuaded to hear the rest of the claim as a representative proceeding, notwithstanding that there would be fewer than seven group members. Consideration would be given to the cost to both the court and the parties of taking a different course of action, which would be to discontinue the proceedings and for the remaining six to start again under other Rules of the Supreme Court after 90 per cent of the claims had been heard. The judge would have to disregard that and a new judge would have to be found, at huge expense to the court. If a claim had the required seven group members and one passed away at some point during the proceedings, the court may decide it was in

the interests of the remaining six members to continue, but it was not that the member pulled out because they identified some problem with the claim. If the claim had only recently commenced and the number of members fell below seven—for instance, five group members chose not to proceed with an action for personal reasons; five of them said, "We're outta here!"—the court may determine it would be more appropriate that the remaining two members simply bring individual proceedings. It is going to turn upon the facts, where the case is up to and at what stage and in what circumstances the numbers fell below seven.

Mr R.S. LOVE: In making that determination, the costs that had been incurred at that point would be a relevant consideration. We know that there are cost implications in later parts of this legislation for the funding of those types of arrangements. At some point, will the person who is funding the action be consulted if the court is going to be making that determination?

Mr J.R. QUIGLEY: No. The funding is a contract between the representatives and the litigation funder. A representative in the class action may pull out or, alternatively, may achieve a settlement with the defendant.

Debate interrupted, pursuant to standing orders.

RAIL CROSSINGS — SAFETY

Motion

MS M.J. DAVIES (Central Wheatbelt — Leader of the Opposition) [4.03 pm]: I move —

> That this house calls upon the state government to invest in initiatives to increase rail safety at all passive rail crossings across Western Australia and ensure adequate advocacy to the federal government is being made to improve this critical issue across Australia.

I rise today to speak to an issue that I believe most, if not all, members in this place will be supportive of. I know that many of the debates in this place can be robust, even adversarial, but that is not the approach that the opposition or myself, as the member for Central Wheatbelt, will be taking on this matter because I think it is something that every member would be supportive of. It is an issue that has been subject to parliamentary debate around the nation. It has been debated in this chamber in previous Parliaments going back over 20 years. It has been the subject of committee inquiries and it has been the subject of petitions and many, many media articles. It is an issue that, for some families, has been the focus of a 20-year campaign to bring about change.

For 20 years, three wheatbelt families have mourned the loss of their loved ones after their lives were cut short in a horrific accident. Christian Jensen, Jess Broad and Hilary Smith were killed when their Toyota ute collided with a fully loaded 28-wagon grain train on 8 July 2000. They were travelling along Yarramony Road to a twenty-first birthday party at the Jennacubbine Tavern. A coronial inquiry determined that no drugs or alcohol were involved and that speed was not a factor in the accident. They simply just did not see the train coming and there was no warning or signage at the crossing to alert them to the train's proximity. Those three young people lost their lives that night. The life of the train driver involved was also changed forever. After the accident, he said that the train was not going overly fast, from his recollection, and that it was likely that they had mistook his approaching train as one of the tractors or vehicles that were out in the paddock at that time. As someone who spends a bit of time driving through that area and in regional Western Australia, I can attest that when it is seeding or harvest time and there are vehicles out in the paddocks, it is hard to determine proximity and movement, certainly a train with only a front light. I have been in circumstances in which I have come across something very startling. Everybody would have stories of near misses, if they drive regularly in regional Western Australia.

Unfortunately, that incident was not isolated and, very tragically, another person had been killed at a crossing very close by, seven years before, on a family farm—Amanda Dempster. Amanda's family know all too well the pain that these other three families have lived with for 20 years, after Amanda lost her life in a rail collision. Interstate, there are further sobering examples of cars and trucks colliding with trains at all types of crossings. In New South Wales, in January 2001, five people were killed near Gerogery. A driver was killed on 25 May 2006 in Lismore, Victoria. On 27 November 2008, two people were killed near Cardwell in Queensland. On 23 March 2009, in my electorate, a school bus was destroyed in a level crossing incident at Moorine Rock. Thankfully, no injuries or deaths occurred in that particular incident. Most recently, in February this year, two young people lost their lives near Young in New South Wales.

Although it is fair to say that these accidents and incidents are reasonably rare, they are terrible and traumatic for not only the families who are left behind, but also the communities, the first responders and the people who are involved with the train. They leave an indelible mark on so many people's lives. I think we would all agree that the loss of even one life is too much when we are discussing road safety. I know that every member of Parliament discusses road safety on a regular basis in their electorates and with their communities. It is with this in mind and in that context that I raise this matter in Parliament today. I do it because I received a letter earlier in the year from Ms Lara Jensen. She is the sister of Christian Jensen, who so tragically lost his life in 2000 at the Yarramony crossing close to Jennacubbine. She was writing on behalf of seven families—the three who were impacted in that particular incident and others who had all lost family members at passive level crossings in regional Western Australia and

in New South Wales. It is quite a long letter. She has obviously been dealing with this for a long time, but there is a section of it I will read into *Hansard*. She is very eloquent in the way that she advocates on behalf of herself and these families. She has been doing it for a long time, so members can sense the passion that comes through when she is making the case for change. It states —

> My brother Christian Jensen and his two friends Jess Broad and Hilary Smith were killed at the Yarramony level crossing near Jennacubbine in the Northam Shire on July 8, 2000. Lack of signage and rumble strips as well as poor train lighting and overgrown vegetation all contributed to the triple fatality. My brother was an experienced, careful, and conscientious bush driver who was not speeding or under the influence of alcohol or drugs—he and his two friends simply did not see that train.
>
> …
>
> … tragically, just seven years prior and only 20km away in the WA farming locality of Grass Valley, —

Also in the Shire of Northam —

> the Dempster family lost their daughter Amanda when she was hit by the Prospector Train bound for Kalgoorlie at a passive level crossing on the family farm. This horrific tragedy followed a 20-year battle with Westrail by the Dempster family to install flashing lights at the railway crossing. Three months after Amanda's death, flashing lights were installed at the crossing where she was killed—much too little, much too late.
>
> … our families are all both utterly disappointed and completely frustrated that in the 21 years that have surpassed since my brother and his friends were killed, and the 28 years since Amanda Dempster lost her life—there has been only minimal progress made to improve lighting on trains and signage at level crossings despite the recommendations of three State Coroners (NSW, WA, and Victoria) over several decades.

For members' benefit, this issue has been well canvassed in Parliaments around the nation, yet there has been little progress to address the issues we know exist. As members could surmise from the time line that I am talking about, governments of both persuasions have been in power in all those Parliaments over the period since Amanda Dempster lost her life; so, collectively, I would say that we, in the parliamentary sense, and those who have had the opportunity to make a difference much earlier than now, have let these families down.

When Jess wrote to me earlier this year, I gave her the undertaking that we would support the renewed efforts of the families to work with governments both at a state and federal level for positive change. Jess points out in her letter that some of the issues they would like to see addressed have, in fact, been around since 1968.

Following a spate of serious crashes at railway level crossings in that period, a state government report entitled *Report on railway crossing protection in Western Australia* was released, which recommended that all engines and guard vans be fitted with rotating beacons. It was never actioned and 53 years on freight trains remain the largest, most dangerous and poorly lit vehicles we have on land. The installation of crossing lights, which are the lights that are located at the bottom of the train that illuminate opposite sides of the track, are the only mandatory change that has been introduced to train illumination in WA in more than five decades. That, to me, particularly as someone who lives in a community in which freight goes back and forwards on the main line, in and out of the state, is remarkable given that significant freight is transported all around our state. There are other networks, including our grain network, on which that has an impact. These crossings are not used frequently. We are not talking about crossings like those in the Perth metropolitan area that see huge numbers of vehicles every day and that are typically active and protected. Therefore, on that basis, it is very difficult sometimes to make the case, from a Treasury perspective, to find the funds to change or upgrade those passive crossings. But to Lara and the families' great credit, they have continued to say that we need to look beyond the financial implications and look to how we can work collaboratively with industry and all tiers of government to try to make some positive change.

The State Coroner in 2001, Mr Alastair Hope, called for immediate action to install some form of external auxiliary lighting on locomotives, which would provide an external warning to motor vehicle drivers and would be an addition, not an alternative, to the ditch lighting that we have currently. Those measures were never implemented. That was after the coronial inquiry into the death of Christian, Jess and Hillary.

Also, the House of Representatives Standing Committee on Transport and Regional Services conducted an inquiry in 2003—again, after this incident and a number of others around the nation. It released a report in 2004 that recommended all locomotives should be fitted with rotating beacon lights to help to make them more visible and reduce level crossing incidents. The federal government at the time responded to all the recommendations but said that it did not support that particular recommendation. Again, it came back to cost. It said it would not pursue that course of action without a cost–benefit analysis and, as far as I am aware, no subsequent or further action was taken.

The Australian Rail Track Corporation points out that there are 23 500 railway level crossings in Australia. I am not talking about just Western Australia, but across the nation. Twenty-one per cent of them are active. By "active", I mean that they have boom gates or flashing lights to alert people to when a train is approaching. The remaining 79 per cent are passive and a vast majority of them are marked with a Stop or Give Way sign, denoting that there

is a railway crossing and that people need to pay attention. The ARTC statistics show that—I could not quite tell whether this was just on its rail network because it does not cover the entire nation—there are around 1 000 near hits between vehicles and trains at level crossings annually. Think about how big these trains are—it takes an enormous amount of time for them to stop when the emergency brake is hit. It takes about two kilometres for a fully laden freight train to stop once the emergency brake has been hit. The driver simply has no option to take any other effective action when someone in a light vehicle or truck does not see the train, goes over a crossing or is stuck on a crossing. That is why we see these near misses and deaths.

It sounds ridiculous that someone could not see something as enormous as a train, but perhaps I can explain just how easy it is. I mentioned that at harvest time and seeding both at dark or after dusk—a number of these incidents occur during the day—there are headers and vehicles out in the paddocks. When driving at night in the wheatbelt in particular—that is probably the best experience that I can explain—there will be lights dotted all over the place, so another travelling light may go unnoticed. If we add that to the light on the front of a locomotive, it is easy to understand how some people would miss it.

Also I am the first to admit that at passive crossings—it might not be the case with the Yarramony Road crossing—there is a degree of, probably, complacency in some areas. If someone goes over these passive crossings on a regular basis and they are close to home—we know that most accidents occur close to home whether people are on the road or crossing a railway line—there is a combination of awareness, but also the fact that quite clearly, if there is not something alerting people to an approaching train, the outcome can be enormously tragic. If it is dark—there is no street lighting on a vast majority of these roads—you can quite often be travelling parallel to a fully laden train and not even know. That is the fact of it, because they are not required to have lighting down the carriages. They have reflective strips. I do not know whether anybody has seen them, but I will use CBH's grain bins as an example. They are typically pretty dusty and dirty and most of them, unfortunately, have graffiti all over them. You are very unlikely to see the reflective strips behind the locomotive unless there is something shining on them. One argument of this group is that rail carriages should have permanent lighting strips much like we see on trucks on the roads so that the entire train can be seen as it is moving through the environment.

I received an email to my office in September, which was one of a number I received when Lara and others started to advocate on this matter again. This email came from a gentleman in Mandurah. He was writing in response to a letter that he had seen in *The West Australian*. He wrote —

> Jo Jackson King's letter … regarding poor freight-train lighting in rural areas really hit home for me. I can understand how her mother didn't see the train until it was close and a serious accident resulted.
>
> I have travelled many miles through rural WA in my work for an insurance company. I have experienced how dangerous freight trains can be at unlit level crossings. Reflective strips along rolling stock are ineffective unless wagons are clean (I never saw clean wagons) and your headlights are directed right at them; that was how I nearly came to grief twice, once in heavy rain and once in heavy fog. I was just metres away when I realised a train was even ahead.
>
> I can't work out why freight trains aren't lit up like road trains to give motorists half a chance of seeing them, especially because they are more than a kilometre long. Rail companies need to act immediately to address this serious safety issue before more people are needlessly killed. I know the technology exists now to do so, the road train industry is proof of that.

Merrilea Broad, who is Jess Broad's mum, wrote to *The West Australian* on 1 September. I want to share that with members. She is a parent who has been living with loss for so long. She wrote —

> My daughter Jess Broad was killed in an accident along with Christian Jensen and Hilary Smith at an unlit crossing near Jennacubbine on the July 8, 2000.
>
> Following the accident, all three families fought hard for improved train lighting and the bolstering of safety measures at all passive level crossings.
>
> The culmination of this hard-fought battle led to my invitation to Canberra in 2003 to put forward a submission to the Standing Committee for Transport and Regional Services for the report on train illumination.
>
> The recommendations from the standing committee report were passed in Federal Parliament in 2004 and were the catalyst for the Rail Safety National Law which all States now adhere to. Despite the enactment of the Rail Safety National Law in every State from 2012 to 2015, no legislation has been introduced to improve train lighting or ensure safety improvements are made to passive level crossings around Australia.
>
> Peter Mackin's letter (21/8) illustrates the deep and permanent impact on families following these horrific accidents. It is totally unacceptable that 55 years on (from his family's loss), passive level crossings still lack the essential basics and train lighting remains inadequate because government agencies and rail companies have done little to address safety concerns spanning decades.
>
> Our lives are worth the negligible costs of rotating beacons on locomotives and lights on wagons that should be mandatory under the Rail Safety National Law.

