Parliamentary Debates
(HANSARD)

FORTY-FIRST PARLIAMENT
FIRST SESSION
2021

LEGISLATIVE ASSEMBLY

Thursday, 18 November 2021

THE SPEAKER (Mrs M.H. Roberts) took the chair at 9.00 am, acknowledged country and read prayers.

PAPERS TABLED

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

DEPARTMENT OF FIRE AND EMERGENCY SERVICES 2020–21 ANNUAL REPORT

Correction — Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [9.03 am]: I received a letter from the Minister for Emergency Services dated 8 November 2021 requesting that an erratum be added to the *Department of Fire and Emergency Services 2020–21 annual report*, which was tabled on 16 September 2021. The erratum corrects an error on page 140 regarding the key performance indicator for the average cost to deliver frontline services. Under the provisions of standing order 156, I have authorised that the correction be attached as an erratum to the tabled paper.

[See paper 813.]

GRAYLANDS RECONFIGURATION AND FORENSIC TASKFORCE

Statement by Minister for Health

MR R.H. COOK (Kwinana — Minister for Health) [9.04 am]: I rise to update members of the house on the work being undertaken by the Graylands Reconfiguration and Forensic Taskforce. The purpose of the task force is to oversee the planning and development of contemporary services to meet the needs of Western Australians living with a mental illness now and into the future. The Graylands site has a long history of providing mental health services in our state. The task force has proposed a concept to government that some high-quality mental health care should be retained at Graylands. This option was deemed the best for our mental health consumers and their carers and families, as well as the highly specialised workforce. The task force heard from the Office of the Chief Psychiatrist, the clinical advisory group and the lived experience advisory group that a portion of the Graylands site should be retained for mental health services. The concept will see a mental health presence on the northern part of the Graylands site housing contemporary forensic and rehabilitation facilities. The existing Frankland Centre at Graylands will be retained to deliver care to forensic mental health patients with a plan for its facilities to be updated, expanded and modernised.

The *Western Australian mental health, alcohol and other drug services plan 2015–2025* is the blueprint for future services and has been government policy since 2015. It specifies an option for expanding contemporary mental health forensic services on the Graylands site. The mental health system across WA continues to experience significant demand for services in hospitals, emergency departments and the community. High levels of mental health attendances and patients needing longer lengths of stay are all contributing to a high demand for acute mental health beds in hospitals. The task force plan and surrounding details are still being refined, but it is important that this update be conveyed to patients, their carers and families, staff and the local community.

I thank the task force for its significant work to date. The reconfiguration of the state's mental health system and the Graylands Hospital site is a long-term project that will not happen overnight. It is an incredibly important piece of work that will bring significant benefits to the Western Australian community.

EARLIER INTERVENTION AND FAMILY SUPPORT STRATEGY

Statement by Minister for Child Protection

MS S.F. McGURK (Fremantle — Minister for Child Protection) [9.07 am]: I rise to update the house on the important work the McGowan government is doing to create better outcomes for vulnerable children and families. Through the earlier intervention and family support strategy, the Department of Communities contracts the Aboriginal in-home support service, the intensive family support service and the family support network. These contracts have more than tripled the number of community service organisations delivering these services and resulted in partnerships with 12 Aboriginal community controlled organisations, including direct service provision by Yorgum Aboriginal Corporation.

Since the EIFS strategy commenced, we have seen the largest reduction of children in care for the last two decades. The number of non-Aboriginal children in care has reduced by 5.3 per cent—the largest reduction since 1997. Significantly, the number of Aboriginal children in care has reduced by 0.8 per cent, which is the first reduction since 1996. In the past financial year, we have seen a decrease in the growth of children coming into care in 15 of the 17 child protection districts. This continued improvement in numbers is due to our commitment to support frontline child protection staff and promote best practice—the recent statewide Signs of Safety gathering is a great

example. Regionally, there was a reduction in growth of Aboriginal children in care in every district. Of children referred to services under the strategy, 91 per cent of those referred to the Aboriginal in-home support service and 86 per cent referred to the intensive family support service remained at home with their parents after 12 months. We credit these promising results to our commitment to early intervention and focus on reunification. The McGowan government has invested a total of $112.5 million towards early intervention, including a further $10.3 million for a two-year expansion of the Aboriginal in-home support service led by the Wungening Aboriginal Corporation.

Although there is still more work to be done, I welcome these results from our reforms and investment. I am proud to be part of a government that has a genuine commitment to work in partnership to deliver better outcomes for vulnerable children and their families, and these results speak for themselves.

NATIONAL ASSOCIATION OF WOMEN IN CONSTRUCTION EXCELLENCE AWARDS

Statement by Minister for Women's Interests

MS S.F. McGURK (Fremantle — Minister for Women's Interests) [9.09 am]: I rise today to inform the house that last week I had the privilege to attend the National Association of Women in Construction Excellence Awards. These awards celebrate the achievements of Western Australian women excelling in this male-dominated field. I have attended this event for the past four years and I am extremely encouraged by NAWIC's continuous growth and unwavering commitment to educate and advocate for change in the construction industry. Awards like these are a positive step to increase the visibility of women in construction and challenge perceptions about traditional gender roles. Women are significantly under-represented in the construction industry, which has the second highest pay gap in Australia at 26 per cent and only 12.7 per cent of women make up its workforce. Further to this, women make up only two per cent of construction trade roles nationally and 2.7 per cent of trades in Western Australia. Those figures are as at the 2016 census. This gender gap is caused by stereotypes about gender roles, unconscious bias in recruitment, lack of flexibility at work and ongoing safety issues such as sexual harassment. Western Australia remains at risk of falling behind if we do not tackle issues across all workplaces and communities. In order to create safer workplaces for everyone, it is crucial we increase women's representation to create better outcomes.

The construction industry is a key driver of our economy. It makes a valuable contribution to jobs, investment and economic growth even when other sectors are struggling. We need to ensure that women benefit from these job opportunities and ensure that Western Australia benefits by drawing from the whole talent pool. NAWIC's awards are important to support and recognise women in the construction industry and encourage more women and girls into the field—you cannot be what you cannot see. I take this opportunity to congratulate all the prize winners and nominees for this event, and NAWIC for the important work it does to build an equitable construction industry where women are able to fully participate.

WATER CORPORATION — ABORIGINAL PROCUREMENT POLICY

Statement by Minister for Water

MR D.J. KELLY (Bassendean — Minister for Water) [9.12 am]: Last Friday, I had the pleasure of attending the Aboriginal suppliers gathering hosted by the Water Corporation. It was a great event with really positive feedback. Our government is focused on increasing Aboriginal procurement levels and has set a target of three per cent of all contracts over $50 000 being awarded to Aboriginal suppliers this year. I am pleased to say that the Water Corporation has gone above and beyond this target, achieving 3.5 per cent of all contracts of a value greater than $50 000 being awarded to Aboriginal suppliers. The gathering is part of the Water Corporation's ongoing commitment to procure goods and services from Aboriginal suppliers. This work is led by the Water Corporation's reconciliation action plan. The reconciliation action plan seeks to improve employment opportunities for Aboriginal Western Australians within the Water Corporation, by setting progressive procurement targets and improving water infrastructure in remote communities. The gathering was a fantastic opportunity for the Water Corporation to continue to lead cross-industry collaboration to create economic opportunities for Aboriginal people across the state. The forum provides Aboriginal suppliers with an understanding of the Water Corporation's works programs and provides them with information on procurement processes, such as panel contracts and how to submit a contract bid.

The Water Corporation is also performing well against other Closing the Gap targets and has a dedicated Aboriginal affairs section within its regional assets planning team. The Aboriginal affairs team provides leadership and expertise to support the organisation to establish and maintain sustainable and mutually beneficial relationships with Aboriginal communities and people wherever they operate. The Water Corporation also has a dedicated Aboriginal employment and development team whose role is to encourage and actively recruit Aboriginal employees. Through the work of this team and the dedication of the Water Corporation, the Aboriginal employment rate has risen steadily since June 2018, from 3.5 per cent of the total Water Corporation workforce to 4.8 per cent in June 2021. These employment figures include a number of Aboriginal trainees and apprentices, giving young Aboriginal people the opportunity to commence their careers at the Water Corporation. The McGowan government is dedicated to improving outcomes for Aboriginal Western Australians and as Minister for Water I want to ensure that I am doing everything possible to ensure greater access to employment and business opportunities. I thank the Water Corporation, its board and chief executive officer, Pat Donovan, for their dedication and efforts in assisting the government to do just that.

SHARKS — HAZARD MITIGATION

Grievance

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [9.15 am]: I thank the Minister for Fisheries for taking my grievance. My grievance relates to the recent horrific attack on Mr Paul Millachip, a father of two, who was fatally bitten by a shark 50 to 75 metres from shore on the southern end of Port Beach on 6 November this year. Following the attack, I met with members of the Fremantle Surf Life Saving Club who were on hand to assist with the search efforts on the fatal day. The members are all very conscious that there is a lack of safe swimming areas along Western Australia's coastline. It has become very clear to me, after meeting with members of the club and talking with other beachgoers, that this tragic case has galvanised support within the community for proactive steps to be taken to ensure safer access to our beaches. As an active member of the Cottesloe Surf Life Saving Club, I can personally attest that once an area is made safe for swimming—for example, once a shark barrier is installed, as is the case for Cottesloe Beach during the summer months—it significantly increases the number of beachgoers who feel safe enough to swim at our beaches.

Although the government's recent investments in shark mitigation systems and infrastructure are welcomed, this tragic attack has brought attention to the deficiencies in our shark protection system. The installation of shark barriers is clearly one of the most effective ways of ensuring the safety of our beachgoers. However, I appreciate that shark barriers need to be installed in relatively calm waters, because if conditions are fairly rough, the shark nets become unstable and will be torn up and displaced. Nevertheless, there are still clearly a number of locations along our coastline at which shark nets could be installed, which would give our beachgoers more options on where they can safely swim.

Following the meeting with the members of the Fremantle Surf Life Saving Club, I was also made aware of major concerns over the significant gaps in our shark mitigation network. As the minister would be aware, the 25 satellite-linked VR4G receivers that comprise the shark mitigation network allow near real-time monitoring of tagged sharks on our state's beaches, allowing the Department of Primary Industries and Regional Development to issue public warnings that minimise the risk of human–shark encounters. I also recognise that the minister is trialling alarms. However, in the case of the attack on Mr Millachip, due to the limited range of these receivers sadly Port Beach was uncovered by the shark mitigation network at the time of the attack. The 400 to 500 metre range of the VR4G receiver would mean that the Leighton receiver's location—an estimated one kilometre from Port Beach, 1.5 kilometres from Sandrax, the southernmost section of Port Beach, and 3.5 kilometres from the closest receiver in Cottesloe—creates a significant gap in our capacity to provide effective early warnings. There are obviously many similar gaps across popular swimming beaches in the metropolitan area and major regional beaches.

When aerial surveillance and beach surveillance are not present or are hindered by adverse conditions, tagged sharks may approach these stretches of coast undetected, posing a risk to beachgoers. Although it is reported that the shark that caused Mr Millachip's tragic death was untagged, this incident has brought attention to the gaps in our shark mitigation system that must be quickly remedied to reduce the risk of future shark attacks. This includes an expansion of the shark monitoring network to ensure that tagged sharks can be detected along those major swimming beaches. If anything, we know that these proactive steps can save lives.

Consequently, I request the minister to act rapidly and decisively in expanding Western Australia's VR4G receiver network to ensure that our coastline is more reasonably covered by the shark mitigation network. I further request the minister to expedite progress towards installing further shark barriers across Western Australia's most popular beaches as a matter of the highest priority.

MR D.T. PUNCH (Bunbury — Minister for Fisheries) [9.18 am]: I thank the member for Cottesloe for his grievance. I have previously expressed in this house the sense of loss and tragedy around Mr Millachip's attack. Although the risk of shark attack is low along the Western Australian coastline, whatever the nature of a shark attack, it affects everybody. We all share a sense of horror and the sense of loss that occurs with it. It always promotes the profound debate about what we should be doing or what we could be doing and lots of opinions about the best way of reducing risk into the future. That debate has been around for quite a while.

This government has focused on identifying a comprehensive way of reducing risk that is based on evidence and science. My predecessor, who sits next to me, Hon Dave Kelly, set the foundations for the management framework to reduce risk in Western Australia, and we have continued to build on and refine that process ever since. One of the foundations of that is ensuring that people have adequate knowledge of what is around, which the member raised in his grievance, and working out the best way of giving people that information to help them assess risk, because people go into waters right along the Western Australian coastline for a variety of purposes. For some it is to swim along the beach, and for others it is spearfishing or diving. There are a variety of ways that people enjoy our oceans and we want to ensure that they can continue to do that.

The partnerships that we have developed have been the foundation of how we manage risk. The partnership with Surf Life Saving Western Australia has been profound not only for getting feedback from people who are out there daily supporting people to engage safely with the ocean, but also regarding the aerial and beach patrols that have

added significantly to being able to cover a large tract of popular beaches as efficiently as possible. We certainly take a lot of advice from the Surf Life Saving Association. I understand that at the recent meeting of the members for Cottesloe and Bicton and members of Surf Life Saving WA, it was agreed that this issue should not be dealt with in a political way; it should be an arrangement whereby the community identifies what is important for that area. There is an open invitation to convey those views to me to see how we can continue to improve our relationship with Surf Life Saving WA et cetera. It is very unfortunate that the agreement that the member for Cottesloe and the member for Bicton shared on a commonly signed letter of support to Surf Life Saving and to raise these issues has been overlaid by this grievance, but I accept that the member has an opportunity to present a grievance.

Dr D.J. Honey: Minister, I'm not attacking the government or criticising it. I understand your good intentions; it's purely on behalf of my electorate. I am not seeking to confound anything we are doing with the member for Bicton.

Mr D.T. PUNCH: Member for Cottesloe, I understand, but there is an agreement with the community, Surf Life Saving WA and the member for Bicton, and I think that if that agreement failed in some respect—if the government did not respond in an adequate way—there would perhaps be a better basis for a grievance.

I want to go through the rest of our mitigation program, because at the core of this is gaining the public's confidence in the systems that are in place. Too often in this house of late, work has been done to undermine public confidence in the very genuine attempt of people and governments to address this risk. Earlier this year, following the cessation of the shark drum line trial, we announced a significant expansion of the shark mitigation program. That includes the continuation over the next four years of the aerial patrols that are operating along popular beaches in the south west, through the Mandurah area and up into the northern beaches. Surf Life Saving WA has been doing a terrific job with those aerial patrols. The other areas include jet skis and drums for Surfing WA events, so that extra resources are put in to help safeguard the public during a major event. The SharkSmart WA app has around 60 000 users. I am very pleased that people are using that app to check out what is available. The shark monitoring and enhanced tagging that the member referred to has $2.8 million allocated to it over the next four years to improve the range of and upgrade the existing 34 receivers, and to look at an enhanced tagging program. We know from the science that opportunistic tagging of white sharks, which are typically responsible for these attacks, is the best way to get that tagging program out. We have significantly enhanced that.

The member mentioned beach enclosures, and that is an ongoing program of support, working in partnership with local government. I am sure that this incident, unfortunate as it is, will raise that issue in the minds of local governments and they will work with their communities to see whether beach enclosures are the most suitable option for particular beaches within their local government areas. I always have an open door to local governments and am willing to engage in any conversations around those requirements.

The shark response unit mobilised very quickly in response to that attack. We do not want attacks to happen, but when they do, the most significant thing is to recover the person and make sure that they get access to first aid in an appropriate and timely manner. That links to the beach numbering system, which enables people to identify exactly which beach they are at so that emergency services can get there very quickly.

The community awareness campaign that my predecessor raised has done an enormous amount to sensitise people to assessing risk. We know that if there are whale carcasses or seal pups in an area, that significantly attracts sharks. If people are aware of that, they can make a decision about entering the water. We have a comprehensive system. I certainly take on board the member's points, but I continue to support community efforts in this respect.

NON-NICOTINE VAPING

Grievance

MS M.M. QUIRK (Landsdale) [9.25 am]: I grieve to the Minister for Health. I request that in the interests of timely harm minimisation, he raises with the Ministerial Drug and Alcohol Forum the need for more research and investigation on the impact of vaping of non-nicotine substances targeted to the young, including the extent of usage; the need for greater transparency in the composition of non-nicotine liquids and their potential harms; and the need for a national approach, given the ease of purchase of these devices and liquids online rendering ineffectual any state controls on sales. It is invariably the case that laws relating to the control of substances likely to cause harm tend to lag behind what is actually happening in the community. A good example is the misuse of cream charger nitrous oxide bulbs, also known as nangs. The cynical will note that several 24/7 delivery businesses have existed in Perth for a number of years. Who legitimately would need 600 bulbs at 3.00 am? That is a lot of cream! Whilst nitrous oxide is not considered a prohibited drug, under the Criminal Code it is against the law in WA for someone to supply an intoxicant in circumstances in which it is reasonable to suspect that person will use it to become intoxicated. A person found guilty of that offence is liable to imprisonment for 12 months or a fine of $12 000. I doubt that anyone is ever prosecuted under these laws. They are simply grey, imprecise and difficult to prove to a criminal standard and they certainly fail to act as a deterrent.

On this issue, the minister responded to a grievance from the member for Kingsley last year. I understand Minister Dawson, in his mental health portfolio, is investigating ways to address this concerning situation. I use this as an example of how the law sadly lags behind the pressing need to take both preventive and legislative action

to minimise harm, especially to minors. And so it is with vaping. Insufficient research has been done into non-nicotine vaping. Not enough is known about the extent of harm from ingesting heated liquids into young lungs. It is dangerous to infer that such exposure is harmless.