> If these highly profitable rail companies had made improvements 55 years ago with the simple technology available, our children would still be here today.
>
> Our lives do matter, and so do the lives of train drivers. Rail companies are falling well short of their duty of care to their own employees as well as the general public. I am fed up with the complacency and the bureaucratic rhetoric and want positive action to make these essential changes mandatory as soon as possible.

That is from Merrilea Broad and she is in Leonora. As I said before, a passive rail crossing is marked only with a Stop or a Give Way sign, and it relies on the motorist detecting the approach or presence of a train by direct observation. A majority of these passive crossings are in regional WA, and the geographic isolation and those very low volumes of traffic that I have spoken about means that they are rarely considered appropriate for safety upgrades on a cost–benefit analysis.

The families behind the campaign, many of whom are watching online today, have asked for three simple yet effective changes to improve safety at passive rail crossings and safety in general. The first is that flashing amber lights be installed across the front of train roofs to increase visibility and LED lights be installed on the side of carriages so that the entire length of the train is illuminated. The second is the provision of ultra high frequency—UHF—radiocommunications on channel 40 to trains so that train drivers can alert truck drivers of their arrival or potential dangers as they are travelling along. Thirdly, they are calling for the installation of solar-powered flashing red lights activated by a low-powered, dedicated frequency radio transmitter with a one-kilometre range on top of the level crossing warning posts that automatically flash when a train is within one kilometre of a passive crossing. When we first started talking about it, they said that they wanted the range to be five kilometres. On further consideration and discussion, they decided that a range of five kilometres would mean that people might have to wait at a passive crossing for up to four minutes, which might make people quite agitated and mean that they shoot over the crossing, which would not be the outcome that the families want. Therefore, we are asking for a five-kilometre range with one kilometre for activation. The member for Moore is telling me that the radio transmitter would have a five-kilometre range but would start flashing within one kilometre. I thank him for that clarification.

It is worth noting—maybe the Minister for Transport would be able to illuminate us on this—the difference between road and rail safety requirements. Trucks are required to have conspicuity, I think it is called, which means that people can see the full outline of the truck while it is travelling at night as it has lighting requirements that are regulated.

Dr D.J. Honey: In every plane, yes.

Ms M.J. DAVIES: People can see it in every dimension; that is right, member for Cottesloe. This is not required. I can perhaps understand why—the trains are on a set track, while trucks are moving and interacting more regularly—but I certainly think that with the number of accidents that we are talking about, it would be worth going down this pathway, for a reasonably small cost, I would think.

Lara has been no slouch in her advocacy and in raising this matter with key stakeholders. She has written to the federal leader of the Nationals and the appropriate federal minister, Hon Barnaby Joyce, and acknowledges that this requires leadership at a federal level, as well. She is certainly continuing to make that advocacy, as are we.

Dr D.J. Honey: Member, just a second on that visibility all the way along, if you don't mind an interjection. In my early career, when I was a forensic scientist, I was at Port Hedland and attended an accident. Two workers who were coming out of Port Hedland drove straight into the side of an ore train. They were wide awake, no alcohol, it was the start of their day, but it was early dusk. They clearly just did not see the train and drove straight into the side of it, and a middle-aged man and a young guy aged about 19 were killed.

Ms M.J. DAVIES: It is tragic.

Dr D.J. Honey: It is tragic. I think that visibility all the way along is important.

Ms M.J. DAVIES: All the way along the lines. Lara has raised this with Arc Infrastructure and Co-operative Bulk Handling Ltd, because their rail carriages are not lit, and a number of other companies, as well. We in the opposition have done the same. We have raised it with key stakeholders and also directly with our federal colleagues, and we will continue to do so, because I think it will require collaboration between industry and government to come to some sort of solution.

To add our support, at our recent state conference, the Nationals WA unanimously agreed to those three key issues being a part of our policy platform. I am the member for the area from which this issue has originated, and this correspondence has come through me and the member for Moore. The unanimous support of our party has given me confidence that we have its backing to pursue this and to escalate it through our policy networks to our federal colleagues in another avenue, as well.

Today, we are asking the state government for its assistance in this very important matter. These families have waited so long for action. Amanda Dempster's family has waited 28 years, but others have been affected for much longer. I would very much like to think that this can be the starting point for a positive discussion on how we can all work together to address these concerns. As I said earlier, if we look at the time line of the period when these incidents

have occurred, we see that governments of both persuasions have had the opportunity and have not acted. This has now been raised again by the families. It was triggered because a couple in New South Wales were recently killed, and Lara's family reached out to their family and spoke with them and said that this is something that we need to address now at a national level, but with our state governments and the federal government working together. We understand that there are roles for the federal government and we understand that there will be a role for industry, and that is why we will continue to advocate with those stakeholders, as well.

We understand that one of the impediments of upgrading rail crossings is the cost of doing so. I do not think it needs to be done overnight, but it requires a plan and a steady approach to make those improvements over time so that these families have some certainty. At this point, communities or individual families have to lobby for safer passive crossings, either on their properties or in their community, on a case-by-case basis or when a number of fatalities occur at a crossing, which then triggers a safety response. We would all agree that that is not the right way to go about it.

To the Minister for Transport, this is very much an opportunity for us all to see this as a first step towards addressing a historical wrong. Lara and the families that have been left behind have lived with this pain for over 20 years. There has to be a way that we can work with the state government, industry and the commonwealth to address these matters so that we are not back here in another 20 years having the same conversation. I raise this issue in the great hope that these families' pleas for assistance do not fall on deaf ears. I will continue to do my bit to advocate to our federal colleagues. I will do the same with those stakeholders on whom this will directly impact, with their above-rail and below-rail infrastructure. It will remain on the opposition's agenda until we see some action.

I do not think we need a further inquiry. I have a file full of outcomes from here in Western Australia and New South Wales, Victoria and the commonwealth. There is a whole raft of evidence that says some fairly simple things can be done to improve safety. The one that I could not find and which I know exists is a trial that was done sometime in the 2000s about strobe lighting. I think I was working in the office of Hon Max Trenorden, the local member and Leader of the National Party at the time. An incident had occurred in the Shire of Northam, in his electorate. A trial was carried out that involved putting a strobe light on the front of a train to see whether a moving light on the front of a train would make a difference. To my knowledge, nothing came of that. I could not find the outcome of that inquiry. As I said, there have been parliamentary committees and inquiries and coronial inquiries, and evidence has been presented. I feel that there is enough evidence for us to say these are sensible solutions that we can work towards, and some funding just needs to be applied. In a perfect world, we would see a fund created to upgrade passive crossings, and also to assist industry to transition to improve safety, with investment from both the state and federal governments and industry. In a perfect world, we would see changes to the regulatory regime that sends a very strong message to industry, not only for the safety of road users but also its own workforce, that we need to see lighting on not only locos, but also carriages. In a perfect world, everyone would cooperate to make this happen. I know that we do not live in a perfect world, but I hope we have an opportunity to try to find a way to work together so that these families are the last ones who have to suffer the pain that they have and nobody else has to experience the grief that they have carried.

I repeat the request that Lara and the group have made towards what they see as a solution. I am very open-minded; if other things can be added or if there is a better way of doing it, I think they would welcome that engagement. Their three priorities are: firstly, flashing amber lights across the front of train roofs be installed to increase visibility and LED lights be installed on the side of carriages so the entire train is illuminated; secondly, UHF radiocommunications systems be available on trains so that train drivers may alert truck drivers of their arrival or other potential dangers on the track; and, thirdly, solar-powered flashing red lights be installed, which are automatically activated by a lower powered dedicated frequency radio transmitter within a five-kilometre range on top of level crossing warning posts when a train is within one kilometre of a passive crossing.

I thank the minister in advance for her consideration of this very important matter. I know that road and rail safety has been one of her priorities since she has had the portfolio. I genuinely look forward to having a discussion about this with her and the community members who have raised this with us.

MS R. SAFFIOTI (West Swan — Minister for Transport) [4.35 pm]: I thank the Leader of the Opposition for the points she raised during her speech on road and rail safety. Many families have been impacted by deaths and tragic accidents on roads. I do not want to dwell on that too much because of what has recently happened to my family. I do want to acknowledge the deaths and impact this would have had on those families in the wheatbelt—the Jensen family, the Smith family, the Broad family and the Dempster family. I am sorry; I did not think I would get so upset.

I can understand the emotional toll that deaths have on families, particularly when young people are involved. We have all either experienced it or know people who have experienced it. It is a tragedy. I can understand the pain that these families have experienced over the past 20 to 25 years. No-one can ever replace the sons, daughters, brothers and sisters who are lost on our roads. It is something that we should try to eliminate where we can. As I said, many families have experienced it. It is an absolute tragedy that victims' parents and families will never get over. We understand the emotional toll that it has on not only their direct families, but also the extended families and the

communities in which they live. As I said, we have felt it personally over the last few weeks. I know that many families across regional WA and in the suburbs have experienced enormous pain. I want to acknowledge the impact and the tragedy that many of these families would have felt. I apologise for getting upset; it is still a bit raw for me, but it is also very raw for those families. I acknowledge the pain that they have gone through.

Going forward, we are looking at the issue of rail safety. I thank the Leader of the Opposition for raising this issue. I again want to acknowledge the Jensen, Smith, Broad and Dempster families. I was watching TV on Sunday, which I do not normally do. I came across *Landline*, which showed the story. I saw the story on Sunday. I saw Laurie Jensen, I think, and the beautiful tribute he continues to pay to his daughter. I saw that program on Sunday, and again thought that maybe we could all do better. I acknowledge that.

As we know, railcars, rail carriages and cars do not mix. Unfortunately, people take their lives on our rail tracks and accidents occur throughout the state. Pain and suffering is experienced by train drivers as a result. I know many of them. We have seen some very tragic deaths across the urban network in particular. The pain extends to everybody. When we can, we try to reduce the interaction of trains and the public in a sense—pedestrians and also cars. There is an enormous number of level crossings across regional WA. There are 3 000 level crossings in WA, 1 327 railway crossings on public roads on the government rail network, including 491 actively patrolled level crossings, which can be broken down into 161 active crossings with boom barriers and 330 active crossings with flashing lights. There are a number of railway crossings across the state. Of course, when we can, we install flashing lights and boom gates. The real issue, of course, is with passive level crossings. We understand that there is an enormous number of passive level crossings across the state.

On the issues that were put forward, I want to acknowledge that there have been a number of deaths, including recently in New South Wales, which I think triggered the more recent comments. There is a national rail safety body. In response to some of the comments already made, I understand that the federal transport minister, Barnaby Joyce, has said that the federal government will be looking at this issue.

I have the same notes and comments that ministers before me would have had about the cost of lighting trains and some of the issues involved in rolling out these things, but I will take up the issue of the lighting of trains. There are some discrepancies or issues between how we light up our trucks and our trains. I think it was a fair enough question, to which we need better answers on how visible our trains can be in regional WA, particularly the freight trains and particularly when there is not much else happening out there. It was a fair question about how we could improve the lighting of trains so that we can see them coming. As with everything else, these things do not happen overnight, particularly when we want to improve safety. We have seen that with the regional road safety program, which is being rolled out. We might be able to create a new program. I do not like to use the term "grandfathering", but perhaps we could have a program to make sure that all new trains and trains across the network have improved lighting. That is something I will take up. As I said, my notes would say what many notes have said before—that the cost would be significant—but I do think there is a question to be asked about the discrepancy between how trucks are lit up on our roads compared with trains. I think that is a fair question. I have not delved into it a lot, but it is something that I will ask both my agencies and, moreover, the federal safety agencies and the federal minister.

The other question was about the ultra high frequency band. Improving communications between truck and train drivers is something that I will also follow up, because, again, it was a fair question about how we can improve communication between the users of our roads and rail lines.

As I have said, there are national standards. The Rail Industry Safety and Standards Board specifies requirements for the colour and lights at the front of trains and the delineators along the sides of trains. Rolling stock is fitted with warning horns to warn of their presence. This is supplemented by flashing white lights at the front of trains. That is the national standard. However, I do understand the push for much better lighting and more visible trains. I understand that trains might have mud on them or might not have been cleaned recently, so some of those things might not be as clear. I will follow up those issues.

On the issue of upgrading existing crossings, my notes outline that since 2010, there has been a level crossing protection funding agreement between Main Roads Western Australia and Arc Infrastructure to upgrade and improve level crossings. Since 2010, the funding agreement has resulted in 63 level crossings being upgraded to active control, with the installation of boom gates at a further 45 level crossings. Arc Infrastructure has advised that 25 level crossings have been upgraded or removed this year. There is a continuing program in partnership between Main Roads and Arc to improve existing level crossings and install boom gates. That is happening at the moment.

We are very keen to work with the commonwealth, including the Office of the National Rail Safety Regulator, to identify the measures we can use to improve rail safety. I will take up the lighting and UHF questions with the federal national safety agencies and the federal minister, because it will have to be a national approach. We will seek to understand what is required now and what improvements can happen over time. No-one expects everything to change overnight with massive programs like this, but where we can make some improvements, where we can improve visibility and where we can save someone's life, it is imperative that we look at those things. There was a request for solar panels to be installed on top of Stop signs to provide warning bells when trains are within a kilometre of

a crossing. We will have a look at that. That may involve a partnership. We might be able to improve some of the passive crossings as well over time. There is an existing program, and we will look at whatever else we can do to try to improve that. I thank the member for raising this issue.