A serious respiratory condition has been diagnosed as EVALI: e-cigarette or vaping associated lung injury. Symptoms include problems with respiratory function, with shortness of breath, cough or chest pain; gastrointestinal effects, with nausea, vomiting or diarrhoea; and non-specific manifestations of fatigue, fever or weight loss. We must ascertain what harm ensues from sustained use of non-nicotine vaping, and whether particular flavours are more harmful than others and should be banned altogether. Anecdotally, vaping is already becoming endemic amongst the young in schools. Parents and teachers are concerned about the use of vapes on school property. Although they are aware of students storing e-cigarettes in their backpacks and lockers, it is difficult to police. I am told that it is not unusual to find students vaping in classrooms, toilet cubicles and change rooms. Although teachers can confiscate the e-cigarettes and discourage the behaviour, they are working against an addictive product and a culture of peer pressure. The feedback from parents is clear: high school students incorrectly assume that vaping is a cool, healthy alternative to traditional cigarettes. They are either unaware or naive about the addictive properties of vapes.

Despite the banning of nicotine e-liquids without prescription from 1 October 2021, it still remains relatively easy to acquire nicotine vaping devices. Just last week, we were able to easily purchase a vaping device at a local specialist store. I have one here. I wonder whether there will be a transitional grace period for retailers. I have also bought several devices online, some of which would fall outside the definition in the Tobacco Products Control Act 2006 because they do not resemble a tobacco product and are designed to skirt the law by being disguised as a USB memory stick, a backpack buckle, a pen or a highlighter. Thankfully, that act is currently the subject of a statutory review, and this gap must be closed.

The liquids in e-cigarettes are very much targeted towards the young, with an array of flavours like peach ice, watermelon, strawberry, bubblegum, mint and menthol. Since I have taken these out of the pack, a really nauseating smell of strawberry is emanating around me! I certainly would not ingest it. We simply do not know what is in some of these products. They lack quality control and transparency. Some dispensers claim to be nicotine-free but actually contain that substance.

The other concern is that substances that are ordinarily benign are toxic once heated through the vaping device. Curtin University respiratory physiologist Associate Professor Alexander Larcombe has studied 65 common liquids used in vapes from local suppliers, and recently published his findings. He found that many contained carcinogenic and other harmful ingredients. The research discovered a suite of chemicals, many of which are known to have negative impacts on lung health. The researchers found evidence of a group of chemicals known as polycyclic aromatic hydrocarbons, which have been linked to lung, bladder and gastrointestinal cancers. They also found that high levels of the lung irritant benzaldehyde—thank God for Hansard, that is all I can say—had been added to 61 of the 65 e-liquids that they sampled to give them an almond flavour. That substance changes how the lungs work by impairing cells that are normally responsible for cleaning up pathogens. One of the main flavour enhancers in vapes is benzyl alcohol. It was found in 42 of the samples, in some cases at very high levels. Benzyl alcohol, as a skin sensitising substance, can cause severe allergic reactions. Another finding was that the metal heating coil in vaping devices degrades over time with use. The coil is made up of chromium, nickel and iron. Researchers found that low levels of those heavy metals are ingested. These findings have prompted the Minderoo Foundation to call for sweeping reforms to the production of e-liquids in Australia. Steve Burnell, the chief executive of the Minderoo Foundation's Collaborate Against Cancer initiative, has said that restrictions on non-nicotine vaping products, changes to the Tobacco Advertising Prohibition Act, and much stricter monitoring and compliance are all required to protect our young people from these toxic products.

MR R.H. COOK (Kwinana — Minister for Health) [9.32 am]: I thank the member for her grievance today. This grievance is very timely and very important, because this is an area of increasing concern in our community.

Member, I remember that when vaping was initially raised and becoming more prominent, people were looking to vaping as something that would enable them to consume tobacco products in a safe way. Indeed, in many parts of the word, vaping was characterised or marketed as a way of getting off cigarettes. That was consistent with the fact that big tobacco was investing heavily in vaping companies. It is very clear that vaping is not a ramp off; it is a ramp on. That is why the marketing of e-cigarettes has been so focused on young people. They are trying to create a new generation of tobacco addicts, and are doing that in the United States with a great deal of success.

The comments that the member made about vaping, and particularly nicotine, are an incredibly important observation. I hope that we will be in a position to legislate further on that issue shortly. The Department of Health is completing its regular five-year review of the Tobacco Products Control Act. I hope that will come forward with recommendations about how we can further legislate to tighten our tobacco product laws, and in particular meet these new challenges to the public health of the community by clamping down further on these insidious products.

Member, I remember that when I went to the United Kingdom a couple of years ago, I was struck with how endemic the use of vaping products was in the London community that I was circulating in. It struck me at that point how important it is that we fight against this. As the member observed, it is not always the nicotine content that is doing

the harm in creating the new generation of tobacco smokers. We need to continue to do further research into both the short-term and long-term effects, as well as the consumption of these products, to make sure that we can stay on top of this issue. The Department of Health contributes to the funding of population-based surveys that measure the use of e-cigarettes by young people and adults in Western Australia. This includes the WA Health and Wellbeing Surveillance System survey, and the Australian Secondary Students Alcohol and other Drug survey. The Department of Health continues to monitor research and international evidence to establish the composition of nicotine and non-nicotine liquids and their potential harms. The Department of Health is aware of ongoing research at the Telethon Kids Institute in this area, which is providing further insights.

The national regulatory changes that were implemented by the Therapeutic Goods Administration from 1 October this year clarified that all consumers will require a doctor's prescription to legally access nicotine and liquid nicotine for use in e-cigarettes. The TGA is working with Australian Border Force and has a plan for education and compliance activities that will be undertaken to support the regulatory requirements for importation and supply of nicotine vaping products from 1 October. Under the personal importation scheme administered by the TGA, both before and after 1 October, Australians are able to purchase e-cigarettes containing nicotine from overseas websites provided they have a valid doctor's prescription. That TGA decision is consistent with the ban that has been in place in all states and territories since 1 October on the sale of e-cigarettes containing nicotine without a valid medical prescription. There is ongoing dialogue between the state, territory and national governments to monitor the implementation and enforcement of this ban.

The member talked about the Ministerial Drug and Alcohol Forum. I sometimes wonder whether Food Standards Australia should also be engaged in the issue of e-cigarettes, given that although it is the consumption of a non-nicotine or non-drug-based product, there is, as the member has said, increasing evidence to suggest that it does a great deal of harm. We know that vaping liquids and aerosols produced by e-cigarettes, both nicotine and non-nicotine, have been found to contain substances that are harmful to human cells and DNA, and that in the short term they may cause vomiting, nausea and irritation to the throat and lungs. Certain flavouring agents have also been linked to health harm when inhaled, such as irreversible lung damage and respiratory failure. The national regulatory changes from 1 October clarified that consumers across Australia will require a doctor's prescription for the supply of e-cigarettes. The member will be pleased to know that members of the public can report any concerns about the sale of nicotine in Western Australia to the Department of Health's medicines and poisons regulation branch via the email address MPRB@health.wa.gov.au.

The use of e-cigarettes is an emerging public health concern for all Western Australians. I am startled by the anecdotes that the member revealed in her grievance about how e-cigarettes are being consumed in schools. I am also aware that some schools are now installing detection devices in the toilets; I cannot tell members where, and I am not sure of the extent to which that program is rolling out. Clearly, if we do not get on top of this, we will lose another generation of young people and other Western Australians to the insidious effects of the addictive nature of nicotine and nicotine-like products.

Member, I look forward to the recommendations for changes to the Tobacco Products Control Act, and to the support of all members as we further tighten those arrangements. The member's observation about the non-nicotine-based products in e-cigarettes is an important warning to heed. I look forward to continuing to work with the member to understand how we can further regulate this market, because, if we do not regulate it tightly, it will do untold damage to our community. Thank you.

BUNBURY HOSPITAL — OPERATING THEATRES

Grievance

MS L. METTAM (Vasse — Deputy Leader of the Liberal Party) [9.39 am]: My grievance is to the Minister for Health. I thank him for taking my grievance, which relates to the recent closure of an operating theatre at Bunbury Hospital at South West Health Campus and the impact it is having, and will continue to have, on elective surgery lists in the region. As the minister may be aware, Bunbury Hospital has three operating theatres that are utilised by a number of surgeons, including general, orthopaedic, and ear, nose and throat surgeons, as well as gynaecologists and urologists. Their lists include surgeries across all categories and are often scheduled months in advance, as is the practice across the system, as the theatres are in high demand.

Late last month, surgeons in the region received a letter advising that one of the three operating theatres at the hospital would be closed for the month of November due to a shortage of theatre staff. WA Country Health Service asked surgeons to prioritise urgent category 1 cases, over-boundary cases and patients close to boundary, and delay all other patients if possible for the month of November. This was obviously distressing for both the surgeons and affected patients. However, surgeons were further advised last week that the theatre closure will continue and a number of lists will also be cancelled in December. All elective surgery is also being suspended from 23 December until the new year due to Christmas. Surgeons have been told that into 2022, the cancelled lists will be announced on a monthly basis. This has caused considerable concern among those surgeons as they believe it highlights a very poor standard of patient care and no real certainty or ability to plan for either surgical teams or the patients they are treating. I have been advised that the closure of the theatre has resulted in the cancellation of surgery for about 200 patients this month

alone, with many more likely to be impacted on other lists in other theatres at the hospital as they are bumped or cancelled due to more urgent cases arising. It is more likely that up to 300 patients will be impacted by the closure this month alone. I am also advised that one surgeon had a whole list of category 1 procedures cancelled. The reality is that a number of other category 1 surgeries will also be unavoidably cancelled, which is of great concern.

As the minister would be aware, in a regional area with limited facilities, these lists are not easily rescheduled. The closure of this theatre means that whole lists of scheduled patients, who may have been waiting many months for their surgery, have been and will continue to be cancelled. For some patients, the earliest they can be rescheduled is currently April next year. However, as more operating lists are cancelled, I am advised that the patient waiting times will blow out much further. The closure of this theatre is in addition to a number of intermittent cancellations and suspensions to elective surgery lists since July.

Although this is undoubtedly disappointing, there is also genuine concern that the continual disruption in the patterns in elective surgery will lead to an increased acuity of cases, resulting in more patients presenting at the emergency department requiring urgent surgery. This obviously results in increased pressure on our already stretched emergency departments, along with hospital bed capacity, which could have been avoided if surgeries were performed electively in a timely manner utilising day surgery facilities.

I note that in response to a question in this place on Tuesday, the minister said to the member for Cottesloe —

> I assume that the member is saying that we have currently suspended elective surgery, but that is not true. The member is wrong.

I would ask the minister to clarify those comments, as clearly there are ongoing suspensions and cancellations of elective surgery lists. I am sure Bunbury is but one example of this. Was the minister implying that because the suspension is not across the whole system, it is not happening?

It is shocking to see the cancellations of category 2 and 3 surgeries continue, let alone category 1, despite the absence of COVID in the community. It is also important to note that these are just not names on a list. Many patients on elective surgery lists are suffering in chronic pain, with their family lives and livelihoods often impacted while they wait for their surgeries.

I refer to one patient who wrote to me outlining the impact of ongoing cancellations for his hip replacement. As a self-employed courier, he was struggling to walk, let alone complete his work, as he suffered constant pain. However, as a subcontractor, if he does not work, he does not get paid. According to my notes, he said —

> I have to pay another person to do my job for 10 weeks that I'm off work for a full recovery … or I risk losing my job/contract altogether.

At the time of writing, he had waited 324 days for his surgery and was physically exhausted. He also spoke of the emotional rollercoaster for both him and his family after his surgery was cancelled a second time, just 90 minutes beforehand. Preparing for surgery requires a great deal of logistics and for a patient to simply be told that it is not happening now, their surgery is not important enough and it will be rescheduled to next year, maybe, is a lot to bear. Patients in regional areas also do not have the ability to easily be rescheduled at a different hospital if situations such as this arise as there simply are not any other facilities.

As the minister may be aware, Margaret River Hospital's operating theatre closed in 2019 as the facility did not meet current standards. An operating theatre in Collie is also scheduled to close in early 2022 for theatre redevelopment. Last month, the minister announced a redevelopment of Bunbury Hospital that will include increased operating theatre capacity, and I quote —

> … providing the entire South West community with care close to home that will meet the growing demand for years to come."

Although I welcome any investment in the region, particularly given the population growth, I would like to know when this will be completed and how the extra theatre capacity will work, given there are not enough specialist theatre staff to service the existing theatres. I implore the minister to review the situation at Bunbury Hospital to ensure the theatre is reopened as soon as possible and to investigate what other arrangements can be made in the short term to allow the growing backlog of elective surgeries to be undertaken. These rolling cancellations with little notice are causing considerable anguish for health workers, surgeons and patients alike.

MR R.H. COOK (Kwinana — Minister for Health) [9.46 am]: I thank the member for Vasse for her grievance today. Can I just put on the record to start with that Bunbury Hospital at South West Health Campus is maintaining the use of all three theatres and the endoscopy suite, so the premise for her grievance is entirely wrong.

Bunbury Hospital has not closed its theatres, but it is true that it is operating at a reduced theatre capacity aligned with workforce availability. I am advised that that is primarily in the sterilisation technician field and, obviously, we have to work to the workforce capacity that we need.

My attention was drawn to an article in *The West Australian* today in which Dr Shane Kelly, the CEO of St John of God Health Care, said that they need 500 people in their system at the moment, such is the shortage in the health

workforce. In addition, yesterday I met with the chief executive officer of Ramsay Health Care who reported that the key challenge is attracting staff not only locally, but also nationally. Therefore, we have to continue to work within those constraints. I would like to thank Bunbury Hospital for doing a wonderful job in trying to overcome these challenges. It is working collaboratively with St John of God Bunbury Hospital, which is part of the South West Health Campus, on theatre activity.

Theatre activity has been supported across the south west region, with some surgical activity moving to Busselton Health Campus and staff from other sites supporting Bunbury Hospital. The elective surgery waiting list is being closely managed, with priority given to category 1 and 2 cases and those close to or over boundary. In relation to the case that the member for Vasse raised, a hip replacement is generally regarded as a category 3 unless it is of a particularly severe deterioration, and so that person would potentially be seen within 365 days. I think the member mentioned that this person was at 324 days, so he is not yet at over boundary.

It is true that lower priority or acuity operations make way for emergency or category 1 operations. That is the nature of elective surgery in a public hospital system. It is how it is managed right around the world; otherwise, we would have operating theatres sitting idle waiting for emergency cases while not taking the opportunity to schedule less urgent cases in those theatres. A proactive approach is being taken with individual specialties and surgeons to minimise day-of-surgery cancellations and ensure that services are sustained. There is also an increased focus on pre-surgical screening to ensure that patients are well prepared for surgery and to identify any patient who may be at risk and needs to be prioritised. Short, medium and long-term workforce strategies are being progressed to manage significant staff fatigue and wellbeing issues. The government has allocated $200.1 million for the transformation of Bunbury Hospital at South West Health Campus into an expanded facility that is capable of meeting the complex needs of the south west population into the future.

The WA Country Health Service's commitment to Bunbury Hospital becoming a contemporary and desirable workplace and an employer of choice in regional Australia will support the work of that hospital. The capability of smaller sites will continue to be supported with the regional service planning that is being undertaken. Of course, the state government is investing in Collie Hospital in line with its plan to redevelop its theatre. As I said, we have a $200 million hospital redevelopment underway. The first stage of that redevelopment has seen the allocation of a project for stage 1, which will see a significant expansion of hospital parking to ensure that people going to that hospital have their parking needs met. Once the first stage is completed, we will move to stage 2 of the redevelopment program. It will be a significant redevelopment of the hospital, one that is well overdue and that we are rightly proud to be leading as part of the overall expansion and redevelopment of our regional hospital network.

An investment of $10 million also has been allocated to the Bunbury Hospital service development and reform project. The project purpose is to embed patients at the centre of contemporary service models and to have an agile organisational workforce that meets current and future demand in the south west region. Staff in a regional hospital setting have to be nimble and able to adapt because there is no larger workforce to draw on inside the hospital. That is one of the great challenges, but it is also one of the great rewards of working as part of the WACHS team. The project team leading this is currently working to develop the Bunbury Hospital high-level concept plan, which will inform the capital planning associated with that redevelopment. That is in the planning and development phase stage, and we very much look forward to further progress.

In conclusion, once again the member for Vasse has come into this place with false assertions, stating that we have closed one of Bunbury Hospital's operating theatres. That is not true. Having had some experience in the role of shadow Minister for Health, I understand that the member would be in receipt of a range of information provided to her by a range of people for a range of motivations. It is part of her role as the shadow minister to identify what is actually the case before she comes into this place and makes wild accusations.

DENMARK SURF LIFE SAVING CLUB — UPGRADES

Grievance

MS E.J. KELSBIE (Warren–Blackwood) [9.53 am]: I rise today to raise a grievance with the Minister for Sport and Recreation about protecting the hard-won funds of Denmark Surf Life Saving Club and the Shire of Denmark. In addition to its own financial contributions, Denmark Surf Life Saving Club has worked tirelessly to secure $2.125 million from the state government and Lotterywest, as well as $800 000 from the Shire of Denmark, to fund the much-needed upgrade of its emergency service facility and clubrooms at Ocean Beach. The approved grants of $1.5 million from Lotterywest and $625 000 through the community sporting and recreation facilities fund are central to the project's viability. Unfortunately, the redevelopment project was also hinging on a grant from the commonwealth's building better regions fund, which, for reasons that have not been clearly explained, has been rejected by the federal government.