I did not set out to get as upset as I did, but it is a real issue. When your child goes to a twenty-first birthday party, you want them to come home. We particularly do not want to see road safety issues involving children—where parents have to say goodbye to their children. We are doing all we can on road safety. As members know, we are rolling out road safety programs worth over $250 million across the state. The level crossing removal project is, again, a lot about improving the safety of level crossings in the metropolitan area, where there are thousands of interactions a day. There have been, and continue to be, a lot of near misses, particularly when thousands of cars cross level crossings per day. We have removed the level crossings on Moore Street, Caledonian Avenue, and Denny Avenue in Kelmscott, and we have funded another six level crossing removals throughout the Armadale and Cannington lines. From my perspective, we want to remove level crossings throughout the metropolitan area so that we can stop those incidents from happening, but of course in regional WA, we cannot separate road and rail all the time. We are doing some projects, together with the mining companies, through Port Hedland, again because of some safety issues with all the cars and trucks in the Port Hedland town site. Across regional and rural WA, there is not a lot of interaction with trains, but we want the trains to be visible and we want to make sure that people can stay safe. As I said, we want our kids and our brothers and sisters to come home after they have been out. I thank the member for raising these issues, which I will follow up with the federal minister and the federal safety authorities.

Debate adjourned, on motion by **Mr D.R. Michael**.

NATIVE FOREST — LOGGING

Motion

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [4.47 pm]: I move —

> That this house condemns WA Labor for its short-sighted decision to unilaterally shut down the native forest industry based on a deeply flawed justification.

Before I commence the debate on this motion, I wish to thank the Minister for Transport for her response to the motion raised by the Leader of the Opposition. The Minister for Transport and I may vehemently disagree on some issues at some times, but I respect that she is both passionate and compassionate, and that was no more evident than in her response to the debate today. I thank her very much for her sincere response. On a personal level, I am extremely saddened by and sorry for the recent loss in the minister's family.

I was fascinated by the response of the Minister for Environment in question time today to the question put to her on the stated justification for the unilateral decision by the state government, with no consultation with anyone other than through some sham online survey, to shut down the forest industry. There was no consultation at all—none. It was just a unilateral decision based on some popularity vox pop poll, carried out by the state government.

Ms S.E. Winton: You were going to shut down Collie! How did that work out for you?

Dr D.J. HONEY: I can tell the member that there is one thing that any decision like that would include and that is lots of discussion and time for discussion. That was not the case here. This government deserves to be condemned for the way it has dealt with this matter. The actions of this government will have an absolutely devastating impact on the communities in the south west of this state not only today, but also in the future. That devastation and the enormous personal, social and economic impact on those communities is getting worse by the day, given the decision that was made by the government.

I would like to outline to members in the chamber some facts on this issue. What is very clear is that none of this decision was based on facts—none of it. The government has not put forward one single so-called justification for this decision, other than it thinks it is popular. It has not put forward one single justification that holds any water whatsoever—quite the opposite. This industry is a key driver for economic activity in Western Australia. It contributes $1.4 billion to the Western Australian economy overall. It creates over 6 000 jobs, 90 per cent of which are in regional areas. Again, what we see from this state Labor government is another attack on the regions. It is attacking regional representation with its disgraceful legislation for so-called electoral reform, which is going through the upper house at the moment. We have seen the government's complete disregard for the regions by not properly investing to enable them to take advantage of the renewable energy revolution in this state.

The government is now setting out to destroy what is probably the only truly scientifically managed sustainable industry in the state of Western Australia. The forestry industry has for some considerable time been based on an enormous amount of science and scientific study. The industry is responsible for harvesting less than one per cent of the total forest area annually. That is in the context that two-thirds of the state forest cannot be touched by logging; it is permanently protected from logging. I am sure that these things are revelations to the Minister for Forestry and the Minister for Environment. It is clear that they did not look at any information before they made their decision. Less than one per cent of the 38 per cent of regrowth forest available is harvested annually.

Mr D.J. Kelly interjected.

Dr D.J. HONEY: What that means, minister, is that it is over 100 years before any milled area is returned to.

Mr D.J. Kelly interjected.

The ACTING SPEAKER (Ms R.S. Stephens): Minister for Water!

Dr D.J. HONEY: If the minister had any contribution to make to this issue, he should have made it before he announced this ludicrous decision.

The forestry industry is an important sector that makes an important economic contribution, especially to regional communities. It is unbelievable that the Premier, the Minister for Forestry and the Minister for Environment would choose to cause such substantial long-term harm to those communities.

Mr P.J. Rundle: What about the member for Warren–Blackwood?

Dr D.J. HONEY: Exactly. I am about to get into that, but thank you very much, member. The fact that the member for Warren–Blackwood and a number of Labor upper house members have just stood back silently, without putting up any fight on behalf of their local communities, speaks volumes about the ruthless nature of the control that is being exercised by the few elites in the Labor Party. We have seen this time and again—regional members who are elected to represent their regions are utterly silent on this matter.

Ms S.E. Winton: Don't you think they might actually agree with it?

Dr D.J. HONEY: Good on you, member for Wanneroo, for mentioning that! They stayed mighty quiet about it before the election, just as they did about the change to regional representation in the upper house—mighty quiet. I am happy again that the member is highlighting that to me. She is saying that they agreed to it. They are happy to hide behind a lie, a lie by omission. This was always on their agenda. That is what the member for Wanneroo is telling me. They just did not bother to tell the people who elected them. What an absolute disgrace! I can tell members that the member for Warren–Blackwood would not have been elected if she had let her electors know about this secret plan that the government had.

On 8 September —

Ms S.E. Winton interjected.

Dr D.J. HONEY: Acting Speaker —

The ACTING SPEAKER: Member for Wanneroo!

Dr D.J. HONEY: Thank you very much, Acting Speaker.

On 8 September, without any consultation, WA Labor blindsided the industry by announcing that it would end logging in native forests, commencing in 2024. I want to take a moment so that the house can hear the words from some of the people in the forestry industry. I will go through a few direct comments from various people. The people who are affected, the people whom these two ministers, who are sitting side by side and laughing, did not bother to talk to —

Several members interjected.

Dr D.J. HONEY: The people you did not bother to talk to! The deceit—proud deceit!

Several members interjected.

Dr D.J. HONEY: They are proud of having had no consultation whatsoever. The Forest Industries Federation of WA has said that this decision was a total shock to the industry, with no prior consultation. It has said also —

> The native forest sector directly employs more than 500 people and contributes over $220 million to the WA economy each year. In turn, the sector underpins small businesses, suppliers and service providers in regional WA. An additional 1.8 jobs —

I think that is a substantial underestimate —

> are created in the economy for every direct job in the native forest sector.

That is a total of 1 400 jobs. Overwhelmingly, 90 per cent of those jobs are in regional WA. The Labor Party has attacked them. That is going to impact —

Several members interjected.

Dr D.J. HONEY: Maybe the member should wait and listen to this debate and hear how foolish this decision is. This is a profoundly bad decision. I spoke to David Mottram from Rockbridge Timber. That company employs 10 people, so 10 families derive their income directly from that mill, but we know that there are another 18 families, which means that almost 30 families in the community of Manjimup and surrounding areas derive their livelihood from that company. It is really interesting. Members opposite should actually bother to talk to the people in that industry. Who uses this mill's hardwood timber? I am certain most members are completely ignorant of the fact that the mining industry is a substantial user of its timber. Why? It is because jarrah hardwood is unique. It is incredibly strong; in particular, it is incredibly strong for its weight. Unlike pine, jarrah does not fail catastrophically. Jarrah does not split;

and, if it does break, it fails very gradually. Any members in this place who have taken an interest in the building industry would know that when pine was introduced into roofing timbers in Western Australia, there were a number of construction deaths of workers who had been walking on pine beams and those timbers had broken instantly and unexpectedly.

This one small mill supplies timber products to BHP, Pilbara Iron and Fortescue Metals. Jarrah is critical for the outrigger blocks for drilling rigs. There is no safer replacement than jarrah blocks. Why is jarrah so important for jetty materials and bridge building materials? It is because people on mine sites need to undertake ad hoc constructions and temporary constructions, and jarrah timber is the pre-eminent material for jetties, bridges and general construction. I cannot see the member for Forrestfield in the chamber. Jarrah is also used for pallets.

Mr D.J. Kelly interjected.

Dr D.J. HONEY: That shows the ignorance of the Minister for Forestry. Pallets are critical on mine sites for carrying heavy equipment. Why is jarrah essential? It is because there is nothing better for the construction of the pallets that carry critical equipment and mining equipment. It is a critical thing on mine sites. Pallets are not just pallets. In the world of ignorant people who live in metropolitan Perth and do not get out, maybe they think that that is not important, but it is. Do members know how important autonomous trucks are? The pegs that go into and along those roads to hold the reflectors are jarrah pegs. Why? It is because they are lightweight, strong, easy for the workers to put out and durable. Regarding scaffolding boards, no members opposite probably go on a scaffold or build one. Nevertheless, there are some members in this place who do come from the manufacturing unions, such as the Australian Manufacturing Workers' Union and associated unions. There is no better material to use for a scaffolding support than a jarrah plank. The aluminium planks are not as strong, safe or durable. I might say, particularly in the aluminium industry that I was associated with, you could not use aluminium because it was subject to corrosion, and that is true in many mining operations. The jarrah planks are also highly chemically durable, so they are a critical input into the scaffolding that is used extensively right across metropolitan Perth, including in the mining industry.

As David Mottram pointed out to me, the mill that has been running for 33 years has no holes in the ground, no tailings dam and no mining of water from a finite water aquifer, and it is an industry that is 100 per cent renewable and recyclable. Every single thing that they get into their mill is re-used. The sawdust is used for potting mix. The pine bark is used for smoking meats, mulching and other purposes. Every single bit of timber that comes into the mill is used for a useful purpose. Members, tell me one industry that can boast that! We were talking earlier in debate last night and this morning about the nickel industry and that 95-plus per cent of all material that goes through those processes ends up on mullock heaps, which create environmental issues. In this case, 100 per cent of every single thing that comes into that mill is a useful product that gets used by other people. The pine tips get used for mulching. The karri goes to waste timber mulches, biochar and the like. Labor has promised new industries, but the towns of Bridgetown, Nannup, Manjimup, Greenbushes, Denmark and Busselton are having major hits from this. I talked to Hon Paul Omodei, the shire president of Manjimup, and he told me —

Ms S.E. Winton: You talk to lots of people!

Dr D.J. HONEY: I bother to talk to people, member—unlike your side.

South West Haulage has 95 employees and 34 trucks that are nearly all involved in the native forest industry. Just that one business puts over $4 million into the local community. It makes the so-called "just" transition fund of $50 million utterly laughable. I would be fascinated by the member for Warren–Blackwood's view on this and whether she thinks that is adequate compensation because that does not even match a quarter of the annual output of this industry into those local communities. We are talking about a farcically small amount of money allocated that is supposed to make a difference.

I was talking to David Wettenhall, an ex-forester, and he made a really excellent point. The members of the other side are ultimately going to have imported deforestation because there is enormous demand for hardwood timber in this state and from the various industries such as mining, building and construction, housing and furniture. In essence, all that demand for hardwood will now be for imported timbers. Where will they be from? They will be from Papua New Guinea, Malaysia or Indonesia. Anyone who knows about the hardwood industries in those countries knows that in the great majority of cases, the major timber companies in those countries are not domestic companies; they are in fact overseas companies that operate there. They do not have a fraction of the forest husbandry experience that we have in Western Australia. We have an outstandingly well-managed industry that that side of the house, the Labor Party, is utterly determined to destroy. As David Wettenhall pointed out, in 2.5 million hectares of state forest, 800 000 hectares are available for forestry; therefore, more than two-thirds of it is never touched at all. In 2019, 6 000 of that 800 000 hectares was logged. This is all based on a forest management plan that had full consultation. I will go through some other points in relation to that in a little bit more detail soon.

I have a letter that was sent to the member for Vasse from Neil Whiteland at Whiteland Milling; I will go through some sections of that letter —

> Whiteland Milling believes the McGowan government has significantly under-estimated the ramifications of their shock decision to cut all native hardwood timber supply at the end of 2023.

> This ill-informed decision was made based on a 'loose' public survey. This decision was made without industry consultation or input into the direct and indirect costs to shut down this whole industry.
>
> Based in Busselton, we are a local, family business that employs up to 40 staff —

With that 1.8 multiple, which as I have said is conservative, 112 people are employed as a result of that business. It continues —

> and injects millions of dollars into our local … economy every year. We are very concerned about the future of our workers and all the industries that work with us, both directly and indirectly.

The letter goes on to say —

> Just two years ago, the State government released a plan for the native forest sector from 2019–2030 which gave us all confidence for our future.

The Minister for Forestry should be very aware of this because, and I quote —

> In January 2021, the Hon Dave Kelly MLA Minister for Water; Forestry; Youth announced that the,
>
> > "Management of our native forests is a key pillar in our battle against climate change, and sustainable forest management can maintain or enhance forest carbon stocks, including by transferring carbon to wood products." He also said, "The timber sustainably harvested (from Barton 0418) will mainly be used by sawmills in the south-west providing valuable economic activity and jobs to the local community."