The Denmark Surf Life Saving Club plays a vital role in the safety, wellbeing and sense of community of the Shire of Denmark. Up until last year, I was proud to serve as the first female president of the club following many years as a volunteer and part of the committee. I am still a volunteer lifesaver at the club. As club patron and ex-president, I know firsthand that the club has been a strong part of the local community since 1958. It continues to provide

training, education and fitness for people of all ages and abilities and offer support to community groups that use the facilities year round. It is also part of the local emergency management response team that helps to keep beaches in Denmark and further afield safe. I understand how important this project is to the club, the precinct and the community, as well as for tourism and, most importantly, safety.

Over the past five years, I have watched with pride as the club's membership has more than doubled. The club has more than 400 members, with around half of those being junior members. In 2018, the Denmark Surf Life Saving Club was named WA Surf Club of the Year. The club received the prestigious award at the Surf Life Saving WA Awards of Excellence and was the only regional club in the running, beating the North Cottesloe, Fremantle, Sorrento and Trigg Island Surf Life Saving Clubs.

In 2020, the club hosted the first, and possibly only, SunSmart WA Country & Masters Championship events held outside the metro area. The club won the flag for the country championship handicap for 2020, meaning that it was most improved, which is an excellent testament to Denmark Surf Life Saving Club's mentorship of nipper, cadet and open competitors.

Although the club goes from strength to strength, sadly, the same cannot be said about the infrastructure at Ocean Beach. A string of factors has led us to the situation in which the club and Ocean Beach surrounds require urgent attention to retain and enhance infrastructure to meet growing demands at the beach. In July this year, strong rip currents and heavy swells caused substantial damage and safety hazards at Ocean Beach. The weather event caused damage across the lookout, stairs, paths and foundations around the club building closest to the beach. The shire has worked hard to remediate some of the damage to provide an interim solution and access; however, this extreme weather event only further highlights the necessity to fund upgrades.

I will read the words of cadet member Riley, a Bronze Medallion and Surf Rescue Certificate holder, who has been involved in the club for eight years. According to my notes, he said —

> The state of our club rooms is poor. Not only from an age standpoint, but also from a basic necessity standpoint. The primary men's bathrooms only have two toilets (borderline savage regarding the hundreds of male surf club members that use them), two sinks which barely work, no mirrors, and walls that seem to be crumbling.
>
> The bricks that cover the strip in front of the club are literally falling apart, wobbling tiles that pose a health risk for anyone unlucky enough to stub a toe …
>
> The need for funding is stronger than ever before. Just picture what the surf club could do with improved clubrooms and a new set of bathrooms.

I do not know why this project has been rejected by the Liberal–National federal government following assurances that it was on top of the pile. I hope the decision is not political, because that would do a great disservice to the hardworking volunteers who keep us safe year after year, giving up their weekends and holidays to make sure that Ocean Beach is safely patrolled. The McGowan Labor government understands the importance of this project, which is why it promised to fund it. With tourist numbers booming and membership numbers at the club doubling in recent times, it is vital that Ocean Beach, rated as a highly hazardous beach by Surf Life Saving WA, is given the upgrade it needs to create an accessible, multipurpose site that caters for visitors, the community and clubbies' safely.

The Shire of Denmark and the Denmark Surf Life Saving Club have requested that we hold over their hard-won funds while they try to get the Libs and Nats to come to the party and put in their fair share of the project costs. Personally, I am petitioning the federal government to put in its fair share and help fund the Denmark Surf Life Saving Club upgrade. I understand that voting numbers in Denmark are considerably lower than those in Albany, but I really do hope that the federal government sees sense and stops playing political games in the lead-up to the federal election. I will personally deliver the petition to Rick Wilson and lobby him to make sure that politics does not come into this matter and that Denmark Surf Life Saving Club gets a fair go during the next round of the commonwealth's building better regions fund.

I ask the minister to share with the house what he can do to help support Denmark Surf Lifesaving Club and protect the hard-won state funds towards the project. Youth officer and Denmark Senior High School teacher Deb Edmondson understands the positive impact the club and facilities provide.

She has told me how the Denmark Surf Life Saving Club is a central part of our community, and how it provides lifesaving services to the town and to the broader Western Australian public through the summer tourism season. I ask the minister to share with the house what he can do to help support the Denmark Surf Life Saving Club and protect the hard-won state funds for this project.

DR A.D. BUTI (Armadale — Minister for Sport and Recreation) [9.59 am]: Firstly, I would like to thank the member for Warren–Blackwood for bringing this grievance to my attention. I note that she is an outstanding advocate for her local community and a long-term member of the Denmark Surf Life Saving Club, which is very involved in the safety of members of her community.

With regard to this grievance and the concerns of the club, on 14 October, with the member, I had the joyful experience of visiting the Denmark SLSC, along with Martin Norwood, the president of the club; Wayne Winchester,

a long-serving member of the club who is involved in the club's redevelopment project; David Schober, the CEO of the Shire of Denmark; and David King, deputy CEO and director of assets and sustainable development, also from the Shire of Denmark.

As the member mentioned, the Denmark SLSC has an existing community sporting and recreation facilities fund grant of $625 000, which was given conditional approval in June 2020 by the then Minister for Sport and Recreation, Hon Mick Murray. The club was also provided with a further $1.5 million grant from Lotterywest. In all, that is a $2.125 million contribution from the McGowan state Labor government towards this project, which is incredibly significant for the region and for the Denmark Surf Life Saving Club.

It is a beautiful area; it has to be one of the most beautiful surf lifesaving club outlooks in Western Australia—sorry about that, member for Scarborough! But it is also in desperate need of redevelopment. Although it is an incredibly beautiful area, it is rugged and, at times, very dangerous, so it is absolutely critical to have a viable surf lifesaving club in that region, and it needs proper facilities. It is not only that it needs redevelopment to improve its facilities; it is also for the survival of the club, because during storms the buildings, in their current condition, come under significant threat, as they did earlier this year.

In addition to the state government contributing $2.125 million through the CSRFF and Lotterywest, the Shire of Denmark has contributed a further $800 000 towards the project, because it understands the significance of the Denmark Surf Life Saving Club. I encourage anyone who goes to that region to visit the club and take in those breathtaking views, but as I said, they come with a harsh and rugged coastline that is also very dangerous. Upgraded rooms and facilities will be excellent for both the local community and visiting tourists, but the upgrades will also be vital for ensuring that local surf lifesaving volunteers can respond to emergencies along the coastline.

The state government has made a significant contribution of $2.125 million and the Shire of Denmark has put in $800 000, so where is the federal government? Unfortunately, the federal government has not come to the party. The member mentioned petitioning the local federal member, Rick Wilson. She might also want to speak to the member for Roe, who I believe has an office next to the federal member in Narrogin, or used to. The member for Roe is always going on about the need to fund things in the regions. This is a project for which the state government is contributing $2.125 million, which I am sure the member for Roe applauds, and the Shire of Denmark is contributing $800 000. However, the member for Roe's federal colleague is silent. I look forward to him knocking on Rick Wilson's door in Narrogin, going in for a cup of tea and putting the case for the need for this upgrade. The upgrade is needed for not only the comfort, but also the survival of the club going forward, which is crucial for safety in that area.

It is interesting that Rick Wilson is nowhere to be seen on this matter, and that the federal government rejected the club's application for a building better regions fund grant. It gave no clear reason for its rejection. A grant from the federal government is needed to ensure that this development goes ahead. The state government is pulling its weight, the Shire of Denmark is pulling its weight, but the federal government is not. I am surprised that someone like the member for Roe, who has an office next door to the federal member, is not in the member for Warren–Blackwood's corner on this issue. I am sure that after this grievance the member for Roe will take up the case and go to see Rick Wilson.

The commonwealth government's building better regions fund has committed $125 million to 81 tourist-specific infrastructure project upgrades across Australia, including a number in Western Australia. But for whatever reason, it is missing in action in respect of the Denmark Surf Life Saving Club. That is very surprising because of the critical need for this redevelopment to go ahead and for the continuing viability of the club, which is a crucial safety presence in that region.

The chief executive officer of the Shire of Denmark, Mr David Schober, has written to me, explaining that the project has been thrown into disarray by the shire's inability to secure funds from the commonwealth government, but I am pleased to tell the member for Warren–Blackwood that I have granted a six-month extension to the club's $625 000 CSRFF grant to afford the shire and the club more time to secure a commitment from the commonwealth government and the local federal member. That will provide more time, and hopefully the member for Roe will help in that pursuit. Thank you.

PUBLIC ACCOUNTS COMMITTEE

Third Report — A statement of understanding between the Public Accounts Committee and the Auditor General — Tabling

MRS L.M. O'MALLEY (Bicton) [10.06 am]: I present for tabling the third report of the Public Accounts Committee titled *A statement of understanding between the Public Accounts Committee and the Auditor General*.

[See paper 814.]

Mrs L.M. O'MALLEY: This report tables a statement of understanding entered into between the Public Accounts Committee and the Auditor General of Western Australia. The statement—the first one entered into between a Public Accounts Committee and the Western Australian Auditor General since 1996—plays an important role in setting out the terms of the working relationship between the committee and the Auditor General, therefore enhancing that working relationship. Of additional significance is who executed the statement. I am honoured to be the first

female chair of the Public Accounts Committee in Western Australia's history. Caroline Spencer was also, in 2018, the first woman appointed to the important role of Auditor General for Western Australia, and the committee of the forty-first Parliament has a majority of female members. It is thus with pride that I table the third report of the Public Accounts Committee.

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

Second Report — Report review 2020–21: Examination of selected reports by the Commissioner for Children and Young People — Tabling

MRS R.M.J. CLARKE (Murray–Wellington) [10.08 am]: I present for tabling the second report of the Joint Standing Committee on the Commissioner for Children and Young People titled *Report review 2020–21: Examination of selected reports by the Commissioner for Children and Young People*.

[See paper 815.]

Mrs R.M.J. CLARKE: The committee has reviewed the Commissioner for Children and Young People's 2020–21 activities and also considered two other important reports tabled after the end of the financial year. One of these reports was a comprehensive literature review of research, here and overseas, into the decline of wellbeing for girls. It was the commissioner's first Speaking Out Survey that identified the gender wellbeing gap—that is, the noticeable difference in wellbeing between boys and girls from when they enter the teenage years.

This is a valuable finding from this remarkable survey, which continues to prove its worth as a rich source of data on the health and wellbeing of our state's children and young people. The issues troubling teenage girls make for worrying reading and I am pleased to see that the commissioner's office has plans to follow up with groups of young people—females, in particular—to tease out some solutions. The second Speaking Out Survey has now been completed, with three times the number of participants as in the first survey, and the initial summary of results is imminent. I will be one, among many, reading the results with interest.

The commissioner's office completed a wideranging set of activities in 2020–21, including monitoring the impact of COVID-19, creating child-safe resources and following up the progress of previous recommendations. Disadvantage in vulnerable children requires particular attention and there is always more that could be done. We appreciate the efforts made to reach as many marginalised groups and individuals as possible, especially in a state as vast as ours. As Colin Pettit's time as commissioner comes to an end, I would like to thank him for his outstanding service over the past six years and for his passion in addressing critical issues for the health and safety of children and young people. We wish him well.

I would also like to congratulate the newly appointed commissioner, Jacqueline McGowan-Jones, an Aboriginal woman. On behalf of the committee, I thank Sarah Palmer, principal research officer; Lucy Roberts, research officer; and Carmen Cummings, research officer.

Third Report — The merits of appointing a commissioner for Aboriginal children and young people — Tabling

MRS R.M.J. CLARKE (Murray–Wellington) [10.10 am]: I present for tabling the third report of the Joint Standing Committee on the Commissioner for Children and Young People, titled *The merits of appointing a commissioner for Aboriginal children and young people*.

[See paper 816.]

Mrs R.M.J. CLARKE: Western Australia has around 40 000 Aboriginal children and young people, the third biggest population after those in New South Wales and Queensland. Those two states have appointed an Aboriginal person to act in the interests of Aboriginal children and young people, and so have Victoria and South Australia, whose Aboriginal children number around 25 000 and 19 000 respectively. Those states have established that having an Aboriginal advocate can help to address the higher levels of disadvantage experienced by these young people. Aboriginal children and young people in WA face the same type of entrenched disadvantage; in fact, many face additional challenges because of where they live. WA has the highest number of Aboriginal people living in remote or very remote regions—38 100 compared with 36 600 in Queensland. This is 38 per cent of WA's Aboriginal population, while the Queensland figure represents only 16 per cent of its Aboriginal population.

The four states with an Aboriginal commissioner or guardian have outlined their reasons for making the appointment. There have been calls for all states to have such a position, as well as for an Aboriginal commissioner at a national level. WA has not appointed an Aboriginal commissioner, even though there have been recommendations to make such an appointment for two decades. Various arguments have been put forward for why the current arrangement, which allocates responsibility for all children to the Commissioner for Children and Young People, is acceptable. But it is worth noting that the commissioner himself firmly believes that there should be an Aboriginal commissioner. Outgoing commissioner Colin Pettit has worked hard to connect with Aboriginal children and young people and the adults from their communities, but he is the first to admit that an Aboriginal person in the role could do it better and someone should be given the opportunity. Aboriginal children and young people need to be heard loud and clear to have a better chance of a brighter future.

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Third Reading

MR J.R. QUIGLEY (Butler — Attorney General) [10.13 am]: I move —

That the bill be now read a third time.

DR D.J. HONEY (Cottesloe — Leader of the Liberal Party) [10.13 am]: I rise to make a short contribution to the third reading of this bill. I want to go through one of the core issues that has been the subject of discussion during debate on the bill—that is, whether this bill will in fact make it easier or more difficult to deal with child sex offenders.

I made it clear at the outset of the debate that we support any effort that the government is making to disrupt organised crime, particularly by organised motorcycle gangs. As part of that, we welcome the efforts by the government to disrupt consorting between organised motorcycle gangs to disrupt their activities and the runs that are so intimidating, particularly for small communities and people who live in isolated areas. We have no concern about that, although we have raised in this place and publicly concerns that this bill will make it more difficult for the police to interrupt consorting between convicted child sex offenders. I want to go through this because the Attorney General made much of this. He said that the new laws will make it as easy for officers to disrupt consorting amongst convicted child sex offenders, and there are other aspects. I will go through this in a little bit of detail. I accept the Attorney General's word that achieving a conviction for consorting by convicted child sex offenders is more codified in this bill. I take the Attorney General's assertion that achieving a conviction under the prescriptions in the bill may be easier to do, but it will also be more difficult for a police officer to intervene. At present, the police rely on section 557K(4) and (5) of the Criminal Code, amongst others. Section 557K(4) states —

> A person who is a child sex offender and who, having been warned by a police officer —
>
> (a) that another person is also a child sex offender; and
>
> (b) that consorting with the other person may lead to the person being charged with an offence under this section,
>
> habitually consorts with the other person is guilty of an offence and is liable to imprisonment for 2 years and a fine of $24 000.

As the Attorney General has stated, his concern is with the second part. My key point is that a police officer can simply see two convicted child sex offenders consorting, which includes communicating in any manner. I note that there is a much longer definition in the bill, but I think the definition of "consorting" clearly covers a whole range of activities that a police officer could intervene in. It means that a police officer will need no approval from anyone else and will need to have no discussion with or authority from anyone else. The police officer will simply be able to intervene in that activity. They will not need a commander to authorise the issuing of a notice before they can intervene.

I think that is significant. It is relatively straightforward to get a commander to authorise something in metropolitan Perth, but if a police officer in Perenjori or Kununurra sees two convicted child sex offenders consorting, whether they are physically communicating or communicating in any other manner, that police officer can immediately warn those individuals. However, under this bill—this is the difference that I am highlighting—there will be a significantly higher hurdle before a police officer can intervene. Let me go through it. It goes to division 2, "Unlawful consorting notices", because the notice is the mechanism. Clause 9(1) states —

> (1) An authorised officer may issue a notice (an ***unlawful consorting notice***) in respect of a person (a ***restricted offender***) if —
>
> (a) the person has reached 18 years of age; and
>
> (b) the person is a relevant offender who —
>
> (i) has consorted, or is consorting, with another relevant offender; or
>
> (ii) the officer suspects on reasonable grounds is likely to consort with another relevant offender;
>
> and
>
> (c) the officer considers that it is appropriate to issue the notice —

The police officer has to "issue the notice", not immediately intervene —

> in order to disrupt or restrict the capacity of relevant offenders to engage in conduct constituting an indictable offence.

They cannot simply go and intervene, particularly in remote locations such as wheatbelt or south west communities, where I grew up. In those places only a single officer may be working in a station. They do not have a commander. Clause 11, "Service of unlawful consorting notice", states —

> (1) An authorised officer must, as soon as practicable after issuing an unlawful consorting notice, ensure that a police officer serves the notice on the restricted offender …

So it is a commander. There is a definition in the bill of the senior police officer who has to fill out that notice. As the bill points out —

> (1) An authorised officer must, as soon as practicable after issuing an unlawful consorting notice, ensure that a police officer serves the notice …

So that notice has to be generated and a commander has to approve it. That commander will ask all sorts of questions, because that commander will definitely be very aware of the "and" in clause 9 that includes subclause (1)(c). That senior officer has a hurdle to overcome before they issue that notice. Then the police officer has to do a whole range of things. I will not go through that exhaustively, but I might say that if a person can avoid service for 21 days, that notice expires and I assume the officer has to go through that process all over again. I do not seek to debate the process used, but what I am making very clear—the Attorney General was quite mocking in his response during debate on this bill—is that the process a police officer has to go through to intervene in consorting between two registered sex offenders is significantly more involved under this bill.