How things have changed! That is what the Minister for Forestry was telling the foresters, the people who were investing in their businesses and making multimillion-dollar investments, and the young people considering their careers and their future in a sustainable industry. Is it any wonder that they thought that the Labor Party and this Labor government had their back, because that is what the Minister for Forestry told them—and then two years later, with no consultation, utterly by surprise, he says, "Hang on. It's all ending."

To further quote the letter —

> These recent statements from the government gave us the confidence to continue to invest in our industry and our sustainable and viable family business.

I will not quote the whole letter, but it goes on to talk about the utter inadequacy of the so-called just transition fund. Whiteland Milling does not know where its customers will be able to source timber in the future. The letter continues —

> The plan to replace hardwood with pine is flawed. Pine is not suitable for flooring, decking, high-grade furniture or outdoor use.

The idea that pine is going to replace what the government is destroying is an utter nonsense, and members opposite must know in their heart of hearts that that is an utter nonsense.

The economic input that this one small family-owned mill makes to the community is considerable. The letter continues —

> Whiteland Milling is constantly investing and upgrading plant & equipment. In the past few years alone, we have built a whole new sawmill, four new drying kilns and a new docking system. All these upgrades flow through our local business community …

It goes on to say that Whiteland Milling will not be able to recover any funds from that equipment. The letter continues —

> As an example, in 2020, our total expenditure exceeded $7 million so when we are forced to close our doors and lay off all our staff, this will affect many local businesses.

Therefore, $7 million will be taken out of the Busselton community when the government shuts down the industry. The reality is that this government is offering nothing meaningful that will replace any of that—nothing meaningful whatsoever!

The Labor Party's policy not only hurts local jobs and local communities, but also is deeply flawed in its logic. It highlights the complete lack of understanding of its ministers. In terms of a lack of public policy, the only justification that could hold some water is to say that this is a popular decision. I tell members on that side that if that is their justification for making any decision in this place, go and halve land tax or payroll tax. If the government surveyed businesses and asked whether it should halve payroll tax, it would have 100 per cent of them saying to do it. If the government asked the general public of Western Australia whether it should halve land tax, perhaps not 100 per cent, but 90 per cent would say yes. Anyone who is thinking of buying a house would say, "Absolutely, do it." But that would be an irresponsible public policy decision.

The role of government is not to sit there releasing some vox pops and doing something just because it thinks it is popular. The role of government is to do what is responsible for the state of Western Australia, and, in this case, what is responsible for those regional communities.

The Minister for Environment's response to my question in question time today was laughable. The so-called environmental argument for this decision does not hold water. In fact, this decision will result in a worse environmental outcome for native forests. I will quote the Minister for Forestry, who loves to go on about this. He states —

> The McGowan government accepts the science that underpins our understanding of climate change and acknowledges that climate change has already significantly impacted our environment and community.

There we go! He went out on a limb on that one. Everyone accepts that; the federal Liberal government accepts it, the federal National Party accepts it and the local Nationals WA —

Ms S. Winton interjected.

Dr D.J. HONEY: I am fascinated to see how much attention the other side of the chamber pays to our state conferences, member. I heard that the Premier was reading the transcript of my speech. I was flattered, to be honest. Hopefully, he got a few hints and learnt something from it. The minister continues —

> Sustainably produced Western Australian plantation timber will play a key role in our climate change battle. Plantation timber is renewable and has the potential to sequester millions of tonnes of carbon dioxide from the atmosphere.

He goes on to talk about planting pine trees. That is fine; the government can plant all the pine trees it likes. Planting pine trees is utterly independent of any decision around the native forest. As I already pointed out, pine cannot replace a fraction of what hardwood timber is used for.

Mr D.J. Kelly: Is a job in a softwood plantation not worth the same as a job in a native forest?

Dr D.J. HONEY: I find this utterly farcical. The minister clearly does not understand how they even plant pine trees. He thinks that the 1 500 people employed by this industry are going to be employed to plant pine trees. Is that the minister's contention? He thinks that they will be employed to harvest those trees. Let us jump in our time machine and think ahead.

Mr D.J. Kelly: There will be harvesting, too—you don't just plant them.

Dr D.J. HONEY: Outside the odd bit of thinning, which is done by a machine and tractor, none of this timber will go into mills for 15 or 20 years. Everyone can put on hold their mortgage repayments, their car repayments and their kids' schooling. They can put all that on hold for 15 years and wait for these mythical jobs that are going to come out of the pine plantation. We know the truth. This government has not even identified where it is going to plant them. The massive increase in farm prices, as the two members sitting on my side here today are well aware of, will make it even less probable going into the future. If members want to talk about the environment, comparing a monoculture of pine trees with the diversity of a jarrah forest is, again, laughable. Pine plantations are monocultures. They are less biologically diverse than a cleared paddock. They are utter environmental wastelands. Members opposite should visit the pine forest at Wanneroo—they do not have to drive far—and see what is there. They will see acidified soil and acidified groundwater —

Several members interjected.

The ACTING SPEAKER: Members!

Dr D.J. HONEY: Those pine plantations are massive water pumps that have dropped the watertable dramatically. One of the reasons the water in Gnangara mound is going down is the pine trees. They are massive consumers of water. Everyone living around where those pine trees are to be planted will see their watertable absolutely plummet. Perhaps part of the Just Transition package can also be to pay for all the farmers to extend their bores and wells so that they can reach the groundwater—although it is pretty clear that the Minister for Water is pretty keen that farmers in the south west do not have access to any water.

We will go through this in a bit of detail. Let us look at the sustainability of harvesting timber from native forests. What happens to that timber? That timber is used in building construction. That material then sequesters the carbon associated with it. A media release from the Australian Forest Products Association states —

> "WA was using less than 1 tree in 1000 for forest products in a completely sustainable way, ensuring any tree used was replaced by careful regeneration. Internationally the world is increasingly turning to sustainably sourced tree-fibre to replace plastics and to construct carbon storing timber buildings. The world needs more certified, environmentally careful forestry—such as occurs in WA—not less. Well managed forests are one of the best ways we can help the planet …

That is, in fact, true. That is the science, but it is clear that either the Minister for Environment did not hear it or she just wilfully chooses to ignore it. I will quote the United Nations Intergovernmental Panel on Climate Change and its fourth assessment report.

Mr J.N. Carey interjected.

Dr D.J. HONEY: I am sure that the Minister for Housing is passionate about the importance of hardwood. In fact, in this place I heard the minister telling me that low-cost housing will be constructed out of wood. I will bet my bottom dollar that it will not be constructed out of only pine, because white ants just love it.

I will go back to the IPCC's fourth assessment report. This is what the IPCC has to say. This is the globally accepted science that this lot opposite bang on about all the time. Members opposite come in here and talk to us about climate change being real and the IPCC says this and that. They want to lecture us on this side about it, knowing all the while that we are passionate about sustainable industry and protecting the environment and we understand the importance of reducing greenhouse gas emissions. This is what the IPCC report had to say —

> … a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit.

That is what it says, but the Minister for Environment and the Minister for Forestry know better than the IPCC. They have come up with some mythical statement—it was in the Premier's press release originally when this decision was made—that not harvesting timber is going to magically sequester more carbon in the native forest. It is utter rubbish. In fact, the best way to ensure continued sequestration of carbon is to continue to harvest the native forest in an environmentally sustainable and responsible way. The Minister for Forestry likes to talk about science. He said —

> The science says business as usual for native forestry is just not sustainable. That is what the science says; that is why there needs to be change in this industry.

That is utter rubbish. The minister knows that, because the minister quoted two years earlier in 2019, at least in excerpt, the Intergovernmental Panel on Climate Change report, so something has magically changed. The minister has woken up and had a revolution—I should say he has had a revelation; he might have had a revolution as well! He has had a revelation. He said, "Hang on, all those scientists and experts from around the world are all wrong. We have come to the conclusion that they have all got it wrong." It is utter rubbish. The simple reality is that stopping sustainable harvesting of logs in the forest will not decrease carbon emissions in the forest. It will increase carbon emissions, because at the moment the timber from that forest is being used for many other purposes that are sequestering that carbon. I have heard members on the other side say that they will plant pine trees. They can plant as many pine trees as they like. That wood will go to a completely different market, in the larger part, than the hardwood timber does. If the government wants to spend that money, it can do it. It will create jobs.

We know, or at least it is reported by industry associations there, that the majority of people coming to live in Manjimup do not have jobs. They are not coming for jobs and they do not have jobs. They are moving there because of the beautiful lifestyle in that part of the state. I am sure that the member for Warren–Blackwood would agree that it is a beautiful part of the state to live in. The majority of people moving there do not have jobs, so if the government wants to plant pine trees and create more jobs for those people, it should do that. But why would it set out to destroy an utterly sustainable industry, an industry that is sustainable not just for one year or 10 years? That is not like the industry I worked in. I worked for Alcoa, as I have told members in this place many times. Alcoa's operations in 50 years will have ceased—gone. Those bauxite reserves will be depleted. All that industry will be gone. Our sustainable forest industry can be here in 200 years, 300 years and 400 years, and that is something this government wants to stop.

I have talked about pine monocultures. Pine plantations are worse than an environmental wasteland. In fact, pine plantations have a massive negative impact on watertables where they are planted. Wherever those pine plantations are planted, it will take the watertable down many, many metres, and that will affect wetlands and other land uses, and it will make the placement of those pine plantations extremely difficult. So, do not talk to me about the environment. In fact, the government is going to harm the environment with those trees. If the government wants to do that, it can go and do it. The government will struggle whatsoever to find any land to plant pine trees, but let us say it spends taxpayers' money buying land and plants those pine trees. They will not be proper millable timber for 10, 15 or 20 years. We will have a massive gap. As I have asked before, what is going to happen? That hardwood timber will be replaced—it will be replaced by timber from Papua New Guinea, and it will come in from Malaysia and Indonesia. The minister is importing deforestation. I know those countries have good governance and they are trying hard, but those governments struggle to contain the rogue loggers taking the timber. That is what the minister is doing. He is going to import deforestation from those other countries. Instead of having a superbly managed forest industry, utterly sustainable, done on the strongest scientific and environmental principles, the minister is going to import deforestation from those other countries. That is what is going to happen. That is what will be used for hardwood furniture, planking and other critical uses in this state. It will destroy jobs and drive further environmental harm in other countries.

That is what the minister is doing with this decision, and all because the government did a vox pop. It did an online survey. The government talks about getting feedback. I cannot comprehend how anyone involved in politics would think that is an appropriate way. The government knew what the outcome would be. The government knew that that survey was pushed by interest groups to its members. There was no limit on the number of times someone could reply to the survey. If someone had been keen, they could have sat down and done a thousand responses. What possible validity could that have? That was the basis for the minister's decision. I understand people being passionate about the forest. I grew up in the bush. I love the bush; I love trees—but the nonsense we hear here! We heard the minister today talking about deforestation. That logging and timber industry is utterly opposed to deforestation.

Those foresters are passionate. I have not read out all their letters, but I will tell the minister what they have to say about the mining industry. Foresters want to stop it because they are passionate about forests. They hate seeing the trees knocked down.

Mr D.J. Kelly: Do you support that?

Dr D.J. HONEY: I support sustainable mining and I support sustainable forestry. The minister would know —

Mr D.J. Kelly: The people who have written those letters you are quoting from want us to close down Alcoa. Do you want us to do that?

Dr D.J. HONEY: That is my point, minister. I do not want to do that. Not to defend my former employer, but Alcoa is the only mining company in the world on the United Nations Global 500 Roll of Honour. Why? It was not good in the 1970s, but Alcoa learnt from its mistakes and put an enormous effort into making sure it had 100 per cent replacement of species in those forests. The foresters are passionate about the forest and they have a slightly different view from me on that, and I have discussed it with them. I have met a lot of people.

Ms S.E. Winton: You talk to everybody!

Dr D.J. HONEY: I talk to a lot of people, as the member for Wanneroo knows. I talk to more people in Wanneroo than she does, I know that. I tell the member what: I have talked to more horticulturists.

Mr J.N. Carey: He's been everywhere, man!

Dr D.J. HONEY: I have!

Several members interjected.

The ACTING SPEAKER: Members!

Dr D.J. HONEY: The Minister for Housing has stolen my thunder for my Christmas song! I may not have been everywhere, but I tell the minister what: I get around and I talk to a whole heap of people. I get around to a whole heap of people.

Ms S. Winton interjected.

Dr D.J. HONEY: The member for Wanneroo is very loud now.