I said this before, but my understanding is that one of the complications with this bill is that we are dealing with organised motorcycle gangs that have deep pockets and can go to courts at all levels in Australia and challenge these laws, so the Attorney General has been very, very keen to make sure that the various parts of this bill dealing with organised motorcycle and criminal gangs are bulletproof. I am sure that the Attorney General is a learned lawmaker and I know his office is full of learned lawmakers. They have tried to make this law as robust as they can so that it cannot be defeated and the government's intent, which we share, of disrupting that criminal activity can be carried out. But for a police officer, interrupting an activity of consorting between two offenders is substantially simpler than having to know this is occurring, get a commander's approval and get a very detailed document. If any mistake is made in that document, it cannot be served, or if it is served, it will not be legal, so this is no trivial matter. The commander will ask all sorts of questions—what information and evidence the officer has—because of that "and" in clause 9(1), and then the officer will have to do it. That will take time. This will not be a five-minute exercise, particularly for officers working by themselves or with a colleague in a more remote area. That is why we have said we admire all the parts in this law that make it harder for organised motorcycle and criminal gangs to do their work, but the lack of ability for very rapid and easy intervention for the officer diminishes the police's ability to intercede in that activity.

As I said, I take it from the Attorney General that a prosecution under this legislation will be more certain. He has indicated that because there was interpretation about what was habitual and the like under the other act, things are more difficult, but my contention, and I do not think it is controversial, is about the ability of officers to immediately intervene in a matter. Even in relation to the issuing of that notice, the Attorney General made much of the fact that the existing Criminal Code says there has to be habitual consorting. From what the Attorney General said to me, if the officer issues that notice to the offender—they have gone through that process—and the offender continues to consort, a prosecution can be launched. In fact, the bill requires that the person is caught consorting two more times before a conviction can be launched, so it is not as though the officer can issue that notice and then, bang, the next time that person does something, they can convict them. That person has to be consorting against the intent of that notice two more times before they can be prosecuted. Again, I suspect that the first notice being issued will act as a deterrent for the more—I hate to use the word—reasonable offender, the offender who perhaps is unaware or who just needs a warning. Clearly, hardened offenders who do not care about the law will ignore it, and hopefully they will be prosecuted. This is no trivial matter. That is the distinction I make.

As I say, I welcome the intent of the law. I think I understand the reason for it—that is, to make sure this is an effective law—but my concern remains that an officer cannot simply intervene and have that original interaction. There is a police officer sitting here in the chamber, although not quite in his own seat. I am certain that on the great majority of occasions that officer did his policing through warning people and moving them on, not through constantly prosecuting them, because, at the end of day, that is resource consuming and that is not where police want to be. Police want to warn people and have them move on, and if they continue to do what they are doing, then they prosecute. That is the point I am making. I do not think it is refutable in this law that early, quick intervention by a police officer is simpler, and it is enabled in the existing law. This new law will make it harder for an officer to immediately intervene in a consorting activity. As I have said, in much policing the early intervention in and interdiction of that event is the most important thing. On that point, I end my third reading contribution.

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [10.27 am]: I want to speak briefly in the third reading debate on this Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021. The member for Cottesloe has outlined the concerns about the changes to the way consorting among sex offenders is treated; he has given a detailed description of that. I want to run through the rest of the bill very briefly.

First of all, Attorney General, I think we explored a number of details in the bill—its background and the justification for some of the measures being brought in. It was quite an enlivened and informing discussion.

Mr J.R. Quigley: I thought your questions were insightful.

Mr R.S. LOVE: I hope they were. In the main, the answers were quite descriptive and as detailed as we could possibly expect at that time. I thank the Attorney General for that.

As we know, there are three main reforms here: the unlawful consorting schemes that are being brought in, the matters of prohibited insignia and the dispersal notices that were discussed. I turn to some of the discussion that took place. It was quite interesting talking about some of the defences that might be available for the new provisions for the dispersal notices, consorting notices and the display of insignia. No doubt some interesting discussions will take place in the courts of law around whether the defence that a person happens to be on a site because they are a union official, for instance, is valid in the circumstance, and a range of other defences that we went through for all the matters outlined in the bill. Perhaps one of the matters that the Attorney General has spoken about most publicly is the insignia of the organisations. There is a list of the organisations. There is not a long gallery of images of all the insignia that will be prohibited, but any insignia that relates to one of those groups is to be classed in that way. No doubt, some innocent people will be picked up by this provision and will have to explain why they are displaying some of the insignia. When explaining the removal of the insignia from the built environment, the Attorney General said that the provisions mirror what happens with the anti-fortification laws, and that is understood. However, it is quite novel to say to a person who has altered their skin with a tattoo that they can no longer display that tattoo and to refer to how much sunscreen the person will have to apply to hide it. I think there will be a bit of interest in that. That has made for good publicity and media releases.

I do not know whether the Attorney General was correct when he said that this legislation will interfere with the functions of the motorcycle outlaw gangs because they will not be able to intimidate people with their tattoos at the traffic lights. They will still have their bikes, but they will not have tattoos, or they will have different tattoos. It will be interesting to see whether this will be as disruptive to their activities as the Attorney General has led us to believe. I do not know whether it will. We explored a lot of those matters in the consideration in detail stage. Anyone who wants to learn a little about those matters can read that discussion and the answers the Attorney General gave, which outline the thinking behind it and the justification the police put forward for it in the first place.

I will end with the thoughts of another lawyer of some note, Tom Percy. Talking about the laws that are being introduced, he said —

> There is no doubt that the latest crowd-pleaser from the McGowan Government will have the desired effect of making the public think that the Government is alive to the "bikie problem" and actively pursuing it.
>
> But the real question is whether the new measures are likely to cause any real disruption to the activities of OMCGs in Western Australia.

Further in the same article he says in relation to tattoos —

> There could also be some very interesting test cases involving persons who were already tattooed with what is now a prohibited insignia.
>
> The law itself could also be subject to challenge at a number of levels as an invasion of civil liberties or personal freedoms. OMCGs have certainly never been shy of litigation.
>
> Whilst politicians will bask in the glory of public approval that these measures will bring, it is unlikely that in Clubhouses around the suburbs this week the members of any Western Australian OMCGs will be particularly concerned.
>
> They have always found a way to flout the law and exploiting this one will be little more than a new challenge for them.
>
> If anything, it could (as can be seen with some sections of American society's adulation of rap and gangster culture) have the opposite effect on young and impressionable members of the community to whom the whole idea of a secret counter-culture society has some real attraction.
>
> At the end of the day, most OMCG's nefarious activities are carried on in extreme secrecy. The inability to openly identify who they are publicly is unlikely to be of much consequence to them.
>
> It is hardly likely to make them shut up shop and leave town. Colours flying or otherwise, I suspect it will be business as usual.

MR J.R. QUIGLEY (Butler — Attorney General) [10.34 am] — in reply: I thank members, particularly the member for Moore, for their contributions to the Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021, and I thank the Leader of the Liberal Party for aspects of his contribution to the bill and the acknowledgement that this is a genuine and best attempt to try to disrupt outlaw motorcycle gangs. I say at the start that this did not come from Labor Party ideology, government ideology or the state conference of the Labor Party as an item of social belief; this legislation was born in response to a direct request by the Western Australia Police Force for this legislation. The request for this legislation was made publicly by the police in the lead-up to the last election. It was not made during the campaign. As I recall, it was made some time after the Perth Motorplex assassination when the police were confronted with drive-by shootings of bikies and a vicious brawl in a licensed restaurant in Scarborough in the middle of a Sunday afternoon when families were present—chairs were thrown everywhere and the late Mick Martin was beaten to a pulp by what is called the sergeant-at-arms of another OMCG bikie outfit. It is no wonder the police were calling for law reform in this area.

In response to the comment made by the member for Moore that it is questionable whether this law will disrupt bikies, this law and the papers we have in front of us this morning will not disrupt bikies. What will disrupt bikies is the police gang squad. We have seen vision of them with their door-busting ram, pouring into buildings wearing dark helmets and dark glasses and all the accoutrements to take on armed offenders. It is the actions of the police that will disrupt outlaw motorcycle gangs. The police went to both sides of politics before the election. I doubt whether, if elected, a conservative government would have turned down the police request either, because we entrust and charge the police with protecting our society and busting these outlaw motorcycle gangs, which are the retail outfits of methamphetamine supply. There is no doubt about that. They can do teddy bear runs and all those things in some vain attempt to change their image. In recent press releases, I have seen them go on little runs to raise some hundreds of dollars for sick children. One wonders why. They had $1 million to let murder contracts on three people. They had already disbursed $340 000 for the first murder. Think of how many sick children that money could have saved. Think of how many sick children that $1 million they put out on a contract on three human lives could have saved. We see their Christmas teddy bear run to buy toys for Perth Children's Hospital. There is no doubt that they could buy a toy factory with their drug money. Just think: $50 million was taken from trucks on Eyre Highway last year. I stood at a press conference at the Midland police complex where they had $30 million vacuum-packed on trestle tables. I had never before been so close to so much money, member for Moore. It was being guarded by the Tactical Response Group, but it was all vacuum-packed and it covered three or four trestle tables.

Mr R.S. Love: I thought it was $50 million. It was $50 million when you took it off the road and $30 million when you counted it! How did that happen?

Mr J.R. QUIGLEY: It was $30 million. There was more money already banked. The packs of money on the grass in front of the trestle tables came up to the height of the trestle tables, and then there was money on top. I looked closely at this money. The packs were like bricks. They were all $50 notes handed over by the youth and citizens of this city to buy drugs. This supply chain has to be disrupted. The police came to us and asked us to give them these laws. I was sceptical. I said, "Well, if we outlaw the patches, the police won't know who the baddies are." They said, "Do not be so naive, Attorney. We know their names. We know their addresses. We know their nominees. We have police intelligence." Look how the police intelligence worked in relation to the Perth Motorplex assassination. Within a short time, the murderer was arrested and the person who allegedly let the contract was also incarcerated and is now on several serious charges, including murder and two conspiracies to murder and whatnot.

The police said they want these laws because when they interact with the OMCGs out on the road, the bikies can just flip the bird at them. That is an Australian colloquial term. If they are not then and there breaking the law and carrying drugs on their person, or riding an unlicensed bike or breaking the traffic law, we just have to suffer them. We have no purchase over them. We will now have an ability to disrupt them. Once this law passes, the police will have that weapon. They have come to this Parliament. They have come to the body politic and asked us to give them these laws. We said we would, but that we would build into the laws reasonable defences like being at an educational institution together, but only if it is reasonable that they are in proximity to each other. There is a reasonableness test. We are not trying to interfere with human rights or with families. If they can show it was a genuine family event, they will have a defence. We will be giving the police the toughest laws in Australia, with built-in reasonable defences, and no-one in this chamber—I thank members—has criticised the defences, because they are reasonable. The association must be necessary and reasonable.

Also, the Commissioner of Police will have a right of review for dispersal notices. The laws were drawn up by officials within the Department of Justice, working with senior police who were delegated to the task by Acting Commissioner of Police Col Blanch—and what an asset he is to policing in Western Australia. I think everyone would agree with that. He has led a magnificent team, along with the best commissioner in Australia, Commissioner Dawson, who has stepped aside to be our Vaccine Commander. There will be a right of review for dispersal notices.

This is not a second reading speech, so I would like to turn to that aspect of the bill raised by the Liberal Party—not the Nationals WA, which is the official opposition, but that rump, the Liberal Party. It has come to this chamber not to praise Caesar, but to bury him. It has come not to praise the bill, but to attack and try to bury it by saying that it will weaken the laws against child sex offenders. What a lot of nonsense. I have gone back through the *Hansard* of when this bill was before the chamber last, and the member for Cottesloe, who has been so vocal on this point about clause 9 and section 557K of the Criminal Code, did not breathe a word of it the last time this debate was on in Parliament. He was unconcerned about this. This is a confected concern under a new shadow Attorney General. We know what the previous shadow Attorney General, Hon Michael Mischin, had to say when the bill was last before Parliament, and he never had a kind word to say about any of the legislation I brought to this chamber or about me. He was never-ending in his criticisms, but he gave this bill high praise and said it would improve the current system and was good legislation. That is what the previous shadow Attorney General said.

In the forty-first Parliament, the member for Cottesloe, who was unconcerned last time about clause 9 of the bill and did not raise section 557K(4) or (5) of the Criminal Code, has tried, in most of his contribution to the third reading and consideration in detail stages and in his social media postings, to undermine the strength of this bill by trying to scare the public by saying this is a step backwards in respect of child sex offenders who may consort. He then gave a bush lawyer's description of section 557K(4) of the Criminal Code. All that the police will have to do if they

see two child sex offenders is to warn them that the other person is a child sex offender and that consorting with the other person may lead that person to be charged with an offence under this section. All they will have to do is warn them and wag their finger at them. There would be no written record, no regime, no right of review by the Commissioner of Police; they would just say the other person is a child sex offender and warn them to stay away.

This is the stickler of the whole scheme. That person can be prosecuted if they habitually consort with the other person—not just be in the other person's company on two or three occasions, but habitually consort. "Habitually" is not defined in the Criminal Code, so the courts have to go back to the common meaning of the word. According to the *Macquarie Dictionary,* "habitual" means "the nature of a habit". He had a habit of being in the other person's company. They could go to a porno movie in those scungy theatres they used to have in Hay Street—I think one was called the Savoy. It was sort of running on a loop.

Dr A.D. Buti: I would not know.

Mr J.R. QUIGLEY: We could not walk down the mall without seeing them advertised. Going into the Savoy in a raincoat and being present in the theatre whilst another child sex offender is present is not enough to prosecute them. To see them there three weeks in a row is not enough to prosecute them because the person can say, "I was there but I didn't know he was going to be there. It was casual contact. I am not seeing that person as a matter of habit." The *Australian Oxford Dictionary* says "habitual" means "done constantly or as a habit" or "usual". They are usually in that person's company. This is the problem the police face with "habitual". It is not simply a case of the member for Cottesloe saying that an officer can give them a warning. In giving them a warning that the other person is a child sex offender, he has to then say to them, "If you are habitually in that person's company, you will be prosecuted", because habitually is an element of the offence. It just goes nowhere.

Indeed, the person can go along to court and say, "I wasn't habitually in anyone's company. I went to this movie show because I like these filthy movies. There was someone else in the theatre. So what? I can't be prosecuted", and they will get off. Is it any wonder that of the 3 500 registered sex offenders in Western Australia and the anti-consorting notices that have been issued, there have been only eight convictions? They have only tried 20 times in about 15 years. There have been only eight convictions, and one wonders whether those people were even represented—one got fined 10 bucks. One wonders whether they would ever have been convicted if they had challenged the word "habitually". If those eight had had Mr Percy, QC, down there defending them, they would not have been convicted because section 557K(4) and (5) is so full of holes that an elephant could walk through it!

Seeing that the member for Moore raised the name of my friend of 45 years, Mr Percy, I will say that I had an ale with my friend the other night at the bench and bar dinner. That is a function for judges and senior barristers. I saw Sir Thomas there and we had an ale—we are friends. He had criticised me and I had criticised him, on fair ground. I read his comments in the paper where he criticised this. I thought, "That's a good one, Tom. The bill hasn't even been released and you're trying to identify the shortcomings in it. You haven't read the bill because it has never been tabled." I reject what the member for Cottesloe has said because under the new legislation, if two people are seen consorting, someone will be able to ring up the gang squad—there will be a commander available—and an anti-consorting notice can be issued immediately and it can be orally served, as clause 11(1)(a) says. There will be no hold-up. Alternatively, they can do what they cannot do at the moment and say, "You've got to stay here for two hours so we can serve one", or "You've got to come to the police station", but they will no longer have to prove habitual consorting. This legislation is much, much stronger. I am proud and humble to be the Attorney General to bring this bill forward at the request of the Western Australia Police Force, designed by Western Australian police in concert with the Department of Justice, the State Solicitor's Office and the Solicitor-General.

I commend this bill to the chamber in every respect.

Question put and passed.

Bill read a third time and transmitted to the Council.

ABORIGINAL CULTURAL HERITAGE BILL 2021

Consideration in Detail

Resumed from 17 November.

Clause 25: Facilities and services —

Debate was adjourned after the clause had been partly considered.

Clause put and passed.

Clauses 26 to 29 put and passed.

Clause 30: Committees —

Dr D.J. HONEY: Clause 30 appears at page 31 of the bill. I understand that the clear intent of the clause is to establish committees. I wonder whether the minister could provide some examples of the types of committees that the Aboriginal Cultural Heritage Council would likely require or may require. Would the minister provide some examples of those, please?

Dr A.D. BUTI: Obviously, the legislation has not been enacted and is not operational, but committees that could be formed would obviously assist in performing the functions of the council. They may include committees consisting of Aboriginal people with cultural authority for particular regions or areas.

Clause put and passed.

Clause 31: Procedures —

Mr V.A. CATANIA: Clause 31 states —

> Subject to the regulations, the ACH Council may determine its own procedures.

Will the council be able to determine its own procedures per application or will there be a set procedure that it will follow, or will every application be treated in a different way?