Let us go on, if we can. Let us talk about sovereign risk. I will read this out. The Western Australian regional forest agreement was originally signed by the Australian and Western Australian governments on 4 May 1999 to establish a framework for the sustainable management of forests in the south west region of Western Australia. When do members reckon it was re-signed? Was it back in the midst of time, back in the middle of the Barnett government? No doubt it had to be done then, but it was signed on 29 March 2019. On 29 March 2019, this minister—I am certain that the Premier and others, cabinet, had to agree to it—signed a 20-year rolling extension of that forest agreement with some minor amendments. That is what the minister signed, and all the businesses saw that. That is why businesses made their investments. That is why we saw one mill making a $50 million investment, and it was prepared to make further investment with some support from the government. That is why they made the investment and minister stood beside them. They made that investment, because they believed they had a further 20 years of sustainable yield from that forest. The minister utterly betrayed them. That is not just from that mill. That is common feedback I had from right across the industry. All those businesses, those millers I spoke to, the people in the communities who depended on that forestry, all believed that they could make their investments because the minister had signed that agreement, because he had made a commitment to the federal government that he was going to sustainably manage the yield from that forest for the next 20 years. That is what they believed, and the minister has utterly betrayed them. I could literally go on for three hours on this topic, if members begged me!

Several members interjected.

Dr D.J. HONEY: Yes, if members begged me! However, this is an extremely serious matter. This government stands condemned for the irresponsible and short-sighted decision to shut down this industry. Not one single argument that the government has put forward to justify this decision holds any water whatsoever. This decision will be worse for the environment and massively worse for regional communities. The so-called compensation package is frankly pathetic and will not replace a small fraction of the jobs that will need to be regenerated, for nothing other than allowing the ministers to have a warm glow when they walk into a meeting of the green left faction of the Labor Party and pat themselves on the back for doing it. They are destroying the livelihoods and careers of thousands of people, particularly in the south west and the regional areas of this state.

MR P.J. RUNDLE (Roe) [5.32 pm]: I strongly support the motion moved by the member for Cottesloe, which states —

> That this house condemns WA Labor for its short-sighted decision to unilaterally shut down the native forest industry based on a deeply flawed justification.

There is so much information here from opponents of what this government has done, and I will work my way through some of it. Firstly, I want to express my disappointment in both the Minister for Environment and the Minister for Forestry. The Minister for Environment obviously put out that survey as some sort of justification, but what really

worries me—I am sure it is also some sort of attempt to gain favour with the inner-city green vote, which I am sure it will do to some extent; it will be great in Morley, Fremantle and places like that—are the members of the community in Manjimup —

Dr D.J. Honey: Baldivis.

Mr P.J. RUNDLE: — and Baldivis. I am worried about the member for Warren–Blackwood, because I am sure she had absolutely no idea about what was going to be done to her electorate. She has come in here in good faith looking to serve the voters of Manjimup, Nannup and Pemberton and the rug has been pulled out from underneath her. As I said, I like the member for Warren–Blackwood, but I am worried because in March 2025, the voters in Manjimup and Pemberton —

Several members interjected.

The ACTING SPEAKER (Ms A.E. Kent): Members! The member for Roe has the floor.

Mr P.J. RUNDLE: Thank you, Madam Acting Speaker.

In March 2025, the voters of Warren–Blackwood will have their say and it will be through no fault of the new member for Warren–Blackwood. I am sure that she will spend the next three and a half years trying to justify the decision of the environment minister and the forestry minister, who are really playing to the inner-city vote. That is just my personal opinion, as I said. I wish the member for Warren–Blackwood good luck over the next three and a half years.

There is a pattern developing within this government—cut first and consult later. We have seen it with the marine park situation on the south coast: "We're going to make marine and land-based parks. We're going to have five million hectares of land and sea parks and we'll put it out there first and consult later." The consultation is starting to improve, so I will give the Minister for Environment that, but it is because the community pushed back. It had no idea; these announcements were just made and then it was consulted later. This is exactly what has happened with the forestry industry.

I want to give an example from the electorate of Roe that is close to my heart. It is about what has happened to many of my constituents who have forestry contracts. They planted pine trees in good faith anywhere up to 15, 20 or 25 years ago. The plantations were established and most of them had a term of about 40 years. Recently, many of those farmers were in a state of shock. Ents Forestry Pty Ltd, which is a forestry management and consulting company, had had very little information from BP, the company that my constituents had the contract with. They got this letter in the mail saying that Ents Forestry had taken on 107 contracts from BP. The plantations cover about 2 400 hectares stretching from Williams to Wellstead. The contracts were based on sharefarming arrangements under which the landowners were responsible for maintaining fences and gates, fire prevention and vermin control, while BP was responsible for maintaining the trees, including pruning, trimming and thinning, and fertiliser application and insect control. BP then contracted the Forest Products Commission to manage the plantation and take care of any maintenance. Under the agreement, BP would get 70 per cent of the harvest revenue and the landowner would get 30 per cent. This was established 25 years ago and the landholders were going along and then all of a sudden they got this letter saying that the contracts had been transferred. Aside from that, the really disappointing thing is that the FPC seems to have walked away from any responsibility for the plantations, even though for 18 years it was responsible for maintaining those plantations.

The community focus has now switched to the FPC. Those farmers are disappointed. There have been many articles in *Farm Weekly*, *Countryman* and the like about the disillusionment of those farmers. This is exactly what we are talking about. The forestry minister has come out with this great plan for farming softwood in these pine plantations for which, as the member for Cottesloe pointed out, there is no land. No land has been acquired and it is going to be very difficult to acquire land considering the current price of farming land. So my question is: if and when the FPC manages to get this land and plant these trees, will it be able to maintain and look after those forestry assets properly? There are already 2 400 hectares of pine plantation and the FPC has not turned up for years. Some of the farmers are reporting that it has not been there for 10 or 15 years. The pine plantation has not been thinned properly and a lot of the farmers are now saying that they would rather the land go back to farming land. That is a real disappointment for me.

The final thing that came from the meeting in Katanning was a vote of no confidence in the Forest Products Commission. It is pretty disappointing when I see my local farmers in the electorate of Roe and some of the adjoining electorates being hung out to dry. Will the new pine plantations that are supposedly going to be planted to somehow assist in this native forest program do the job? As the member for Cottesloe pointed out very well, and as the Australian Forest Products Association's media release of September 2021 pointed out —

> "This announcement of a renewed investment in more softwood trees is therefore very welcome, however the State Government must be honest with West Australians. The trees planted in plantations do not provide the hardwood timber which is used for floors, stairs, and windows. That timber will have to be imported into WA in future years. There is no surplus in Eastern states so it will mostly come from overseas where often the same high levels of environmental control are not operating.

That is a question for the Minister for Environment. When the government closes down the industry, we will import timbers from places such as Papua New Guinea, Indonesia and South America. Those places have nowhere near the environmental practices of Australia. I am very much looking forward to the environment minister enlightening me. When I see on TV that in the Amazon they are knocking down forests the size of tens of dozens of football fields every day, and I see the Western Australian government putting us in a situation in which we will have to import that timber from those countries, I am really looking forward to the explanation from this minister on what the plan is. How will the minister implement the climate change plan, or whatever it might be, on those governments that seem to be less conscientious than Western Australia and Australia? That is the first part of it.

As I said, I worry about this proposed program to supposedly plant all the pine plantations. I worry also about the acquisition of land because, although it sounds good on paper, I do not think a lot of people will want to sell land that receives 600 millimetres of rainfall to plant pine plantations on. I could be proven wrong. I have looked at some of the claims made by the Forest Industries Federation of WA; for example, "Native forestry is not viable", but the "Fact" states, "Native forestry is viable and underpins many profitable local businesses". The claim was made, "Old growth forests are being destroyed", but the fact is, "In 2001, WA became the first state to outlaw harvesting of old growth forests. High conservation value forest, habitat trees and riparian zones are also protected". The claim was made, "85% of the timber that comes out of those forests is either waste, charcoal, firewood or pulp", but the forestry industry points out, "We use the whole tree. 100% utilisation with all timber going to the highest value use, from furniture through to silicon produced from charcoal. Nothing is a waste". The claim was made, "Transition the timber industry to plantation and farm forestry" but the fact is, "Plantation forestry cannot simply replace native forestry"—as I just pointed out—"Land availability, market access and fibre properties are all limiting factors. The result would be an increased reliance on timber imports from other countries." That is exactly what I just pointed out to the environment minister. The final claim was, "The forests are worth more standing", but the fact is, "The forests are worth most, when managed properly. Actively managed, multiple-use forests fight climate change, provide renewable resources and recreational opportunities." That is what the Forest Industries Federation is pointing out. As I said, it has been a total shock to the industry with no consultation: "cut first, consult later" is the mantra of this new government. I have a really serious concern about where it will get the land from.

I want to quote from an excellent article in the *Business News* by Jesinta Burton, an excellent journalist. I know her well from her time at *The Esperance Express*. She has done some good work here. She pointed out that the Forest Industries Federation of WA was among the first to speak out, describing the decision as "sudden and reckless" and that both businesses and their employees in the industry have been blindsided. Jesinta Burton reports —

> FIFWA director Melissa Haslam said the reverberations of the state government's decision would first be felt by regional communities reliant on this industry, which contributed $1.4 billion to the WA economy each year and supported about 6,000 jobs.

It is incredibly disappointing. Jesinta Burton spoke to one of the furniture manufacturers, Michael D'Andrea from Artifex Australia. I notice today that Hon Steve Martin and Hon James Hayward were at that company today looking at some of the fantastic furniture it produces. Referring to Mr D'Andrea, Jesinta's article states —

> He said he was shocked and confused by the move, particularly given the government had claimed the industry was operating sustainably; something that had become a major selling point for the business.
>
> In fact, the Forest Products Commission's annual reports, endorsed by Forestry Minister Dave Kelly, claimed hardwood logging in WA met the strictest environmental standards and was considered sustainable by both internal and external experts.

There it is, the Forest Products Commission's annual report endorsed by forestry minister, Dave Kelly. As the member for Cottesloe pointed out, that 20-year forest agreement was signed in March 2019. We have an industry that thinks it has security, it has some longevity and something to work from. A survey was put out by the Minister for Environment's department, or whatever, and I quote —

> A government spokesperson told *Business News* close to 17,000 responses were received, 95 per cent of which called for more areas of native forest to be protected and 73 per cent believing no harvesting should occur.

Funnily enough —

> But less than 10 per cent of the respondents were directly employed by or affiliated with the South West forestry industry, native timber harvesting or artisan timber product manufacturing.

That is the deception that this industry is facing. I cannot say how disappointing it has been. I will admit that I do not profess to be a forestry expert but I do profess that I know how local communities and local businesses work. It is incredibly disappointing for those industries and those communities to have to face what has been put on them by this couple of ministers.

I would like to wrap up with the situation at Parkside. The minister will no doubt refer to it and the fact that it was looking for extra funding and all the rest of it, as we have heard in question time previously. However, back in 2019 Minister Kelly said that it was fabulous news for the town of Nannup when Parkside Timber bought Nannup Timber

Processing. It was a great vote of confidence for the industry here and in the south west and it was great news for employment. There is not too much confidence out there now; there is not too much confidence after this government has pulled the rug out. On 15 January 2021, Parkside Timber invested $14 million in upgrading the facility in Manjimup and recruited 65 staff. As at 22 September 2021, Parkside had invested $54.4 million and employed 160 people. Over the past two years, the Parkside Group has been encouraged by the Premier, the minister and local mayors to continue to develop the business into a world-class milling centre. The Parkside board subsequently approved additional capital improvements to WA businesses, which would have seen a total investment of $103 million.

[Member's time extended.]

Mr P.J. RUNDLE: The outcome would have meant 720 full-time jobs in WA supporting local communities. Although Parkside will continue operating as usual, the announcement regarding the closure of native forest harvesting came as a complete surprise to the Parkside Group and was extremely disappointing.

I want to reiterate the disappointment of the farming community in my electorate, which entered into contracts in good faith. These farmers believed that the Forest Products Commission —

Mr D.J. Kelly: Sorry, member, you understand that issue is completely separate to the native —

Mr P.J. RUNDLE: I understand.

Mr D.J. Kelly: I wouldn't want people to get confused that the two are related.

Mr P.J. RUNDLE: I understand that. I guess I was trying to connect the fact that I am concerned about the minister's $350 million pine plantation package. I am worried about whether the government will be able to acquire any land. I am worried about whether the Forest Products Commission will perform, because it certainly has not performed with those previous contracts. This relates to both governments; it is not about the Labor Party or the Liberal–National Parties or whatever. This is about management of the forests—the forests not being thinned properly and not being looked after properly. A total of 2 400 hectares will probably go to waste. As we pointed out many times, it takes a long time to grow pine trees, and they have to be looked after properly. We could be talking 20 years down the track before we get any decent results. Those farmers are saying that they want their land back. It is more profitable to grow grain or farm sheep, cattle or whatever. It has not worked out. I am linking it to that.

The motion is about the native forest industry, which relates to the disappointment of these furniture makers, communities and businesses that thought they had assurance when Minister Kelly said in 2019 that it was fabulous news for the town of Nannup when Parkside Timber bought Nannup Timber Processing, and it was a great vote of confidence in the industry. This government has not shown a great vote of confidence in the timber industry. The recent decision is incredibly disappointing. As far as I am concerned, this government needs to have a good, hard look at itself because this culture of "cut first, consult later" is not on.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [5.53 pm]: I will be interested to hear from the Minister for Forestry at some point tonight. I rise to speak to the following motion moved by the member for Cottesloe —

> That this house condemns WA Labor for its short-sighted decision to unilaterally shut down the native forest industry based on a deeply flawed justification.