Dr A.D. BUTI: That will be determined once we co-design the regulations. The regulations will determine the procedures that will be followed.

Mr V.A. CATANIA: The ACHC would still have the ability to treat each application in a different way, which obviously could provide uncertainty for applicants. Does the government want an application process that is uniform across the board?

Dr A.D. BUTI: Obviously, the procedures will have some consistent parts to them from one application to another, but there needs to be that variety or the ability to have variation because of culturally sensitive issues that may come up from time to time that can only be determined for that particular application.

Clause put and passed.

Clauses 32 and 33 put and passed.

Clause 34: Purpose of local ACH service —

Dr D.J. HONEY: I suspect it is a legal answer but maybe it is a straightforward answer. For the purpose of a LACH service, "a person" is designated as a LACH service. What is the definition of "a person"? It sometimes reads as though it is an individual, but I am aware that there is a more legal definition of "a person" and that it can be a body. I would be grateful if the minister could explain that, please.

Dr A.D. BUTI: The member's partner would know this very well: it could be an individual, a corporation or a body. It will be under the Interpretation Act. If the member goes to the definition clause of the bill, it refers to what a person is.

Dr D.J. HONEY: The local ACH service will clearly have a very powerful role and obviously the key role, if you like, or be the key person or organisation in relation to this whole bill, because they will get a say and will get to make that interpretation in terms of significance. The minister would be aware that in some communities there is a severe split between groups that have quite different views. My understanding is that a LACH service can be identified for a site, an individual thing, but otherwise it is identifying a LACH service for an area. What will happen when a community is strongly divided? I appreciate that it is not generally the case, but I am aware that in some communities there are strict divisions between two sides, and even significant differences of opinion about what may or may not be significant or what may or may not be an important issue.

Dr A.D. BUTI: Clause 39 sets out the requirements to be designated as a local ACH service and refers to the person having sufficient support of the local Aboriginal area to be able to perform the functions.

Dr D.J. HONEY: I am not trying to create an artificial thing, but is there a possibility of having two, where it is 51–49? It is clear that it is a simple LACH service, so the best endeavour will be made to make sure the LACH service represents that group, regardless of a difference of opinion.

Dr A.D. BUTI: Yes; the member is right.

Mr V.A. CATANIA: Clause 34(b) states —

> may charge a fee for services that it provides in connection with the provision of local ACH service functions in accordance with Subdivision 3.

Is there a table of the scope of the fee structure that a service will be able to charge? There can be a lot of work involved in this, and lengthy time as well. Has the government thought about introducing caps on this?

Dr A.D. BUTI: The approved fee structure and related matters are provided in subdivision 3 of this division, so the member may want to ask again when we get to that.

Dr D.J. HONEY: Who will have oversight of the LACHS? Clearly these groups will have a very powerful role. Obviously, for major mining operations and those sorts of things, large sums of money are involved in the activities that are carried out. Who will have the oversight of those groups to ensure there is no impropriety? I am not alleging that these are likely to be improper groups. I am certain we will see the same diversity of human behaviour in

LACH service groups as we see in any other organisation. We know that in the WA Police Force, for example, the great majority of police behave properly but some police behave improperly. The Corruption and Crime Commission has active oversight, not just passive oversight, of the police to make sure they are doing their duty. Will there be an oversight of the LACHS or other processes to make sure there is no impropriety? I recognise that the overwhelming majority will behave in a very proper way, but it may be that an individual will be tempted to approve something, for example, that should not be approved because of the payment of money or some such thing. In any case, I think the minister catches my drift. I am interested in what oversight there will be to make sure there is no improper behaviour, recognising that that is likely to be an uncommon occurrence.

Dr A.D. BUTI: The council will have the oversight. Clause 43 addresses the suspension and cancellation of a LACH service.

Dr D.J. HONEY: Will that be an active audit function or simply a function that results from complaints being raised? Is that something that is yet to be determined? Even in the organisations I worked for before I came here, a group of people routinely audited everything I did as a manager and made sure that I was doing the right thing by my organisation.

Dr A.D. BUTI: I would be interested in who audits "The Clan".

It will be what normally happens. The council will be responsible for overseeing and ensuring that the LACHS operate according to how they should operate. It is no different from the situation in any other organisation.

Clause put and passed.

Clause 35: Nature of local ACH service —

Mr V.A. CATANIA: Why will a person designated as a local ACH service not be an organisation for the purposes of the Public Sector Management Act?

Dr A.D. BUTI: It is because most of them would be prescribed bodies corporate under the Native Title Act.

Clause put and passed.

Clauses 36 to 38 put and passed.

Clause 39: Requirements for designation as local ACH service —

Dr D.J. HONEY: Clause 39(c) states —

> has sufficient support of the local Aboriginal community in the area to enable it to provide local ACH service functions for the area …

How will that be determined? Will that be a process that requires a community meeting? I appreciate that there will be a hierarchy in how that service is provided, but, ultimately, if it does not come down to the existing prescribed body cooperate or one of the other existing bodies, how will it be determined?

Dr A.D. BUTI: It will be determined by the council.

Dr D.J. HONEY: I appreciate the pithiness of the minister's answer, but is he able to elucidate how that would occur in a community? I understand there will be a hierarchy of the bodies. I say to the people who wrote this bill that it is one of the clearest bills I have read, so I thank them very much. When it comes down to identifying an individual, what will the process be? That could be contentious in some circumstances.

Dr A.D. BUTI: This bill is all about ensuring that Indigenous people, Aboriginal people, have the central role in determining their cultural heritage. Therefore, the council will determine that. We have confidence that Aboriginal councils can determine that, and that is all I am going to say on the matter.

Mr V.A. CATANIA: Clause 39(c) states—

> has sufficient support of the local Aboriginal community in the area to enable it to provide local ACH service functions for the area …

I spoke in my second reading contribution about traditional owners having the authority to talk on behalf of the mob. Is this part of the co-design moving forward that will work out a hierarchy of people to co-opt or talk to in the local area, starting from those who have authority, being traditional owners? If those traditional owners want to pass on to someone else to act on their behalf and on the Aboriginal group's behalf, is that what will be undertaken as part of the co-design of these rules and regulations or guidelines?

Dr A.D. BUTI: It is not actually an issue about hierarchy. It is an issue about ensuring that the people who have the local support are the appropriate people to be on these bodies, and that they have the right knowledge to ensure that the cultural heritage of that area is protected.

Mr V.A. CATANIA: One of the criticisms of the bill by traditional owners is the failure to recognise that authority on their land. It is probably more about making the point that traditional owners need to be able to be involved.

Often mobs are played against each other as well, and the direct authority, being the traditional owner, is sometimes overlooked by people trying to go through the back door. That creates angst within the mob, but also, as I said before, may defer and delay and cost jobs through the process. Minister, if I can say one other thing, any co-design of the guidelines or regulations moving forward needs to ensure that traditional owners are included in the wording, because they are the authority on the land that we are dealing with.

Dr A.D. BUTI: The LACH service will be the determining structure. That will be the front door. People can only go through the LACH service. People will not be going through the back door; they will be going through the front door with the LACH service.

Mr V.A. CATANIA: That is the issue. The LACH service will need to ensure that it is dealing with the traditional owners, who have the authority. When I say the back door, minister, sometimes there may be differences of opinion within a group of Aboriginal people. The minister can ask for briefings on where those things are at at any point in time. If the minister has a close relationship with a particular mining company, the minister may be able to influence those within the LACH service who may be in favour of the mining activity, and that may be in direct contravention of trying to keep the Aboriginal cultural heritage sites of significance on that land. The traditional owners, the people who have authority, may sometimes be pushed aside, whether it be by the promise of jobs or any monetary advantage that one group may get over another. That is the point I am trying to make. I want to highlight as much as possible the importance of enabling the traditional owners to be involved in the co-design moving forward and in any guidelines or procedures to ensure that they are given the first right of any discussion.

Dr A.D. BUTI: A LACH service will be required to demonstrate the endorsement of the particular native title party and support from the local Aboriginal community. The council can also co-opt local expertise to assist. Clause 48(1)(a)(ii) states —

> native title parties and knowledge holders for the area, or a part of the area;

Mr V.A. CATANIA: There may be five different groups, or two different families. How will the LACH service work in a situation in which there are multiple groups? Carnarvon is a good example. How will the LACH service co-opt or have that local involvement, knowing that there may be two, three, four or five groups that are perhaps not talking to each other, because that sometimes happens?

Dr A.D. BUTI: That happens in many phases of society, Aboriginal or non-Aboriginal, and within families at Christmas time, for sure; some of us have experienced that. The LACH service will be responsible for determining who are the appropriate people who have the support of the local Aboriginal community. Yes, there will be difficult choices at times, but that is not unusual in any sphere or group in society.

Mr V.A. CATANIA: I accept that. Aboriginal families are no different from other families. Everyone has disputes from time to time, and some of those can never be resolved. Given that sometimes it is very hard to determine who is the native title holder, or that there may be multiple native title holders, will the LACH service have a process to ensure that both sides of the argument, or three or four sides, will be represented, rather than choosing one side over another because one may be more structured than the other, which will make it easier to deal with?

Dr A.D. BUTI: I think the member is the only person in the opposition who mentioned self-determination in his second reading contribution. This is an issue of self-determination. We have confidence that the Aboriginal groups will be able to determine the way forward on this.

Clause put and passed.

Clause 40 put and passed.

Clause 41: ACH Council must give public notice of designation —

Mr V.A. CATANIA: Subclause (1) states —

> The ACH Council must give public notice of the designation of a person as the local ACH service for an area.

How will that be publicised—how will that notice be given to the public?

Dr A.D. BUTI: I refer the member to clause 282 on that matter.

Clause put and passed.

Clause 42 put and passed.

Clause 43: Suspension or cancellation of designation as local ACH service for area or part of area —

Mr V.A. CATANIA: Subclause (2) states —

> The Minister or the ACH Council may, by written notice given to a person who is designated as the local ACH service for an area, take either of the following actions —
>
> (a) suspend the designation in relation to the area or a part of the area for a specified period;
>
> (b) cancel the designation in relation to the area or a part of the area.

Subclause (3) states —

> A notice under subsection (2) may be given only if the Minister or the ACH Council —
>
> (a) is satisfied that the person —
>
> (i) no longer meets the requirements …
>
> (ii) is no longer highest in the order of priority …
>
> or
>
> (b) determines that the person designated as the local ACH service for the area is not, as far as practicable, providing local ACH service functions for the area or a part of the area, as required under section 34(a).

The reason I raise this is that in *The West Australian* on—was yesterday Tuesday?

Dr A.D. Buti: Yes.

Mr V.A. CATANIA: Perhaps it was Wednesday.

Dr A.D. Buti: Today is Thursday!

Mr V.A. CATANIA: It was either Tuesday or Wednesday, I cannot remember, but the Minister for Aboriginal Affairs commented that he will determine what is best for a project. I am sure that that was a slip of the tongue, but it is concerning that the Minister for Aboriginal Affairs, who is responsible for this bill, made the comment "what is best for a project". As I said in my second reading contribution, is should be what is best to protect Aboriginal cultural heritage sites of significance. As I have said before several times, I and many others do not believe that this legislation will protect against a Juukan Gorge–type event in the future. If a minister is a "minister of mining and development at all costs" and the parties go through the process of the Aboriginal Cultural Heritage Council and the minister does not get the response they would like, given the pathway they are going down in supporting mining activity, can the minister remove members of the council, or LACHS, because they do not get the response they want?

Dr A.D. BUTI: The grounds for suspension or cancellation relate to not satisfactorily performing the functions; it is not about any particular decision and whether members agree with a decision. It is about whether they are satisfactorily performing their functions.

Mr V.A. CATANIA: Clause 43(7) states —

> If the Minister or the ACH Council suspends or cancels the designation of a person as the local ACH service for an area or a part of an area under this section the Council must give public notice of the suspension or cancellation.

Can the minister provide an example of why a person on the council would be suspended?

Dr A.D. BUTI: Because they are not performing their functions to a satisfactory standard under the act.

Clause put and passed.

Clauses 44 and 45 put and passed.

Clause 46: Objection to decision of ACH Council —

Mr V.A. CATANIA: Clause 46 deals with an objection to a decision of the ACH council. Subclause (1) states —

> A person who applies under section 38 to be designated as the local ACH service for an area may, within the prescribed period, object in writing to the Minister if the ACH Council refuses to designate the person as the local ACH service for the area.

I referred to this during debate on previous clauses. Does this clause relate to traditional owners and/or different groups that may cover an area? Is that what the minister was talking about in terms of the ability to object to people going on the ACH council? Is the object of this clause to provide traditional owners or Aboriginal people from an area the ability to object? If the minister or I were the member of Parliament for the area concerned, could we object to someone going on the ACH council? Is the objection open to everyone?

Dr A.D. BUTI: This clause is about the LACHS, not about being on the council.

Mr V.A. CATANIA: Even for the LACHS, is the objection for that area only or can anyone object? For example, can those who have the ability to object include a resource company, a member of Parliament, the community or the Chamber of Commerce and Industry of Western Australia—whatever the case may be—or an opposing faction within the mob?

Dr A.D. BUTI: Only the applicant will be able to make the application.

Clause put and passed.

Clause 47 put and passed.

Clause 48: Local ACH service functions —

Dr D.J. HONEY: Subclause (1)(b) on the bottom of page 43 states —

> to make, or to facilitate the making of, ACH management plans in respect of the area;

Can the minister describe what a management plan is and what it contains?

Dr A.D. BUTI: I refer the member to part 6 of the bill.

Dr D.J. HONEY: I look forward with glee to reaching part 6 of the bill.

I turn to page 44. As I have mentioned to the minister before, one of my concerns with the governance of this process is that a LACH service will decide whether ongoing assessment, management or review is required. It will decide the scope of the activity and the fee structure, although I note that there will be an ultimate review. It is an unusual contracting situation in that the contractor will get to decide every aspect of the job. If the affected landholder is a multibillion-dollar global mining company, it will be able to go through the processes and appeal. But an ordinary landholder who does not have great means will have no capacity whatsoever to intervene in the process. Does the minister understand my concern about a group that will decide the scope of work to be carried out and the fee for that scope of work? We could end up with a situation in which, effectively, a landholder could be held to ransom, if you like, because they will not be able to do what they want to do until they go through that approval process. In practical terms, they will not have the capacity to appeal to the minister on this matter. What is the process to make sure that the scope of work is reasonable? I guess that goes to paragraphs (f), (g), (h), (i) and (j) in terms of the scope of the activity to be carried out.

Dr A.D. BUTI: The council will set out the basic framework. If we go back to clause 39, we see that it states that the fee structure has to be reasonable, comply with the LACH service guidelines and satisfy any other requirements.

Dr D.J. HONEY: Even though the body will have a defined fee structure, it still has to design the scope of work that it will carry out, so there is an opportunity. I know most people act in good faith, but some people do not. We see that in every walk of life. Is there any ability to have discussion around the scope of work to be carried out? For example, it may be that there has to be an assessment and the only group allowed to do that cultural assessment is the LACH group, and it gets to decide the scope of that job and get paid for it.

Dr A.D. BUTI: The council will have oversight, and there are sufficient parts of this legislation. We talked about acting in a reasonable manner. I must say that the member is entitled to ask the questions he wants to, but his questions seem to have a thread, which is that we cannot trust Indigenous people. I may be interpreting his questions wrongly, but that is the strong feeling I am getting, and I can tell him, I do not agree with it.

Dr D.J. HONEY: That is just a gratuitous insult. When the opposition goes through and examines this bill, it is not here to look at it in the best possible circumstances. Any bill that is examined in the best possible circumstances is —

Ms M.M. Quirk: What's the question, member?

Dr D.J. HONEY: Every bill we examine —

Ms M.M. Quirk: Thin-skinned!

The ACTING SPEAKER: Thank you, member for Girrawheen—Landsdale, sorry!

Dr D.J. HONEY: Any bill that we examine in the best of possible circumstances is a bill that does not have any issues. The minister is constantly making pejorative comments and making —

Ms M.M. Quirk interjected.

The ACTING SPEAKER (Ms K.E. Giddens): Members! The Leader of the Liberal Party has the call. He has four minutes and eight seconds remaining, and I expect no interjections until that time expires, or until I make a ruling otherwise. Thank you, members.

Dr D.J. HONEY: The minister keeps on making these implications in his answers and saying, "This is from a particular direction." I made it very clear to the minister that I think the great majority of Aboriginal people, like the great majority of people—no more, no less, no different—behave in a reasonable way. Sometimes people behave in an unreasonable way; sometimes policemen behave in an unreasonable way; sometimes doctors behave in an unreasonable way; sometimes lawyers behave in an unreasonable way. In all those groups, the great majority are reasonable people. When we go through this bill, we are not here to examine the best of possible circumstances. We are here to examine what could go wrong and what could be a difficulty with this legislation. I do not care who it is. If in my previous life I said to a civil contractor, "I want this general activity done", and they said, "This is the complete scope, these are the fees—and by the way, if you don't do this, you can't proceed; you won't be able to do this job at all", I would be concerned. It is not unique to this legislation and it is not an allegation or an assertion about the propriety or genuineness or otherwise of any of the LACHS. I am certain that the great majority of the LACHS will behave in a proper way, but we are here to examine what could go wrong and what checks, balances and controls there will be. We have done that so far. It is not an implication and it is not ascribing in any way any different behaviour by LACHS of anyone else who will be subject to this legislation, or asserting that they will be

different from any other group of people. It is purely to see what could go wrong and what could be the worst of all possible worlds. As I say, sometimes we are looking for information, but usually we are trying to find out what could go wrong and whether there are proper checks and balances. That is what I am trying to ascertain in relation to the scope. The minister has said that it can go to the council. Let us say it is an affected landowner. Does that mean that an affected landowner can go to the council and say, "I think the scope of work is unreasonable", or is that not available to the landowner?