If we break down that motion, we see that it contains a number of elements. The unilateral nature of the decision that has been made is quite apparent. On 22 June 2021, Hon Amber-Jade Sanderson, the Minister for Environment; Climate Action; Commerce issued a press release titled "WA public invited to have their say on native forests". When I picked it up, I said to members of my party that it was a very strange looking consultation. I wondered why the Minister for Environment; Climate Action was conducting consultation prior to developing a forest management plan. It was explained to me that under the forest management plan, the Minister for Environment is more or less the asset holder, while the Minister for Forestry is the asset manager. Soothing words were said to me that that was okay, and there was "nothing to see here". I did not feel comfortable about that. I now know that that was right, because on 8 September this year, we saw what some would say was the historic announcement in a press release by the Premier, the Minister for Environment and the Minister for Forestry that the government would take a historic move to protect native forests. It is not mentioned anywhere in the press release but we know that the justification given by the Minister for Environment at various points was a survey that she conducted—that very same survey that I had some trepidation about back in June.

The website of the WA Forest Alliance provides a little insight into the survey—who responded and what the responses were. We know that there were 17 000 responses. I understand that four per cent of those responses were not from Western Australia, 64 per cent were from Perth, and 32 per cent were from regional WA. On the basis of the 17 000 responses, we understand that 95 per cent of respondees mentioned that they supported the notion that more areas of native forest should be protected. I think 73 per cent agreed with the suggestion that no native forest harvesting should occur. It was a very loaded survey that asked specific questions requiring yes or no answers that were aimed at getting an outcome.

We also know that the WA Forest Alliance, the Wilderness Society et cetera have actively pushed the idea that people should participate in these surveys and respond in particular ways. A survey on Western Australia's native

vegetation policy, which similarly attracted attention, closed on 25 October. On the WAFA website, with the Wilderness Society's assistance, there are a number of suggested answers to the survey questions for members to submit. No doubt, another 11 000 members submitted the types of responses that the government would like to hear. That is the justification for the government to act in ways that I think it had already determined before it conducted the survey. I was looking for a bit of justification about that.

An interesting article by Jesse Noakes was published in *The Saturday Paper* titled "How the fight to save WA's native forests was finally won". An unnamed government spokesperson is quoted as having said that there was no consultation with industry; the only consultation was the 17 000 respondees to that survey. That is very much an ambush of the forestry industry by the government. That article said that Labor MPs had told the people looking to end native forestry that they needed justification to take action. It appears to me that a plan was put in place and enacted pretty soon after the election in order for the government to gain that justification. It sent out a push survey that would get certain responses. On the basis of the responses of 11 000 people, the government said that it would shut down an industry that had been in this state for over 100 years.

I point out that at the moment a debate is going on about representation in the Legislative Council. About 11 000 votes are needed to get a representative of the Mining and Pastoral Region in the Legislative Council—the smallest quota of the six regions. The government is claiming that that is not enough people to justify electing a member of Parliament. However, it is apparently enough people to justify shutting down a 100-year-old industry that hundreds of people rely upon for their livelihood and in which the government encouraged investment by a company—Parkside Timber was the one the member named—as it was a good idea to get together and invest in the native forestry industry. It was unforgivable for the government to do that, knowing that it was planning to shut down this industry—unforgivable.

When the Minister for Water was forestry minister, he released a press release on 3 December 2019 headed "Local timber industry gets a boost as leading miller joins WA". This media release talked about Parkside Timber coming to Western Australia, and was put out about a year before certain unnamed Labor MPs told advocates for the closure of native forest logging that they needed some justification. Only about a year before that, the minister pretended to support the hardwood industry in Western Australia. This press release talked about Parkside Timber purchasing two south west mills, with plans to reopen the Manjimup processing centre, which was expected to create local jobs. It went on to say —

- WA's forestry industry supports more than 6,000 jobs, particularly in regional areas
- McGowan Government committed to maintaining a sustainable forestry industry

Comments attributed to forestry minister Dave Kelly state —

> "The McGowan Government sees Parkside's investment as a step forward in maintaining a strong forestry industry that supports WA jobs, while still protecting the environmental values of our beautiful native forests.
>
> "This is the largest native forest industry private investment consolidation and restructure in 15 years which will secure hundreds of direct and indirect jobs in the industry.
>
> "I welcome Parkside's commitment to creating high-value timber products from smaller, younger regrowth trees.
>
> "The native forestry sector is an important employer and economic contributor that supplies our community with sustainable, renewable building materials and other timber products.
>
> "The purchase follows the release of the McGowan Government's Djarlma Plan which set out the strategic direction for the future of the Western Australian forestry industry to support healthy forests and WA jobs."

I put to members that it was somewhat deceptive for the government to put that out and then act in the way that it did a year later to shut down that industry. That employer, which had only recently made that investment in good faith, has been left out to dry.

I want to go through some of the discussion that took place immediately after the announcement was made. This is a bit of the transcript of an interview conducted by Jane Marwick on 13 September 2021. The caller was John Clarke, a forester. The transcript of the interview was supplied to me. Mr Clarke said that one reason the Premier had used to justify the ban was that he believed it would preserve habitat and biodiversity, but that he was wrong. He said that not one single species of plant or animal had become extinct in Western Australia due to native forest timber harvesting, and that that was counting the logging that took place before the introduction of the Forests Act in 1918 and the creation of the forests department. He said that the foresters of a hundred years ago were the ones who genuinely saved our forests, as they had argued hard with the government of the day that the forests had to be reserved from clearing for agriculture, dedicated as state forests through the Parliament, and managed for their many sustainable uses. Mr Clarke said that the Premier and the Minister for Environment must have little faith in the many clever and dedicated foresters and scientists in the Department of Biodiversity, Conservation and Attractions who run a long-term biodiversity monitoring program called Forestcheck, which counts and measures about 350 species of animal, bird, reptile, plant, fungi, lichen and liverworts across our native forests. He said that this

important work has shown that harvesting and prescribed burning does not adversely affect biodiversity at all. In fact, Forestcheck is a thing. I have a copy of some pages off the web that outline its work and that it is monitoring the good health of the forests.

The minister made a decision that does not really stack up in terms of science. I am sure she will get up and tell me I am wrong. Perhaps she might listen to someone from her side of politics called Joel Fitzgibbon.

Ms A. Sanderson: Is he? Is he?

Mr R.S. LOVE: In an article in *The Australian Financial Review* in October 2021—sorry; what is so funny about that? It is one of their own members.

Ms A. Sanderson: He is not really on my side of politics. Go for your life.

Mr R.S. LOVE: The article states —

> Our forestry industry is the underutilised tool in the lowering greenhouse gas emissions kit. The "net" in net zero emissions describes our aspiration to put no more greenhouse gases into the atmosphere than we take out.
>
> Our forests absorb and store carbon, lots of it. Post-harvest, the carbon remains trapped in the wood products we manufacture from the logs.

He later stated —

> There is another case for providing more support to the forest and forest products sectors. They create lots of jobs, around 80,000 of them directly, and another 160,000 indirectly: in forest management, harvesting, haulage, sawmilling, manufacturing, wholesale, retail, and construction.
>
> The modern forestry sector is sophisticated and high-tech.

This is a Labor member, who was talking about the forestry sector being good for the environment, good for jobs and good for our economy. Why, then, does it receive so few mentions in the climate change debate? The only mention the minister has made about it has been to shut down the industry that would harvest that wood, lock it up in furniture, in wood products, and then regrow the wood, taking carbon from the air by the process that the Minister for Environment might have heard of, called photosynthesis. Plants take carbon from the atmosphere and put it into their cells, which, in the case of a tree, will eventually be wood.

Ms A. Sanderson: It is science!

Mr R.S. LOVE: It is science! I think it is called primary school chemistry or biology. It is not exactly rocket science. That is how to sequester carbon. The government is taking away an option for sequestering carbon. This decision is short-sighted and deeply flawed because it will do away with an industry that not only could potentially help fight the increase in greenhouse gases in the atmosphere, but also was supporting jobs in the regions. The government has done this on the basis of a flawed methodology. A push survey was conducted—the government set out to get the answers it wanted. What worries me immensely is the current survey the government has out about the native vegetation situation. I worry about what is coming next for areas such as the wheatbelt. No doubt we will see some measures put in place as a result of the government's survey of 10 000 or 11 000 people who will no doubt sign up to whatever the government wants them to sign up to in the future, and who will provide justification. It is not a discussion about clearing as such, but about the management of native vegetation per se and the whole ambit of it. I have concerns about where that direction will take us. I think it could take us into a very worrying area for the future of agriculture in the wheatbelt and other areas. I would like the minister's assurance that she will not make any more unilateral decisions without consultation and that she will actually go out and talk to a whole range of stakeholders and not just the 11 000 people who responded positively to her survey in the way that she wanted them to respond, while ignoring everybody else who may not have even known that the government was planning to make such a drastic decision on the basis of the result of that survey. I think it is quite extraordinary. If the minister had said that on the back of the survey, the government would decide whether to shut down the logging of native timbers in forests, she might have got a bit more interest from other less engaged persons than she actually ended up getting.

I do not think people fully appreciated the ramifications of that survey. Had they known that the future of an industry would hinge upon the correct response being received, they might have participated more widely and the government might have got something more approximating a full analysis of public opinion in Western Australia, rather than the feelings of a splinter group. I would say that the government is becoming adept at targeting that splinter group and will use that for justification. It is also a splinter group that is no more than the number of people the government needed to get itself a seat in the Mining and Pastoral Region. The government now says that is inadequate to enable those people to have a say in that chamber of Parliament, yet the government is willing to shut down an industry based on the opinions of a similar number of persons. That is quite apart from the fact that not everybody who responded supported the end of native forest logging—I think 73 per cent did, so the others either did not respond one way or the other or said that they were not in favour of it. It is a clear majority

of that select group, but it is not an overwhelming majority of Western Australians. That is a very flawed way for the government to set out to get an answer. I think the government got the answer that it wanted to put in place a plan that it had already had in mind.

The Minister for Forestry himself probably would admit that there would be some conflict with his 2019 press release that welcomed the investment of Parkside Timber in a timber mill that was aimed at using native forest logs. The minister said how his government welcomed and supported that, but over a year later, we are seeing the shutdown of that industry and the absolute devastation of that business. I would suggest also, from the reaction around the town, that the devastation is being felt by many people in the area. My colleague Hon James Hayward has been down in that area and has been very active in discussing these matters with the communities around Manjimup and other areas. It is pretty clear that people are angry and feeling very aggrieved with the decision of this government. As the member for Roe pointed out, the people in that seat probably did not understand when they went to the election last year that they would be seeing the end of that industry.

[Member's time extended.]

Mr R.S. LOVE: Normally, these sorts of things take some time. I was in Albany as a student at around the time the whaling industry in Albany was shut down. I think everybody knew that there would come a time when that industry would be shut down. Some people locally might not have wanted to see it shut down, but other people locally certainly did want to see it shut down. I do not think there was any doubt that there would be a long history of discussion and that at some point there would be a feeling that that industry would go.

Given the enunciation of the minister back in 2019, a fair indication should have been given to the forestry industry that this would come. The decision that was made was unilateral. It blindsided many people who have made a life in that industry. I know that other members have gone through some of the press releases that were put out by the Australian Forest Products Association, the Forest Industries Federation and furniture manufacturers, expressing their dismay, disappointment, shock and grief—the sorts of words we would not expect from an industry that was being treated fairly and was being consulted.

The worst thing about this is the lack of consultation with the industry. Why would the government not work through these matters and have an intelligent and adult conversation with the industry and say, "This is where we want to go as a government", instead of communicating to the industry by press release? That is the most disappointing part about it. The government did not go through a process of giving the industry a bit of warning and telling it what it was thinking of doing, and of saying to Parkside, which has spent millions of dollars to set up, that it does not think this industry has a long-term future. Instead, the government gave it exactly the opposite signal and then, by press release, told the community that this industry that people have relied upon, this industry that the government has said is viable, and this industry that has a whole apparatus of government and scientific oversight around it, is going.

I notice that the Minister for Emergency Services was in the chamber earlier. I had hoped that he would be here at this point. I want to point out that we know that fire is a huge risk in that area. We have seen some devastating wildfires. I do not doubt that people are concerned about that. It concerns me that without an active forestry industry, we will see a level of risk, because that forest will have to readjust to coming back to being the type of forest that existed prior to European settlement. We only need to look at the history of Australia and the understanding we now have that there was a fair degree of human management of the environment through the Aboriginal peoples of this land, and that they practised techniques to prevent the risk of catastrophic fires and to keep some of the forest in good health. I do not think that just locking up that forest and letting it go without active management will be an option. Active management will not be cheap. It will come at a cost. I heard the minister say that the forestry industry is being subsidised in some way. I do not know, because I do not have the full details of that, but I suggest that there will be substantial costs to the state in managing those areas of the forest, just as there is a substantial cost to the state in managing the rest of the conservation estate. That will now be at a greater level because of the higher risk of fire with greater vegetation loads, and the fact that if we abandon forestry, the forest will be out of kilter with what it would have been had there been no involvement at all.

Those issues concern me greatly. I will wrap it up now, because there are a couple of ministers here and I am hoping to hear from them, and perhaps if no-one else wishes to speak, we will be able to vote on the matter. We will see what happens. I hope to get some response from the Minister for Forestry and the Minister for Environment.