Dr A.D. BUTI: The council will have oversight. When a LACH service is appointed, the fee structure will also have to be determined at that time. The scope is needed to ensure that any activity will not cause harm to Aboriginal cultural heritage.

Dr D.J. HONEY: What if there is a dispute about that scope? A landowner may say, "Hang on, that scope is excessive. In my view, that's not reasonable; it's way too much. It's over the top." Accepting that there will be an established fee structure—I understand that there will be a control mechanism for that—will that mean that the landowner could then contact the council and say, "I think this is unreasonable", or will the landowner simply have to live with it because they will not have any avenue for appeal to a superior body like the council to get that dispute resolved?

Dr A.D. BUTI: Under the current act, the proponent seems to have all the control, but the proponent can always write to the department or the council. I do not think we need to worry unnecessarily about the proponent in this case.

Dr D.J. HONEY: All I am trying to ascertain is: is there a pathway? The minister has outlined that there is a pathway down which the proponent or landowner can go, and that is, if I understand it clearly, they can contact the council —

Dr A.D. Buti: There's nothing in the bill that prevents them from doing that. There's nothing prohibiting a proponent from contacting them.

Dr D.J. HONEY: As the minister knows, it is important to capture these pieces of information, so just to clarify, there is nothing to prevent that. The proponent or landowner can contact the Aboriginal Cultural Heritage Council or, in fact, the minister. Honestly, I think for ordinary people, contacting ministers is daunting and, essentially, impossible; not completely, but it is a much harder path. If there were a ready path for them to contact the council, I would be satisfied that there will be a control on this and a check and balance, so that if things go awry—which, as I have said many times, I think it will be a very rare occurrence—there will be an avenue of appeal to a reasonable group, which I accept will be the Aboriginal Cultural Heritage Council in the first instance.

Dr A.D. BUTI: The scenarios raised by the member are really no different from any other area of endeavour or interest in our society. I just do not understand the continual line of questioning on this.

Dr D.J. HONEY: I do not know what the minister means by that. It was a reasonable question. In every avenue of government, there are checks and balances, and this is no different. This is a bill that will affect the whole community, so I am struggling to understand the purpose of the minister's comment. I am asking a really simple and straightforward question about the avenue of appeal. The minister has said that the affected party, whoever it is, could write to the council to have their matter considered; they could also write to the department. I took that to be the minister's answer and I was seeking to clarify that that was his answer. If it was his answer, then it is clear that there is an avenue for checks and balances. If that is not the case, then it appears that there are no checks and balances. That is my concern. As I said, we have to examine this bill in the worst possible potential circumstances, not the best—recognising that that rarely happens, but it will happen.

Mr V.A. CATANIA: If a prescribed body corporate chooses to become a LACH service, what financial support will the government give that PBC?

Dr A.D. Buti: Which clause are you on?

Mr V.A. CATANIA: Clause 48, "Local ACH service functions". If a PBC wants to become a LACH service under these functions, what financial support, if any, will the government provide that PBC?

Dr A.D. BUTI: There is an ability for fee-for-service. There is the $10 million up-front capacity commitment, and under clause 51 there is funding for local council services.

Mr V.A. CATANIA: Will this funding be part of that $10 million?

Dr A.D. Buti: No.

Mr V.A. CATANIA: Is this more money that the government will be throwing at it?

Dr A.D. BUTI: I would not use the word "throwing". I know that the Nationals WA are not known for being fiscally responsible, so the member might like to use that term, but there is capacity under clause 51 to seek funding.

Mr V.A. CATANIA: Probably "the" issue that all groups have brought up is resourcing and funding and the inability of prescribed bodies corporate to carry out these functions. Those Aboriginal organisations that are not PBCs will have to upskill or outsource the function and role of the local Aboriginal cultural heritage service for their area. The current labour market is making it extremely difficult to source people to work in Western Australia, given our

circumstances with borders and so forth, so has the government done an assessment of the labour market for PBCs, or in fact anyone who wants to provide a LACH service? Has the government ascertained whether those functions can be provided from the limited labour market we have in Western Australia?

Dr A.D. BUTI: No, because the LACH service will really be looking at the local community—the ones that have the expertise. That will be determined when it is determined.

Mr V.A. CATANIA: I am sorry to harp on this, minister, but this is probably one of the most challenging aspects of the legislation. I go back to the point that deferrals and delays cost jobs and create angst. I heard someone from the resources sector say yesterday or this morning that they welcome the bill, but that the resourcing is a concern. Every Aboriginal organisation that I have met with this year about this bill has raised concerns about the inability to provide the service, given the labour market. PBCs are stretched. The costs involved are exorbitant, so they will be extremely pressed to deliver the service functions set out in the bill. That is the main concern. I think it is a concern that can be overcome—do not get me wrong—with goodwill from the government in considering providing further training and financial assistance to PBCs and also to those organisations that are not PBCs so that they can upskill and create that function. It is all very well for organisations in mining areas such as the Pilbara, where there is the big end of town—Rio Tinto, BHP and Fortescue Metals Group, which have the capacity to pay those fees for service. They can pay perhaps a higher price to get the outcome that they wish to have or to provide support to the LACH service to go through a process to ensure that Aboriginal cultural heritage sites of significance are protected. Smaller operations, such as those that are in the infancy stage of exploration or junior miners, perhaps do not have that financial capacity or the structures to assist the LACHS or PBCs to carry out the functions that will assist their business. As the minister will appreciate, organisations need the ability to raise funds for exploration. If there is a level of uncertainty or time constraints, it will be difficult. A junior miner will be limited by what it can spend and time frames. The LACHS and PBCs will need to be fully funded to get off the ground, and maybe the government can wean them off that financial support into the future. If we do not deal with this situation, there could be deferrals and delays, jobs lost and angst created. No-one wins in that situation. The major issue with the bill is that the government is not adequately funding our PBCs to upskill and provide that service. What is the minister's view on that?

Dr A.D. BUTI: The member said that this is the main issue with the bill, so once we deal with it, we can pass it! There are a few things. There is the $10 million capacity fund, which will help organisations to upskill and increase capacity. It will allow empowerment and people to attain the skills needed, which will create local jobs. There is the fee-for-service capability. There is also the provision in clause 51, under which additional funding can be provided. There is a commitment by the government to ensure that there is appropriate funding for the services that need to be provided for the powers and objectives in the bill before us.

Mr V.A. CATANIA: The other concern is whether the department will be fully funded to cater for this outsourcing, which will obviously create a large amount of work for it. Can the minister tell me whether the LACH service will be able to charge the department a fee for service?

Dr A.D. BUTI: No.

Mr V.A. CATANIA: So the LACH service will not be able to charge the department a fee for service. Again, that will apply great pressure on the LACH service to charge the applicant more, because it cannot charge the department. PBCs will be responsible for on-the-ground identification, maintenance, conservation and preservation of Aboriginal cultural heritage if they take on the role of the LACH service. Will they be expected to charge for this service because they are taking on this greater role?

Dr A.D. BUTI: They could if they wanted to and if it is reasonable.

Mr V.A. CATANIA: PBCs will be responsible for the identification, maintenance, conservation and preservation of Aboriginal cultural heritage. Who will they charge for providing these services?

Dr A.D. BUTI: I assume that the member is referring to paragraph (i); is that right?

Mr V.A. Catania: That is right.

Dr A.D. BUTI: Under the management plan, they will charge the proponent.

Mr V.A. CATANIA: They will charge the proponent. Will this be an increased cost to the proponent under the legislation?

Dr A.D. BUTI: It will be what was agreed to under the management plan.

Mr V.A. CATANIA: Who agrees to the management plan?

Dr A.D. BUTI: It would be best to deal with that when we get to the clauses that deal with the management plan, but it will be between the proponent and the LACH service.

Mr V.A. CATANIA: So as part of the management plan, the proponent and the LACH service will agree on the fee structure and cost —

Dr A.D. Buti: No.

Mr V.A. CATANIA: Will they agree on activities they perform?

Dr A.D. BUTI: It is the activities, not the fee structure.

Clause put and passed.

Clause 49: Fee for services provided by local ACH service —

Mr V.A. CATANIA: We may have dealt with this previously—I cannot remember—but clause 49(2) states —

> A fee charged must be in accordance with —
>
> (a) the fee structure that the person designated as a local ACH service had in place at the time it was designated;
>
> or
>
> (b) if a variation of the fee structure is later approved by the 13 ACH Council under section 50(2) — the fee structure as 14 varied.

Who will determine that fee structure? Will it be part of that management plan the minister was talking about previously; that is, there will be an agreement between the proponent and the LACH service on a fee structure?

Dr A.D. BUTI: The ACH council will set out the structure and then the LACHS will provide the details and guidelines, which have to then be approved by the council.

Mr V.A. CATANIA: So the ACH council will determine the fee structure.

Dr A.D. BUTI: It will set out the guidelines and the LACHS will determine the actual detail, and then that will have to be endorsed by the council.

Mr V.A. CATANIA: So the ACH council will determine the guidelines. Is this based on the co-design of guidelines that will determine that for the ACH council? Will it be co-designed in the consultation process for the guidelines? That makes sense, minister.

Dr A.D. BUTI: In determining the guidelines, the ACH council will consult whoever it feels are the relevant bodies.

Mr V.A. CATANIA: I will go further to clause 49(3), which states —

> However, a person designated as a local ACH service cannot charge a fee for services that it provides to the Department or the ACH Council in connection with any local ACH service functions.

Can the minister elaborate why it cannot charge any fee to the department?

Dr A.D. BUTI: Because the clause says it cannot!

Mr V.A. CATANIA: That is very good! I accept that, but can the minister say why it cannot charge the department?

Dr A.D. BUTI: It is viewed that the proponent should incur the cost of that. The department is not an isolated institution; it is a state institution. The state should not pick up the tab for a proponent that may seek an economic reward.

Mr V.A. CATANIA: I suppose the other argument to that is that the state receives the economic reward because if a resource company gets off the ground, royalties flow to the state. Will the government not being able to bill for any services that the LACHS may perform reduce the costs to the department and outsource them to LACHS and the proponent or the applicant?

Dr A.D. BUTI: Does the member remember that we talked about this last night? The department will provide support to the LACHS. We talked about human resources et cetera. The department is providing support and the government has this $10 million fund, and the next clause, 51, talks about the possibility of more funding. There is a limit. The proponents should also pay part of the costs incurred.

Clause put and passed.

Clause 50 put and passed.

Clause 51: Funding for local ACH services —

Mr V.A. CATANIA: Clause 51(1) states —

> The CEO may, with the prior written approval of the Minister, decide that funding is to be paid to a person designated as the local ACH service for an area for the purpose of enabling the person to provide local ACH service functions for the area.

Can the minister explain the role of the CEO and why the approval of the minister is needed for them to carry out that function?

Dr A.D. BUTI: Does the member understand that it is the CEO of the department?

Mr V.A. Catania: Yes.

Dr A.D. BUTI: The CEO of the department may receive advice or a request for funding, and they will then seek the approval of the minister. Obviously, funding will be conditional on ensuring that the purposes of the act are met.

Mr V.A. CATANIA: Could that relate to the LACHS? We are a vast state. It is sometimes very difficult. Could it be about paying a bit more to the LACHS because someone is out at Blackstone, and going out to those lands is very expensive because they are remote. Is that part of the reason? Will the LACHS get extra financial support to conduct what they need to for the applicant given the remoteness of some places and their difficult geographical nature?

Dr A.D. BUTI: There are two parts there. Yes, there are different regions that have different demands. Also, LACHS will have different capacities. Some may require more funding than others.

Clause put and passed.

Clauses 52 to 54 put and passed.

Clause 55: Rights of Aboriginal people in relation to Aboriginal ancestral remains —

Mr V.A. CATANIA: Clause 55(1) states —

> An Aboriginal person, group or community that has traditional rights, interests and responsibilities in respect of an area in which Aboriginal ancestral remains are located, or are reasonably believed to have originated from …

If someone comes across ancestral remains, will there be any assistance in determining where they may have originated? will there be any assistance or support to traditional owners or that group to relocate the remains, leave them in place or designate the area as a cultural heritage site of significance?

Dr A.D. BUTI: If someone comes across remains, the best thing to do would be to call the police. If they think they are Aboriginal remains, I refer the member to the next clause, 56.

Clause put and passed.

Clause 56: ACH Council must be notified about Aboriginal ancestral remains —

Mr V.A. CATANIA: The member for Kimberley gave a great speech last night during the second reading debate when she spoke about evidence of someone moving ancestral remains to take a photo. What would the fine be under that scenario? Would it be $10 000? Could someone face any other type of prosecution if they have ignorantly moved ancestral remains for their own benefit to take a photo or removed ancestral remains to put in their home? Can the minister explain the process of the fine, and are there any other potential ramifications such as being prosecuted and thrown in jail?

Dr A.D. BUTI: I refer the member to clause 61, which deals with removing and disturbing ancestral remains. There is also the issue of causing harm, which is dealt with later in the bill.

Clause put and passed.

Clauses 57 to 61 put and passed.

Clause 62: Term used: prescribed public authority —

Dr D.J. HONEY: This clause states —

> ***prescribed public authority*** means any public authority other 10 than the following —
>
> (a) the WA Museum;
>
> (b) a university listed in the *Public Sector Management Act 1994* Schedule 1.

What are some other prescribed public authorities? Can it be a local government or some other government authority? This is a genuine question to try to understand the scope of this. Can the minister please give examples of other prescribed public authorities?

Dr A.D. BUTI: The member is right. It could be a local government authority or any other government department.

Dr D.J. HONEY: Just to be clear about that, does it need to be a body that has a specific connection to government? Can it be a private museum, a registered association, a club or the like, or does it have to be a specific government organisation, whether it is a local government, the state government or the federal government?

Dr A.D. BUTI: It has to be a public authority, not a private authority.

Clause put and passed.

Clause 63: Rights of Aboriginal people in relation to secret or sacred objects —

Dr D.J. HONEY: I could have asked this question in any clause under this division. I appreciate that there is a definition in the bill of "secret or sacred objects" and I accept that the relevant Aboriginal group is the custodian of those objects. How will people know whether an object is a secret or sacred object? As I said, this matter goes over the whole division, so I will ask my question at this clause. I have seen a lot of people who have various Aboriginal objects such as wooden shields, bowls, tools or other implements. My sister, for example, was given some wooden objects by a local Aboriginal person from Darwin in the Northern Territory. My concern is one that I have expressed before, which is about people who have not done bad things. I am not talking about someone who knows it is a secret

and sacred object and is keeping it despite that. I refer to people who have inadvertently obtained an object through what they believed were legitimate purposes. Someone may have either given it to them or sold it to them, for example. How will people know whether it is a secret or sacred object, or is the test that they will have to be aware of that? Given all the things that I have seen in people's houses, particularly people who live in the more remote regional areas, I know that a lot of people have Aboriginal artefacts of one type or another. My very specific concern is that people will inadvertently break the law and that it will have very serious consequences.

Dr A.D. BUTI: The Aboriginal Cultural Heritage Council will undertake a very comprehensive education campaign to educate the public on secret and sacred objects. What a secret or sacred object is will be determined by Aboriginal people. Later in the bill, we will deal with the issue of defences as well.

Dr D.J. HONEY: To clarify that point—I am not trying to create a scare campaign at all—it almost sounds as though if people have an object, they should go to the local Aboriginal cultural heritage service and ask whether the object falls within the scope of the bill. In any case, it is perhaps something the minister cannot give an opinion on. As I said, there is a genuine concern about inadvertent noncompliance.

Dr A.D. BUTI: Obviously, they can report it to the LACH service, but we are dealing with public bodies here, not private individuals.

Clause put and passed.

Clause 64: ACH Council must be notified about secret or sacred objects —

Dr D.J. HONEY: Tiredness and the breadth of this bill are making my mind less speedy than it normally is. Do all the clauses up to and inclusive of clause 67 apply only to prescribed public authorities, or do they apply outside of prescribed public authorities?

Dr A.D. BUTI: Clause 64 talks about the need to notify. That refers to a person. But when we are talking about the need to return an object, we are talking about prescribed authorities. The need to notify relates to anyone, really—a person—but the provisions for returning objects relate to public authorities.

Dr D.J. HONEY: I thank the minister. Just to be clear on that —

Dr A.D. BUTI: Of course, a person cannot sell or remove from the state a secret or sacred object under clause 67.

Dr D.J. HONEY: I thank the minister. That was clear from the bill and it seems like a reasonable provision to ensure that cultural heritage is not lost from the state. If an item is notified to a LACH service and the council determines that the object is significant to a community, can the council demand that the object be returned or will a person be guilty of an offence if they hang onto it, or, as the minister indicated, can only a public authority be compelled to return the items?

Dr A.D. BUTI: The council will be able to recommend and strongly suggest it be returned, but it will not be able to mandate that it be returned unless it is a prescribed public authority.

Clause put and passed.

Clause 65: Duty of prescribed public authorities to return secret or sacred objects —

Dr D.J. HONEY: Perhaps this is more of a comment that does not need the minister's response, but I think pretty well every regional town I am aware of has a council-run local museum. Sometimes they are volunteer-run museums, but they are probably under the auspices of the council. I think it is generally true that for a long time there has been a growing and increasing acknowledgement of and respect for Aboriginal cultural heritage. Therefore, if we go to pretty well any regional town and area and it has a local museum, it will have Aboriginal artefacts. I guess it is the magnitude of the task of doing all that assessment that I am flagging. I think it will be a huge task because I think many thousands of possible items could fall within the scope of this provision. The minister does not need to respond unless he wants to.

Dr A.D. BUTI: It is a very important task.

Clause put and passed.

Clause 66: Secret or sacred objects transferred to custody of ACH Council —

Dr D.J. HONEY: This is around a practicality aspect of the bill. At the top of page 57, clause 66(c) states —

> if the Council cannot identify a custodian of the object—be dealt with in a manner that the Council considers appropriate.

I imagine that the council may end up with a significant number of objects, and clearly we want them stored safely and properly. I wonder whether thought has been given to how that will happen. Is that something the council will decide? I know, for example, that the WA Museum clearly has well-established processes and procedures for safely storing material, but has any thought been given to how the ACH will deal with that? Who knows what will happen, but I suspect it will be a significant amount of material that has been collected by people over a long time and sometimes without knowledge of where it specifically comes from.

Dr A.D. BUTI: The council is to deal with it in a manner that it considers appropriate and, of course, culturally appropriate, and I am sure it will involve communication with appropriate Aboriginal organisations that may then hold it for safekeeping.

Clause put and passed.

Clause 67: Secret or sacred objects must not be sold or removed from the State —

Dr D.J. HONEY: I am going to have good glutes by the end of this! I refer to clause 67(2). It resonates strongly with me that the government has put in protections to make sure items are not removed from the state or the nation and they stay where they should. Clause 67(2) states —

> However, subsection (1) does not apply to a secret or sacred object being dealt with —
>
> (a) by an Aboriginal person in accordance with the person's traditional rights, interests and responsibilities … or
>
> (b) in accordance with this Part.

But does that mean that the responsible Aboriginal person—I am not talking about some rogue person, but the person who has the appropriate authority—will be able to allow that item to be taken out of the state or overseas?

Dr A.D. BUTI: The Aboriginal person has to act in accordance with their cultural traditions and, as we know, Aboriginal people were on this continent way before state boundaries were implemented, which means they may cross between, say, the Northern Territory and Western Australia or South Australia and Western Australia. Obviously, if they are practising their tradition and that is in accordance with their traditions, that is what is included in that subclause.

Clause put and passed.

Clause 68: Reporting Aboriginal cultural heritage —

Mr V.A. CATANIA: Minister, this clause states, in part —

> (1) A person who knows, or becomes aware, of the existence of any of the following must, within the prescribed period, report it to the ACH Council …

Can the minister give me some examples of this? I refer to the fact that the ACH council has not been formed yet. Will the ACH council go through a backdating of sites that have ancestral remains? Will the government assist the ACH council in going through that? I will give the minister an example. It has been in the news for all the wrong reasons, but we know that remains have been found at the Blowholes in Carnarvon. The area is vested in the Shire of Carnarvon. We know that there are bones there. How will this apply to them? Does the shire have to report to the ACH council that bones have been found even though they were found prior to this bill?

Dr A.D. BUTI: At the moment they report, under the current legislation, to the department. When the council is established under this bill when it becomes law, they will then report to the council.

Mr V.A. CATANIA: Does the department have that information already?

Dr A.D. BUTI: It is in the registry.

Mr V.A. CATANIA: That registry will pass over to the ACH council. A function of the government will be passed on to the ACH council.

Dr A.D. BUTI: Member, the directory will still be within the auspices of the department. People report to the council and then it will be put onto the directory, which is managed by the department.

Mr V.A. CATANIA: What is the prescribed period in which one needs to report finding Aboriginal ancestral bones?

Dr A.D. BUTI: That will be determined by the co-design of the regulations.

Mr V.A. CATANIA: Co-designing will determine whether it will be a week, a month, two years, five years or 10 years. Why does that need to be co-designed? Why would the minister not put that into this legislation to say that if someone does find bones, they have to report it within, say, a month, especially if they are out in the desert somewhere or travelling around Western Australia? They could discover ancestral remains in a remote place and it could be on the registry or the directory already. Why would we not prescribe the time frame in the legislation, rather than waiting for co-design guidelines on this?

Dr A.D. BUTI: Obviously, there are always different ways of doing things and the regulations will include many things that pertain to the operation of this bill when it becomes an act. One of the areas it will determine is the prescribed period. Obviously, guidelines and suggestions will be put out and the relevant period will then be determined by the regulations.

Mr V.A. CATANIA: Does one need to take photographs or document where it is when reporting it? Is there a process in regard to that?

Dr A.D. BUTI: It is envisaged that it would be done either in writing or verbally, so one could just ring up and report it.

Mr V.A. CATANIA: To ring up or put it in writing, do people go to the local police? How will one do that? Are the person's obligations then discharged once they report to police that they found bones that are obviously ancestral rather than someone who may have taken a wrong turn? Is that sufficient for that person to conduct their responsibility, but also not be fined down the track by not going to the department? How does one know who to contact when someone sees bones? I think the immediate reaction is to go to the local police.

Dr A.D. BUTI: This is really no different from the current policy. Obviously if it is remains, a person would go to the police. If it is determined that it is Aboriginal remains, it has to be reported to the council. If it is an object, they go to the council, but people can ring the department and the department will tell them the contact for the council. One way or another, it will get there—by ringing the department, going directly to the council, or, if it is remains, going to the police. Obviously, the police will be able to provide that information if the person does not already have it.

Mr V.A. CATANIA: If one comes across ancestral remains and reports that to the police, as they should, and they are travelling around Australia, they do not know where to find the department of Aboriginal affairs. Is it the duty then of the police to report it to the department? I am sure this already happens from time to time. Are the police obligated to report it, or is it the individual who is obligated? If they do not and are not aware of their obligation, and the police are not aware of it, do they receive a fine?

Dr A.D. BUTI: It is a matter of common sense. The police will be educated in this, so they will notify the person or they may report it to the council. Obviously, the coroner may be involved as well.

Clause put and passed.

Clause 69: Terms used —

Mr V.A. CATANIA: This clause explains the application area and outstanding significance, but does not have any criteria for outstanding significance. What is the definition of "outstanding significance"?

Dr A.D. BUTI: Clause 69 provides that definition, and also clause 71 refers to the protected area border guidelines that must be considered.

Dr D.J. HONEY: Under the current regime that this bill will replace, locations are registered under the Aboriginal Heritage Act—for example, the Murray River. The minister may know the history of that. The Murray River was registered under the Aboriginal Heritage Act and there was some controversy because that registration went to the 100-year flood area. The minister would be aware of all the canal developments and other developments along that river. There is now significant development around that river, all the way through to Pinjarra and Ravenswood. The Aboriginal heritage registration was removed because of the controversy and local Aboriginal people were concerned about that. They believed it was inappropriate for it to be removed. It was then reinstated to the high-water mark of the river, effectively to the banks, rather than to the 100-year flood area. Is that an example of an area? Would that be considered under this clause as an application area for a protected area, or are there some other examples?

Dr A.D. BUTI: Under the current act, there are protected areas. This deals with protected areas. I think what the member is referring to are registered sites, which is a different issue.

Dr D.J. HONEY: In those protected areas I have seen equally that there is a particular site. For example, in the area I used to work in in Pinjarra in the hills, there are caves with about a half-a-kilometre circle around them. Under the current act, one has to seek approval to do any work or carry out any activities. Is this the equivalent of that, or is it something else? It is not just the site, there is a whole area—a buffer, if you like—around that site that is prescribed. The big circles typically can be seen on the map, just like Mudurup Rocks at Cottesloe Beach.

Dr A.D. BUTI: I do not think what the member is referring to are protected areas; it is really a mapping issue that we are seeking to address as we progress through this bill.

Dr D.J. HONEY: I am trying to get a sense of what this means, as I think the minister can guess from my questions. Could it be something as broad as saying that it is an area between two locales? Let us say it is an area of a few thousand hectares that was used for hunting–gathering that is significant to our people and we do not believe any activities should be carried out in this area. Is that an example of a protected area? If I understand the intent of this legislation, it is really to say that we are not going to talk about every little thing within this, but we just think this whole area is significant and we do not want any activity going on there unless it has our specific approval. Is there a range of that? We can imagine an area that might be a hunting area or some such area of special importance. Could someone say that the area between Williams and Kojonup through to the coast was a significant area, or does it have to be more specific than that?

Dr A.D. BUTI: We are dealing with protected areas under clause 69 that refer to outstanding significance in relation to Aboriginal cultural heritage. There are 78 protected areas at the moment of varying sizes. Most are rather small, so not of the possible large scale the member mentioned. That is highly, highly unlikely.

Mr V.A. Catania: Is that throughout the state?

Dr A.D. BUTI: Yes, 78. It is a higher threshold, so they are likely to be of a smaller scale.

Clause put and passed.

Clause 70 put and passed.

Clause 71: Protected area order guidelines must be considered —

Mr V.A. CATANIA: I asked the minister during the debate on clause 69 what is the definition of "outstanding significance", and the minister said it is in clause 71.

Dr A.D. BUTI: Yes, I did say that, but it was in clause 69. Sorry about that. The guidelines are in clause 71.

Mr V.A. CATANIA: This clause states —

> In determining under this Part whether Aboriginal cultural heritage is of outstanding significance for the purposes of this Act, the factors set out in the protected area order guidelines must be considered.

There is no definition. The definition would need to be sought by, I would imagine, the co-design that the minister has talked about for the guidelines. Can the minister shed some light on that? Why would we have the term "outstanding significance" with no definition around that?

Dr A.D. BUTI: The actual definition of "outstanding significance" is in clause 69. We are talking about the guidelines in determining what outstanding significance is—that is, the process in determining it. The actual definition is in clause 69, which provides that "outstanding significance" means —

> (a) that the Aboriginal cultural heritage is of outstanding significance to —
>
> (i) a knowledge holder for the Aboriginal cultural heritage; or
>
> …
>
> (b) that the significance is recognised through social, spiritual, historical, scientific or aesthetic values as part of Aboriginal tradition.

What is very important is that we look at the highest level of significance.

Dr D.J. HONEY: I assume that these guidelines are yet to be developed, so this is part of the cooperative effort that will occur between the Aboriginal Cultural Heritage Council, LACHS and other stakeholders to develop those guidelines.

Dr A.D. BUTI: Yes, the member is correct.

Dr D.J. HONEY: Thank you.

Mr V.A. CATANIA: In terms of working through the co-design, I think this is an important clause. Is there a time frame on developing those guidelines, which are pretty significant in relation to this bill? How will the minister co-design these guidelines? Will there be workshops in Perth or around WA that will go through this clause?

Dr A.D. BUTI: I refer the member to part 13, division 3, subdivision 2 of the proposed act, which talks about the process and provides that the guidelines will be prepared by the council, with an opportunity for public consultation and submissions before approval and possible amendment is made by the minister.

Clause put and passed.

Clause 72: Application for area to be declared as protected area —

Mr V.A. CATANIA: This clause excludes areas currently covered by section 18–approved plans. Is that correct?

Dr A.D. BUTI: Yes.

Mr V.A. CATANIA: An application for a protected area cannot be made over the areas covered by section 18 unless the landholder agrees. Is that correct?

Dr A.D. BUTI: Correct.

Mr V.A. CATANIA: This clause will essentially enable a Juukan Gorge scenario to recur, as the bill will do nothing to protect areas. Is that correct?

Dr A.D. BUTI: The point with Juukan Gorge is that it was not a protected area. We are dealing here with protected areas.

Mr V.A. CATANIA: Will this clause protect an Aboriginal cultural heritage site of significance?

Dr A.D. BUTI: An area of outstanding significance has to be declared as a protected area.

Mr V.A. CATANIA: What is the current process for traditional owners to have an area declared as a protected area under this clause?

Dr A.D. BUTI: Is the member talking about under this bill?

Mr V.A. CATANIA: Yes, under proposed section 72.

Dr A.D. BUTI: An application must be made to the council in an approved form. The application must provide details of the area being nominated, including details of the Aboriginal cultural heritage deemed to be of outstanding

significance. Upon receipt of an application, the council must give written notice to the Aboriginal parties in the area that is being nominated to seek their views on the significance of the Aboriginal cultural heritage. Following this, the council will consider the nature of the heritage and the significance of it to the knowledge holders and will either make a preliminary view that the area, or part of the area, or no part of the area, should be declared a protected area. If it forms the view that no part of the area should be declared a protected area, the council is required to give notice of its decision, including the reasons for its decision, to the applicant and the Aboriginal parties of the area notified in the application. The applicant or person given the notice of the application may request the minister to consider the matter. The minister is required to consider the application, along with any further information that may have been provided, any submissions provided to the council and the reasons for the council decision, or anything that confirms the decision of the council to decide that the area or part of the area should be declared a protected area. If the latter, the council is required to continue the application as if it made this in its preliminary view. There are other parts to it. The idea is to protect things that should be protected as areas of outstanding significance—not trying to remove, but rather trying to protect.

Mr V.A. CATANIA: How will this clause change the current process? What is the difference between the current process and this new section 72? We will get there in the end.

Dr A.D. BUTI: Currently, protected areas are vested with the minister. That is not the case in the proposed act.

Mr V.A. CATANIA: Can the minister just explain that? Currently, it is vested with the minister—the minister will make that decision under the current act—whereas the minister will not have any influence under the new legislation?

Dr A.D. BUTI: The way this will work, as I read it out, is that if the council forms the view that it should not be a protected area, that is communicated to the minister and the minister may make a decision that it should be a protected area. That is not currently the situation.

Clause put and passed.

Clauses 73 to 76 put and passed.

Clause 77: Giving public notice of intention to seek that area be declared as protected area —

Dr D.J. HONEY: This clause refers to giving public notice of an intention to seek that an area be declared a protected area, and it lists a thorough process for doing that. What form will the notice to affected landholders need to take? I was concerned during the earlier debate on the bill about how people who live in that area will know that. I then read clause 77(1)(iv), (v) and (vi), which provides that notification must be given to landowners, public authorities and any other person that the council considers has an interest.

What form will that notification take? Will it be via a public notice, mail, facsimile or some other process? The minister can guess why I am asking the question. Obviously, if it is a notice on a tree in the main street—I am not suggesting that it will be—that may not have the effect of informing people. It has to be an effective form of communication to all affected parties.

Dr A.D. BUTI: Considering the member's interest in landowners, I refer him to clause 284. There is also the requirement for publication on the website that maintains this information.

Dr D.J. HONEY: Okay; I had not looked that far ahead. I appreciate that this is looking ahead and I am happy to consider this matter when we reach that clause, but does that mean that at the very least, a letter will be sent to every landholder so that they become aware?

Dr A.D. BUTI: I will deal with it now, but I do not want to have to deal with again at clause 282. Clause 282 states that it has to be published on a website maintained by or on behalf of the ACH council and, if the regulations so provide, be published in accordance with those regulations.

Dr D.J. HONEY: Thank you, minister; I will not waste your time by revisiting that. Thank you for your indulgence.

Dr A.D. BUTI: That actually deals with public notices but with regard to the landowners, that is dealt with under clause 284 and we will deal with that when we get there.

Clause put and passed.

Clause 78: Review of preliminary assessment of ACH Council that area not be declared as protected area —

Mr V.A. CATANIA: Clause 78(3) states —

> On receipt of a request under subsection (2), the Minister must give a written direction to the ACH Council to provide to the Minister …

Often when a minister gives a direction to a department, they are required to table that direction in Parliament. If the minister gives a written direction to the ACH council, will it be tabled in this house or the other place?

Dr A.D. BUTI: No. It will not need to be tabled in Parliament. This really refers to an appeal to the minister.

Clause put and passed.

Clause 79: Recommendation of ACH Council —

Mr V.A. CATANIA: What is the criteria for recommending that a place be declared a protected area?

Dr A.D. BUTI: It will depend on whether it is determined as having outstanding significance requiring protection. That will be determined in the guidelines.

Mr V.A. CATANIA: Who will determine those guidelines and where will they be available?

Dr A.D. BUTI: I think I referred to that during debate on clause 71.

Mr V.A. CATANIA: Minister, we do not have all the advisers sitting around us and being able to —

Dr A.D. Buti: I told you when I mentioned clause 71 and subdivisions.

Mr V.A. CATANIA: Can the minister elaborate on that?

Dr A.D. BUTI: I will not need to elaborate because I will repeat it.

Mr V.A. CATANIA: Can the minister repeat himself for the matter of succinct questioning?

Dr A.D. BUTI: As I told the member, they will be determined under part 13, division 3, subdivision 2.

Mr V.A. CATANIA: Clause 79(2) states —

> The ACH Council may recommend to the Minister —
>
> (a) that the application area, or a part of the application area, be declared as a protected area; or
>
> (b) that no part of the application area be declared as a protected area.

Can the minister reject this recommendation?

Dr A.D. BUTI: I assume that relates to the decision of the minister, and that will be dealt with in clause 81.

Mr V.A. CATANIA: I do not understand. The ACH council may recommend to the minister; so the minister can either accept or reject the recommendation. Is that correct?

Dr A.D. BUTI: That is correct.

Clause put and passed.

Clause 80 put and passed.

Clause 81: Decision of Minister —

Mr V.A. CATANIA: Clause 81(1) states —

> If the ACH Council makes a recommendation to the Minister under section 79(2), the Minister must consider the information provided to the Minister under section 79(5), the recommendation of the Council and any further information provided in response to a request under section 80 and must decide, within the prescribed period —
>
> (a) that the application area, or a part of the application area, should be declared as a protected area; or
>
> (b) that no part of the application area should be declared as a protected area.