MS A. SANDERSON (Morley — Minister for Environment) [6.17 pm]: I am happy to speak on this motion, which, of course, the government does not support, and which is, frankly, riddled with errors and assumptions. It was interesting to listen to the speakers opposite regale arguments from the 1950s—although I am not surprised by the member for Cottesloe—as though we are still living as things were half a century ago, and that we just need to keep doing the same things that we have been doing for the past decades and everything will be fine. Everything that we have been doing around the environment and clearing and climate action is fine; we do not need to change. We can pick and choose the things that suit our arguments. The member for Cottesloe has called the reliance on evidence around the reduction in rainfall, the drying climate and the slower growth —

Dr D.J. Honey interjected.

Ms A. SANDERSON: He claimed that is a so-called fact. What is that term that Donald Trump coined?

Mr D.J. Kelly: Fake news.

Ms A. SANDERSON: Fake news. That is right. Alternative facts—he said he had a set of alternative facts. The member for Cottesloe is living in a universe of alternative facts. We see that daily. The member for Cottesloe claims that somehow the jarrah forestry is sustainable, when, in fact, it had never actually received Forest Stewardship Council certification, which is the global standard for sustainable forestry. It never received that and is not considered sustainable forestry. That is a real fact. I will let the Minister for Forestry go through the arguments around timber yield and economics, but I will touch on them because they do cross over with the environmental evidence that this is absolutely the right policy decision of government.

I have no argument that it is incredibly challenging for a number of families and communities in the south west. There are no arguments from the government about that. We are acutely aware of that, which is why we are committed to funding a transition plan and working hand in hand with those communities towards diversification. That is the focus of this government. Those communities can diversify and they have been diversifying. They were not entirely blindsided by this announcement—that is completely dishonest. I think maybe the Liberals and Nationals who live in a universe of alternative facts were blindsided, but the communities living down there were not. They have been doing a really good job of diversification. There is a lot of optimism in our rural towns and in our south west, as there should be.

It is interesting that the member for Cottesloe in particular was more than happy to shut down an entire coal industry in four years without even going down and facing that community. He was willing to do that to a far bigger workforce than the workforce affected by this decision and argue that point. He is still arguing the point and still hanging on to that policy. I am interested to know whether he has been down there. He visits a lot of people. He talks to a lot of people. Has he been down to Collie to face that community about what the just transition would look like under the Liberal Party's plan? It is entirely hypocritical of him and he is all over the place. On one hand, he is supporting green hydrogen and, on the other hand, he is questioning the science around climate change, native forestry and deforestation. He is just all over the place.

Dr D.J. Honey interjected.

The ACTING SPEAKER: Member for Cottesloe!

Dr D.J. Honey: I did not say one word about climate change—not one word!

The ACTING SPEAKER (Mr D.A.E. Scaife): Member for Cottesloe! The minister has the call. Although I do not mind a little bit of good-natured back and forth, repetitive, persistent interjections are not helpful.

Ms A. SANDERSON: Thank you, Acting Speaker.

There was also an extensive debate in the Legislative Council on this issue and I have read through the *Hansard* of that debate. It is always interesting when the people elected assume those on the other side do not know what they are doing. Hon Jackie Jarvis had explained to her by Hon James Hayward how the forestry industry worked, even though he did not know what two-tier karri forest was. He was explaining to her at length—like we get in this chamber often—how the sustainable forestry industry works, and I was delighted to see her get to her feet and explain to the member that she was actually a member of the Forest Products Commission! She is a member of the FPC and is quite aware of how it works. Although we over on this side appreciate the lessons, we are quite capable of finding our own information and doing research and making our own informed decisions. I have to say the credibility on the other side on this issue is extremely limited. Hon James Hayward insisted for some time, until he realised that he had got it wrong, that it was Richard Court who ended native logging in 2001. He dug himself a hole, but he dug himself out. But it is pretty hard to take it seriously, I have to be honest.

What we do take seriously is the impact of climate change in Western Australia. We are seeing a more urgent need to take action on climate change. We know that climate change is impacting the growth of our forests and impacting our biodiversity. Those replanted forests are simply not growing back as quickly as we need them to to sustain the yield that has been agreed to. In fact, I think the people who work in the forestry industry are not even meeting the yield because of the challenges around climate change. They are on the ground and they see that.

Dr D.J. Honey interjected.

Ms A. SANDERSON: I sat and listened to the member for Cottesloe.

Ms S. Winton interjected.

The ACTING SPEAKER: Member for Wanneroo!

Ms A. SANDERSON: A lot has been made of the survey that was put out. It was accused of being a secret survey, even though it was tabled in the Legislative Council, so there was nothing secret about it. The member for Moore talked about a select number of 11 000 respondents. There were actually 17 000 respondents.

Mr R.S. Love: I said 11 000 responded positively to your survey.

Ms A. SANDERSON: I stand corrected. I have to say that I do not think 11 000 is a select number and neither is 17 000. It may not be the basis on which we make a decision, and certainly this decision was not made based on that, but it is a good thing to ask people what they think. The member for Cottesloe has been asking the government to talk to people. The state's south west forest is a state asset. It is not owned by the foresters. It is a state asset that is also a really important carbon sink. It also has emerging industries that are, frankly, in conflict with ongoing native logging and are more sustainable and more complementary to the forest, so there was an overwhelming response supporting better preservation of our state forests. Essentially, it was a very thorough survey and the member for Cottesloe does the Western Australian Biodiversity Science Institute a great disservice by claiming that it was a Facebook survey. The institute is run by independent scientists, and I think it just goes to show what regard the member has for science, frankly.

This industry has been struggling, and the member can continue to lie and be dishonest to them, but there were a number of times when those mills stood down their staff because they could not get the yield. A number of those mill owners have been trying to sell their mills for a number of years. The member did not mention that in his speech. This is not a sustainable industry. Meanwhile, whilst that member was in government, he let the pine plantation whittle away with no plan to rebuild it. These two policies do go hand in hand; they are not isolated. They were announced as a package. We are ending native logging. We are protecting all karri, jarrah and wandoo forests in the south west. That is what we are doing and the two-tier south karri forest will have immediate conservation protection because those forests contain old-growth trees. They do not meet the very tight definition of "old-growth forest" and I think that probably needs to be looked at, but the forests do contain really important environmental assets and they are more valuable to us in the ground as carbon sinks, habitats and improved biomass. They improve biodiversity and protect threatened species. No, member, species have not gone extinct, thanks to the good work of many volunteers and the Department of Biodiversity, Conservation and Attractions and committed individuals. But do we wait for species to go extinct before we take action? Is that what we do? We are not prepared to do that! We are absolutely not prepared to wait for them to become extinct.

Mr D.J. Kelly: For the first time, there's now more numbats than Liberal Party MPs.

Ms A. SANDERSON: That is actually true! Numerous numbats and baby numbats have been seen—the member knows they have been seen—in the area of the highly discussed prescribed burn.

On the impacts of climate change—I do not want to take up all the time because I know other members are keen to speak on this—the report that the member for Cottesloe is relying on is 14 years old. The 2019 IPCC report was very clear. It found —

> Reducing deforestation and forest degradation rates represents one of the most effective and robust options for climate change mitigation, with large mitigation benefits globally …

I have another more recent report. The 2019 IPCC *Special report: Climate change and land* stated —

> Reducing deforestation and forest degradation is a major strategy to reduce global GHG emissions. The combination of reduced GHG emissions and biophysical effects results in a large climate mitigation effect, with benefits also at local level.

That is some of the evidence that we are relying on. Australia has almost reached 1.5 degrees of warming on average. We have reached 1.44 degrees, and that figure is from the Bureau of Meteorology—more scientists. The climate is warming. We have a huge challenge here, and we have to take action. This is one of the levers that we have available to us as a community to take that action.

The south west forests have experienced a 20 per cent decrease in major July rainfall since the 1970s. Some affected native forests, including regrowth forest, are not growing at the rate that we need them to. The south west forests store the equivalent of 600 million tonnes of carbon dioxide; they are an incredibly important carbon sink. It is true that young trees absorb carbon, but old and mature trees store more carbon. It makes no sense to chop them down, woodchip them and burn them, and then grow new ones! It makes no sense.

Dr D.J. Honey: The wood gets used and it sequesters carbon.

Ms A. SANDERSON: It is largely woodchipped and burned, and used for biomass. We have to weigh up what is of greatest benefit to us in this challenging environment. Frankly, the greatest benefit to us is to leave them in the ground and to grow a sustainable industry in Western Australia, which is what the government is doing. They are a very important carbon store.

We know that if the world stopped deforestation, or even slowed it down significantly, we would get to one-third of the target of reducing emissions by 2030. That is how significant the impact of the forestry industry and deforestation is.

I have sympathy for foresters. They are reducing in number, not only here but globally, because the industry is changing. Those skills will remain in Western Australia, and the jobs will in fact grow. I have sympathy for foresters, because they have had a commitment around this idea of sustainability, and they are very wedded to that commitment, but the evidence shows it is simply not working and it is not a sustainable industry any more. It is dishonest to those communities to continue to tell them that it is sustainable because, frankly, it is just not true.

Let us put this into perspective, the native forestry industry represents about eight per cent of the entire forestry sector, which is a small percentage of the entire forestry sector. Since the commencement of the current forest management plan in 2014, the Forest Products Commission has operated at a loss of $2.8 million per annum. This is about making the FPC a more viable and sustainable operation in itself. It is underwriting an industry that cannot survive into the future. We are asking the taxpayer to put their hand in their pocket and underwrite an industry that is not viable, whereas the alternative is to develop new industries like tourism and beekeeping. The state government has landed a new native title settlement; it is a record native title settlement for the south west Aboriginal people, the traditional owners. The Noongar nation is one of the last to have a significant native title settlement in Western Australia. They should have an opportunity to have a say over what goes on in their native forests, and they will. The forests are incredibly important for Aboriginal culture. They have a deep connection across their forests, and the forest industry is not complementary to that at all.

We are entering a new era. I know that is really challenging for members over there.

Mr P.J. Rundle interjected.

The ACTING SPEAKER: Member for Roe! Just pause for a moment, minister.

I have known the Minister for Environment for a long time and she is more than capable of defending herself, but the optics of three blokes hectoring her on one side is not a great way to end the evening. I will give the Minister for Environment the call, and will let her conclude in silence.

Point of Order

Mr R.S. LOVE: I think we have just been responding to questions. I do not think there is any attempt to bully the minister. I am happy to listen to the minister.

The ACTING SPEAKER (Mr D.A.E. Scaife): The word I used was "hectoring". Do not use a point of order to argue with the chair again, member for Moore.

Debate Resumed

Ms A. SANDERSON: Thank you, Acting Speaker.

We will go into the forest management plan in consultation. That in itself required a policy decision up-front. That is the process. We have to set the policy parameters early for the Conservation and Parks Commission to undertake the really important work of the forest management plan. That is a 12 to 18-month process in and of itself and it will have extensive engagement across a range of stakeholders. There will be deep and meaningful consultation on that forest management plan, but the process is very clear: they need a policy direction from government up-front in order to undertake that work. That is what they have got. They have got a clear policy direction. It is absolutely the right policy direction. Frankly, it is one of the policies I am most proud of as a government. I feel very proud, as Minister for Environment, with the Minister for Forestry, to lead this policy. It goes hand in hand with conservation and sustainable timber growth, and a sustainable timber industry in Western Australia that will also support the building industry. Under the FMP, we will see around 2.5 million hectares of native forest excluded from harvesting, which will be an outstanding outcome. It will not be without its challenges for those communities.

I want to make the point that somehow the member for Roe thinks there is a plethora of Greens who live in the seat of Morley. Anyone who does any kind of analysis of elections, which clearly the member does not, will know that the seat of Morley has the second or third lowest number of Greens of any seat in the state. It is all about the primary vote, member for Moore, for the Labor Party in Morley. I cannot rely on the Greens, and it is absolutely absurd for the member to say that about some inner-city Morley people. I think they would be offended by that characterisation. They care deeply about the environment, but I am not chasing any Green vote in the seat of Morley, because there are about four of them—and one of them is a candidate. They are very nice, but they do not poll well; I always welcome them and their input.

The member for Moore is always an interesting contributor. I think he suggested during the estimates hearings that somehow I needed to stop and take a breath as I had not possibly thought through this decision. Member for Moore, I will stop and take a breath when you take a nap! It was so frankly offensive that somehow this is not a well thought through decision. It has been noted in the chamber that the member for Moore genuinely feels he needs to get up and explain what the Leader of the Opposition has explained quite eloquently herself. I may not agree with her arguments, but she is articulate and she can put them, and she certainly does not need any assistance from the member for Moore in re-articulating them to the chamber. Thank you for your assistance and advice, but I am perfectly capable of making considered and sensible decisions that are based on evidence and fact, and that will protect the forest and industries into the future, and we will support those south west communities to diversify in industries that we will see for generations to come.

MR D.J. KELLY (Bassendean — Minister for Forestry) [6.39 pm]: I want to make a few comments. The Minister for Environment covered a lot of things. I find the idea that members on the other side are the ones who really care about working people and timber mill workers a little bit hard to stomach. Through the years of the Barnett

government, as shadow Minister for Water, I watched the Minister for Water, now Leader of the Opposition, cut 400 jobs from the Water Corporation. About 100 of them were in regional Western Australia. She did it without batting an eyelid. She did not even blink. She cut 400 well-paying permanent jobs out of the Water Corporation, many in regional Western Australia. There was not a peep. I will not take it from members opposite that somehow they are the saviours of working people. We take very seriously this decision and the impact it will have on not only directly employed staff but also the small businesses that are involved in this industry. It is not a decision we have taken lightly.

The Minister for Environment indicated that native hardwood logging comprises eight per cent of the forestry industry. When members opposite talk about the industry employing 6 000 employees, that is the whole forestry industry; it is only eight per cent. It has been making a loss since 2014—$2.8 million. From the Forest Products Commission's books, native logging makes a loss. One of the issues that has become very clear as we come to the end of this forest management plan is that the impacts of climate change are much greater than were anticipated when it was put in place. The decline in rainfall has significantly reduced the yield of sawlogs that we are getting.

Dr D.J. Honey: Since 2019?

Mr D.J. KELLY: I will get to that in a minute, if the member will just let me. I think with you lot, we had three people saying much the same thing for a very long time in the limited time we have.

The yield that we are now getting from coupes that have been harvested is significantly less than was anticipated by the FPC. The jarrah sawlog yield from some of those coupes has gone from 20 tonnes per hectare down to as low as 15 tonnes. That is very significant. To get the same amount of sawlogs out of the forest, we have to harvest more hectares and we might get the sawlogs, but it increases the ratio of residue. When people say that every part of the tree is utilised, in many cases that is true, but some of it is for quite low-value products like woodchips. For example, take a 300-year-old karri tree. If 60 per cent of that tree is cut into sawlogs, 40 per cent will be turned into woodchips. It is a 300-year-old karri tree. It sprouted before European settlement and we are harvesting those trees —

Dr D.J. Honey: A new tree will grow.

Mr D.J. KELLY: A new tree will grow! The member for Cottesloe might glibly say that if we chop down a 300-year-old karri tree, it will regrow. The impacts of climate change are profound and it is absolutely arrogant for the member for Cottesloe, who is going to be on this planet maybe for another 50 years, if he is really lucky—maybe 40 years—to glibly say that the tree we will plant today will replace that 300-year-old karri tree. On this side of the house, we think that if trees of that age are going to be felled, there has to be a very good reason. There has to be a compelling case. Unfortunately, now with the yield as it is, the declining rainfall and the impacts of climate change, that case can no longer be made, especially when it is about eight per cent of the industry.

The evidence we are getting is that the dynamics have absolutely changed. If it was business as usual for the next FMP, we simply could not harvest the same amount of sawlogs as we are currently harvesting. We would have to greatly increase the number of hectares that were being harvested and it is just not compelling.

The member raised an issue about Parkside Timber. Parkside decided to come to Western Australia and purchase two mills that were on the brink of closing. They were almost finished; the Nannup and Auswest mills were virtually done. Parkside made a commercial decision to come to Western Australia and invest in those mills knowing that the forest management plan was going to run out in 2023. Parkside also has an investment security guarantee for some of its contracts, so it was in a slightly different situation from other companies. But it knew exactly what the situation was in Western Australia. It sought no assurances, and it certainly was not given any assurances from the government, for extended contracts. It knew that the FMP was up for renegotiation. When it made that decision and announced that it was going to buy those mills and keep those jobs in place until at least the end of the FMP, obviously we welcomed that because we were happy for those workers to keep their jobs. But we absolutely did not make any commitment beyond the contractual arrangements that Parkside already had. Notwithstanding the public comments Parkside made, it approached the government for a $25 million grant and said that if the government did not provide that grant, the mills would close by the end of the year. That reinforces what we think about the state of the industry.

The government obviously takes fire risk very seriously. The forest will continue to be managed for that issue. There are a limited number of members on the other side who care about fire risk and communities. We are very attuned to that issue and the fire risk in the forest will continue to be actively managed.

Dr D.J. Honey: It has been a bipartisan issue for decades.

Mr D.J. KELLY: Everything that the member for Cottesloe said in his contribution sounded as though native forest harvesting is the only economic value of those forests. There is enormous potential in those forests. A lot of people in south west businesses have said to me that they want the south west to be known for its food production and tourism, and there are a lot of jobs in both those sectors. By preserving native forests, we are enhancing the clean green economic aspects of jobs that can be created in the south west. Completely devoid in the contributions

of Liberals and Nationals today has been a recognition of the many jobs that can be created out of our native forests other than by chopping them down. Members of regional chambers of commerce and industry and small businesses tell the government that all the time. That is one issue we want to deal with through the native transition plan, which we will take seriously. The first meeting of that group is on Thursday. We will begin the process to fairly exit the businesses that want to exit the industry and help to grow jobs and other businesses and opportunities in the south west.

The member for Cottesloe quoted Paul Omodei. When I met Paul Omodei a couple of weeks ago, he said to me in a meeting with a bunch of other people that he had hoped that people would get one more FMP out of the industry. Whatever he said to the member for Cottesloe, it was quite realistic that at best they were going to get one more FMP out of the industry. Next time the member wants to quote him, ask him what he really thinks.

I have a couple of quick comments. I was really quite surprised at the savage attack on plantation forestry from the member for Cottesloe. He called it an environmental wasteland. I know pine plantations in Western Australia do not have the same biodiversity as native forests—that is why we want to keep the native forests—but pine plantations create a lot of jobs and they are also a very important food source for the Carnaby's black-cockatoo, which is an endangered species courtesy of the Liberal Party's management of Western Australia.

A few weeks back during private members' business, the Leader of the Opposition said that she left responsibility for forestry to the member for North West Central. It shows a lot about her judgement that she leaves an important industry like this to the member for North West Central. In relation to the declining plantation estate, rather than do what we are doing—that is, investing $350 million in building up that estate again—he said that they were looking to New South Wales to buy some pine. That is what he said in this place about a week ago. It says a lot about the Leader of the Opposition. Firstly, she does not care about it; and, secondly, if she does care about it, it is a pretty bad decision to put the member for North West Central in charge of policy.

Mr P. Papalia: In charge of anything.

Mr D.J. KELLY: Or in charge of anything, even his own lunch money. I would not have him in charge of the jobs of forestry workers.

In 2012, the previous government planted no pine at all—not even one hectare of pine plantation. Since we have come to government, we have spent $25 million on pine plantations. We are now investing $350 million over 10 years. When I spoke to the federal Assistant Minister for Forestry and Fisheries, Senator Duniam from Tasmania, about our plan, quite frankly—I do not want to over-egg it—he was quite shocked at how much we were investing and he gave our plan 10 out of 10. The member for Cottesloe is shaking his head. After what he said about plantation forestry today, he should really hang his head in shame. Thousands of workers are employed in pine plantation forestry. It supports thousands of jobs in the building industry. For eight years, the previous government did sweet FA.

Dr D.J. Honey: That is an unministerial term.

Mr D.J. KELLY: It is a technical term! I understand that. But that is what the previous government did. We are proud of what we have done. We are proud that we are rebuilding the pine plantation estate. We understand the challenges for affected workers and businesses. We have had good engagement with the Australian Workers' Union on the employee front and good engagement with businesses. We intend to work through and support those businesses. Members opposite should stop being so negative and take a holistic approach to the decisions that we have made.

MS E.J. KELSBIE (Warren–Blackwood) [6.52 pm]: To start with, I would just like to say to the member for Roe and the member for Cottesloe that I am actually fine. I am loving that they are concerned for me, but I am actually okay!

Ms S.E. Winton: And doing very well.

Ms E.J. KELSBIE: I am doing fine, yes. But I thank them for their concern. Honestly, it is terribly nice.

Several members interjected.

Ms E.J. KELSBIE: It is true—seriously.

Mr P. Papalia: Sarcasm does not work in *Hansard*.

Ms E.J. KELSBIE: Sorry; that is being sarcastic, so let us add that as well!

I am really proud to be part of this historic decision. Climate change is real. It is happening now. If we do not act now, what are we going to do? From Denmark to Margaret River, I have been talking to people in my communities of Nannup, Pemby, Manji and Bridgetown–Greenbushes. Predominantly, those in the electorate are rejoicing. They are happy about the decision. I understand also that it is really distressing for people in the industry. My job now is to work with those people in the industry. The change is coming. That is not going to change. My job is to work with them to make sure that they get the best opportunity and the best outcome for those towns, businesses and communities.

Ms C.M. Rowe: Hear, hear!

Ms E.J. KELSBIE: Thank you. It is not without concern for my community as well. On Sunday I went to an event organised by the new president of the chamber in Manji. I was asked on the Wednesday and I turned up and I sat and spoke to the business owners. I sat and listened to their issues and concerns. It was a bit confronting at times, but that is my job, and they understand that they need to transition from where we are now into a new space. We need to look at diversification of industry, hence we are working with different ministers, including the Ministers for Environment and Forestry, and Hon Alannah MacTiernan, the Minister for Regional Development. When would members opposite like us to have told the industry? They talk about giving the industry notice. Would they have liked us to have got to the end of this forest management plan and said, "That's it; sorry, chaps, we've shut the door and we're off"? We are saying it now. Now they have time. We have time to work with people and we have $50 million on the table, which I know members opposite think is a sniff, and $350 million for softwood plantations. We are also going to look at diversifying those towns. Now is our consultation. There has been a 20 per cent decrease in winter rainfall since the 1970s; that is a fact. It would be economically and environmentally irresponsible for us to continue the native forestry industry in its current form. That is where we stand today. That is how it is. As I said, my job now is to go out tomorrow and meet with the native forestry transition group, and there is a huge number of people out there on the board, across the industry, the union, shires and chambers. I can see the member for Cottesloe nodding his head there.

Dr D.J. Honey: I was reading the *Post*. Sorry, member.

Ms E.J. KELSBIE: Carry on! Tomorrow, the journey begins, I guess, and we will start that consultation in earnest with that group and start talking in more earnest with the unions, as well. I continue to go out to the community and I continue to work with my communities.

MS C.M. ROWE (Belmont) [6.56 pm]: I get up to speak absolutely against this motion. In fact, it is a disgraceful motion. I must admit, on the day that I saw that we had banned the logging of native forest, I was immensely proud to be part of a government that was taking such bold steps, and I was immensely proud of our minister for doing what I think is a bold thing. Governments have to make tough decisions—that is what they do. That is what governments do. Governments are responsible and progressive. Unlike the opposition, we understand that climate change is real. We do not deny that we have responsibilities to address climate change and its impacts. The other side is always keen to say, "No, we believe in the science around climate change", but I do not think there is a great deal of evidence that they do. In fact, there is no evidence that they do.

Ms A. Sanderson: Actions speak louder than words.

Ms C.M. ROWE: Absolutely; there is no action. This is a historic thing that our government is doing. Let us be honest.

Ms S. Winton interjected.

The ACTING SPEAKER: Member for Wanneroo!

Ms C.M. ROWE: It is a historic decision to protect our native forests into the future.

Ms S. Winton interjected.

The ACTING SPEAKER: Member for Wanneroo, you are interjecting on your own member of the government. I will hear from the member for Belmont.

Ms C.M. ROWE: Member for Wanneroo, I appreciate your enthusiasm!

We understand the impacts of climate change, and that is why we have made this decision to protect these beautiful forests from 2024, and it is a historic decision. Not only is it aesthetically beautiful, but it is of cultural significance for our First Nations people, as well. It is also incredibly important from a diversity point of view, and both ministers have spoken at length about this. We do not want this left unrebutted. The member for Cottesloe talked about how the industry uses the jarrah logs, and it is very important, because every element of the tree that is logged is used. A 300-year-old tree is used, and this is really important—except that a significant portion of those beautiful karri and jarrah trees is used for woodchip—woodchip!

Dr D.J. Honey interjected.

Ms C.M. ROWE: The member for Cottesloe is part of an opposition in which his federal colleagues are talking about nuclear power. That is their answer to climate change, so let us not go there! I do not think the people of Cottesloe would like to hear that, would they?

Let us ponder for a moment that a large part of every single karri tree ends up as woodchip to be exported overseas. As my note says here, it is sent offshore for paper manufacture or as biomass to be burnt.

Dr D.J. Honey: Yes, beautiful.

Ms C.M. ROWE: The member for Cottesloe says it is beautiful. That is a disgusting comment, but if he thinks it is beautiful, that says it all.

Several members interjected.

Ms C.M. ROWE: That says it all.

I would like to talk about what the government is doing. We are protecting an extra 400 000 hectares of karri, jarrah and wandoo forest to be preserved in perpetuity. Both ministers mentioned the capacity for carbon sequestration, but let us just ponder the fact that native forests are currently storing approximately 600 million tonnes of carbon dioxide equivalent. That is about 116 years' worth of annual emissions for every car in Western Australia. That is absolutely significant. Our plan to protect nearly two million hectares in total of native forest will have a really positive impact on climate change. We do not want to see 40 per cent of our ancient karri forest, which has significant cultural history and importance to our First Nations people, turned into woodchip, thank you very much.

I think both the ministers here this evening should be incredibly proud of these initiatives. We are not only doing a fantastic thing for the forests and our environment, taking responsibility where we can for climate change, but also investing a huge amount of money.

Debate adjourned, pursuant to standing orders.

House adjourned at 7.00 pm