What will the minister have to take into account when deciding whether to declare a place a protected area?

Dr A.D. BUTI: Clause 81(2) states —

> The decision of the Minister under subsection (1) must be made on the grounds of —
>
> (a) whether or not the Minister is satisfied as to the matters set out in section 79(4); and
>
> (b) what is in the interests of the State.

Mr V.A. CATANIA: I hear a lot of references to "what is in the interests of the state". In my mind, it is what is in the interests of protecting Aboriginal cultural heritage sacred sites, which is the intent of the bill. The minister referred to interests of the state. I know this is a very simple question and we all probably know the answer to it, but just to get it on the record, what are some of those interests of the state on which the minister will make a determination?

Dr A.D. BUTI: Back when we debated clause 11, we referred to what are the interests of the state; indeed, the member raised this point and made a comment on it yesterday. It includes the social and economic benefit of the state, which includes the social and economic benefit of Aboriginal people in the interests of future generations.

Mr V.A. CATANIA: Clause 81(5) states —

> If the Minister makes a decision that an area should be declared as a protected area, the Minister must recommend to the Governor that the Governor declare the area to be a protected area for the purposes of this Act.

Can the minister explain why the Governor will need to declare an area to be a protected area for the purpose of this legislation?

Dr A.D. BUTI: That is what occurs under the current situation; it is considered the appropriate way.

Mr V.A. CATANIA: That does not really provide a reason for the government to declare an area protected. Things are often referred back to Parliament, such as signing off on a state agreement; generally, the house is asked to agree to a state agreement. I would say that this is pretty much like a state agreement in that it provides certainty to the traditional owners and to whoever might want to mine around a protected area. It just makes everyone completely aware of that scenario, and to have Parliament, the people's house, sign off on it definitely gives it greater importance, provides greater oversight and makes it more open and transparent. However, when it goes to the Governor to declare an area a protected area for the purposes of this legislation, there is no provision for the Parliament of the day to also provide its support for a protected area as long as it has gone through the legislation, which is what we have. Can the minister explain that? I do not think I have seen it in any other piece of legislation that has come before the house in recent times.

Dr A.D. BUTI: It is a continuation of the system that we have now—it goes to Executive Council, obviously. As the member knows, there has been a sense of complication on many areas of the bill, and it has been determined that this is the appropriate way to continue with regard to protected areas.

Clause put and passed.

Debate interrupted, pursuant to standing orders.

[Continued on page 5751.]

BRIEN ELLIOT TAYLOR — TRIBUTE

Statement by Member for Roe

MR P.J. RUNDLE (Roe) [12.52 pm]: Today I would like to take this opportunity to honour and remember Mr Brien Elliot Taylor of Katanning, who passed away in September this year at nearly 97 years of age. Born in 1924, Brien was educated at Thomas Street School in Subiaco, Hale School and then the University of Western Australia. Brien had a long and distinguished career in law. Joining a firm in Katanning in 1949, he continued practising well into his 80s.

Brien was called up to join the Royal Australian Air Force in 1943, and during the Second World War he spent time in the United States and the United Kingdom. He was discharged in 1946. Outside of his work as a lawyer, Brien was an avid sportsman, loved his golf and tennis, and was president of the Katanning Golf Club. Brien had also been the president of the Katanning Country Club, chairman of the Southern Meatpackers and, in 2013, received the honorary freeman award of the Shire of Katanning. Brien's wife, Pamela, sadly passed away in 1997; he is survived by his children Jane, Annie, Helen, Elizabeth and Stuart.

My wife, Andrea, and I have great memories of Brien at our local tennis club each Saturday, where he always took the time to talk to our two sons, James and Sam, as they were growing up. I played golf with Brien many times and always received great advice on many subjects on the way around the 18 holes! I always envied his record of three holes-in-one to my zero! Brien's advice and mentorship was widely valued by all in the Katanning community and the surrounding region and he will be greatly missed.

HIGH WYCOMBE PRIMARY SCHOOL — SIXTIETH ANNIVERSARY

Statement by Member for Forrestfield

MR S.J. PRICE (Forrestfield — Deputy Speaker) [12.54 pm]: High Wycombe Primary School welcomed its first student through the doors in 1961. Since then, tens of thousands of young people have started their education at this fantastic school, being nurtured and encouraged to become the best person they can be. Tomorrow afternoon, High Wycombe Primary School will welcome current and former students, staff and community members to celebrate 60 years of operation. As part of the school's celebrations, the Minister for Education and Training, Hon Sue Ellery, will officially open the new $3 million early education centre. I am proud that the McGowan government has been able to deliver this long-wished-for facility that will see kindy and pre-primary students finally being taught in modern learning facilities. I thank former principal Rick Walters for his strong advocacy for this new building.

High Wycombe Primary School is a vibrant, energetic place to learn and I acknowledge the tireless efforts of the board, ably led by its chairperson, Sandra Devine; the parents and citizens association, guided by its president, Leonie Kirkwood; and the school staff, led by principal, Kate Lyon, and deputy principals, Taryn Stafford and Glen Duffield, as they strive to provide the best opportunities for all the students. It is always a pleasure to join the school community at events, including assemblies, breakfasts and carnivals, and watch them successfully deliver the school vision to provide a happy, safe and stimulating environment sensitive to the needs of all. Congratulations and happy sixtieth anniversary, High Wycombe Primary School.

PERTH AIRPORT WA TOURISM AWARDS

Statement by Member for North West Central

MR V.A. CATANIA (North West Central) [12.56 pm]: I would like to congratulate Western Australia's leading tourism operators that were recognised for their innovation and commitment to excellence at the Tourism Council Western Australia 2021 Perth Airport WA Tourism Awards. As the shadow Minister for Tourism, it was great to attend the industry's premier awards ceremony at Crown Perth last week. It has been a tough two years for tourism businesses, with many under huge amounts of pressure because they are not able to get workers, there are worker accommodation shortages and Perth city hotels have an occupancy rate of 15 per cent. This makes it very difficult for businesses to survive. But small business owners are resilient, so it was great to see over 800 guests at this event, including many from my electorate: Finlay's Kalbarri, Kalbarri Wagoe Beach Quad Bike Tours, Coral Coast Helicopter Services, Coral Coast Tourist Park, Wula Gura Nyinda Eco Cultural Adventures and RAC Monkey Mia Dolphin Resort. Congratulations to all award winners and let us hope that in 2022, tourism can flourish in every part of our amazing state.

JAN STANDEN — WA SENIOR AUSTRALIAN OF THE YEAR

Statement by Member for Nedlands

DR K. STRATTON (Nedlands) [12.57 pm]: I stand today to celebrate and honour Jan Standen, the WA Senior Australian of the Year, and welcome her to the Speaker's gallery today. Jan is the president of Grandparents Rearing Grandchildren WA, a charity run by and for grandparents who are raising their grandchildren full time. Under Jan's stewardship, the organisation has grown rapidly, increasing its membership by over 40 per cent through active outreach and an effective communication strategy. Jan secured fit-for-purpose premises, giving GRG its first long-term home. Based in Warwick, the premises include a community space, playground, garden, meeting rooms, kitchen, offices and an op shop. Jan has developed meaningful relationships with key stakeholders, including state and federal members of Parliament, local governments, Rotary and Soroptimist International groups and service providers such as Wanslea. This also includes securing pro bono legal services for grandparent carers. Legal uncertainty is a pressing issue in providing secure and ongoing care and obtaining services for the grandchildren these grandparents care for.

A significant issue for grandparent carers is poverty, with two-thirds living below the poverty line. Under Jan's leadership, GRG offers a Foodbank of Western Australia pick-up centre, donations distribution service and an op shop that provides free clothing and toys. Jan is a passionate advocate for grandparent carers and the grandchildren they raise. She has lobbied state and federal governments through the A Fairer Future for Grandchildren campaign, and will continue to do so during the federal election campaign. While doing all this, Jan has also continued to raise her three grandchildren.

Jan, best of luck for the national awards in January 2022, but we already know that you are a rock star!

MOORE ELECTORATE — CHALLENGES

Statement by Member for Moore

MR R.S. LOVE (Moore — Deputy Leader of the Opposition) [12.58 pm]: Like all of Western Australia, the Moore electorate has experienced challenges and disruption as a result of the COVID-19 pandemic. I have been calling for the government to outline its plan for COVID management in 2022—something it refuses to do. This dominant Labor government has become drunk on power. The recent passage of Labor's Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021 marks a dark period ahead for regional WA, with regional voices forever being silenced. It is a sad abuse of power.

Away from politics, category 3 tropical cyclone Seroja crossed the coast on the evening of Sunday, 11 April. It cut a swathe of destruction through the midwest and into the central wheatbelt, an area 700 kilometres long and 150 kilometres wide. Residents spent a traumatic night as winds gusted to 170 kilometres an hour north of the storm's eye. Thirty thousand customers were left without power—some for months and some are still waiting for standalone power. I acknowledge the multitude of people involved in the clean-up and recovery effort, particularly the volunteers who ignored the damage at their own home or business to assist, check on and reassure others. There was $306 million in insurance claims incurred, with 7 100 insurance claims lodged and 2 800 still outstanding. My thoughts are with residents who even now have a tarpaulin on their roof or are surrounded by damage. I hope that repairs can occur and life returns to normal as soon as possible.

I close by wishing our farmers a safe harvest, and say to everybody: have safe travels, a merry Christmas and a happy and healthy 2022.

SUNSET COAST EXPLORER

Statement by Member for Hillarys

MS C.M. COLLINS (Hillarys) [12.59 pm]: I take this opportunity to highlight an exciting tourism initiative that has commenced operation along northern suburbs beaches. I congratulate Destination Perth CEO Tracey Cinavas-Prosser;

the City of Joondalup; the City of Stirling; Hillarys Boat Harbour Traders Association; and, of course, the owners of City Tours, Jon Tomkins and Martin Wright, who have overcome many hurdles to bring to fruition the Sunset Coast Explorer bus service.

Many will be familiar with the red double-decker bus that has been running through the streets of Perth for over 17 years but has been immobile due to the impact of COVID on tourism numbers. It is now getting a new life as the Sunset Coast Explorer, a free hop-on, hop-off coastal bus service that runs every Saturday and Sunday for 13 weeks during spring and summer. The service commenced on 23 October and has been extremely popular. It connects the beautiful beaches between Westfield Whitford City and Scarborough, stopping at Hillarys marina and North Beach in between. Hundreds of families in the Hillarys electorate have been delighted to take advantage of the hop-on, hop-off experience to enjoy the shops, restaurants, bars, beaches and, of course, AQWA.

There is currently no similar scheduled bus route along the coast. The future of this trial service is not guaranteed beyond this summer. I am committed to being a passionate advocate for its continuance to support tourism and local businesses in the Hillarys electorate.

Sitting suspended from 1.01 to 2.00 pm

VISITORS — ST GERARD'S CATHOLIC PRIMARY SCHOOL

Statement by Speaker

THE SPEAKER (Mrs M.H. Roberts) [2.00 pm]: On behalf of the member for Balcatta, I would like to welcome staff and students from St Gerard's Catholic Primary School to the Speaker's gallery. Welcome to Parliament today.

QUESTIONS WITHOUT NOTICE

CORONAVIRUS — VACCINATIONS

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

I note the release of the Auditor General's report, *WA's COVID-19 vaccine roll-out*. Why has the WA Country Health Service not developed a specific implementation plan for Aboriginal people when it was responsible for collaborating with the commonwealth in the vaccination rollout, as confirmed by the Auditor General?

Mr R.H. COOK replied:

I note that part of the conclusion in the Auditor General's report stated —

> In an environment of uncertain supply and demand, the COVID-19 vaccination program in WA has been largely effective in delivering injections for the vast majority of people. A mix of delivery approaches by the Commonwealth and State governments has been an effective way to accelerate vaccination rates and make efficient use of vaccine supplies. The Department predicts that it will achieve its target for 80% of people aged 12 years and over in WA to be fully vaccinated by the end of 2021.

By and large, the Auditor General was glowing; she provided a great report and concluded that the vaccine program was effective.

Back in March 2021, the commonwealth government released the *COVID-19 vaccination program implementation plan: Aboriginal and Torres Strait Islander peoples*. This is consistent with the agreement between the commonwealth and the states that the commonwealth would take responsibility for vaccinating people in residential aged-care facilities and the Aboriginal population.

Mr R.S. Love: That's not what the report says. It says that you were undertaking to coordinate that on the ground through WACHS.

Mr R.H. COOK: I am telling you facts, member.

Mr R.S. Love: That's not what the Auditor General says.

Mr M. McGowan: You don't know anything about it.

Mr R.S. Love: That's why he's saying the Auditor General doesn't know.

Mr R.H. COOK: No; we are saying you do not know. I quote —

> This plan states that the Commonwealth will be 'leading the implementation of the COVID-19 vaccination program for Aboriginal people in consultation with state and territory governments and the Aboriginal Community Controlled Health Services sector'.

It is very clear who was responsible for vaccinating the Aboriginal population, particularly those in remote communities.

It is a matter for the record that the commonwealth government has done a thoroughly abysmal job at that, but we do not hear any critique of the commonwealth from the opposition. It is for the public record that the commonwealth has done an abysmal job but we will not stand by and allow that situation to continue. The state remains a steadfast partner of the commonwealth, and we will assist it to complete this aspect of our mission. The Western Australian

government has been doing much to support Aboriginal medical services, the WA Primary Health Alliance and the pharmacies. We are working together across the communities to ensure that we continue to improve vaccination rates for Aboriginal people. The fact is that Aboriginal and Torres Strait Islander vaccine cohorts are the responsibility of the commonwealth. We will continue to work with it, we will continue to assist it and we stand ready to make sure that we can protect the most vulnerable people in our community.

CORONAVIRUS — VACCINATIONS

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

I have a supplementary question. Will the minister stop his finger-pointing and just accept what his own Auditor General is saying when she says that "roles and responsibilities have not always been clear and gaps in implementation plans have not yet been resolved"?

Several members interjected.

The SPEAKER: Minister, I hope you heard the question because I could not, because of so many interjections from government members. Did you hear the question?

Mr R.H. COOK replied:

Yes, I did hear the question, Madam Speaker. It has taken them from pathetic to hopeless!

Several members interjected.

The SPEAKER: Member for North West Central, I hope you are not going to continuously interject.

Mr R.H. COOK: Just to underscore the point of hopelessness, Madam Speaker, the member for North West Central lights up on cue.

The SPEAKER: This happened yesterday. When I ask the member for North West Central not to interject, the minister on their feet tends to direct their comments directly at him to antagonise him more. If you could just respond to the question you were asked by the deputy leader, please.

Mr R.H. COOK: Madam Speaker, my comments, as always, were directed solely at you. If the member for North West Central takes offence, we can all understand why.

The fact is that the entire Western Australian community is united in making sure that we continue to vaccinate our communities. The Premier and I travel to regional communities all the time. We look at our WA Country Health Service working hand in hand with Aboriginal medical services, working hand in hand with the GP networks, and working hand in hand with the pharmacy networks. They are all doing their bit to try to make sure that Western Australians are vaccinated and working together in unity. The only group that is not with us is this sorry mob over here.

STATE ECONOMY — JOBS

793. Ms S.E. WINTON to the Premier:

On behalf of the member for Belmont, I would like to acknowledge Barry Main, a volunteer, who is in the Speaker's gallery today. Welcome to Parliament.

I refer to the McGowan Labor government's efforts in driving Western Australia's economic recovery, which has seen almost 120 000 new jobs created since the government came to office. Can the Premier update the house on how this government's commitment to keeping Western Australia safe is delivering a strong economy that supports jobs, business and the rest of the country?

Mr M. McGOWAN replied:

I thank the member for Wanneroo. Western Australia continues to be one of the safest and strongest places in not only Australia, but also the entire world. We have not had the deaths and hospitalisations from COVID-19 that other states and countries have had; we have not been locked down for months, as falsely claimed by some east coast commentators and federal Liberal politicians; and our economy has not suffered because of the measures that we have been put in place that have protected health, jobs and businesses.

The Australian Bureau of Statistics recently released its retail spending figures. In the month of September, we saw a record spend of $3.6 billion. In the past 12 months, a record $41.1 billion was spent in retail—that is an annual average growth rate of 10.2 per cent, the strongest growth rate in the country in retail spending. When we came to government, the annual average growth rate was 0.6 of one per cent. It is now 10 per cent, nearly 20 times the growth rate of that of our predecessors in office. We have seen record spending across nearly all categories of retail: cafes, restaurants and takeaway, up 18 per cent; clothing, up 20.5 per cent; and the retail component of furniture is up 22 per cent, according to the ABS. The commonwealth government's Department of Education, Skills and Employment has released figures showing that WA not only has the lowest unemployment rate in the country, but also internet job vacancies have grown by 62.9 per cent in annual average terms—the strongest growth rate on record.

The ABS says that Western Australian exports have hit a new record of $243.3 billion, an increase of 35.5 per cent over the course of the last year, and Western Australia accounts for nearly 60 per cent of the nation's exports, with 11 per cent of the population.

We are keen to ensure that our safe transition plan continues this very good set of economic outcomes as we transition our border arrangements in late January and early February. Our vaccination rate continues to climb. Currently, our double-dose vaccination rate for people aged over 12 years is 71 per cent and the first-dose vaccination rate is around 84 per cent. Despite all the hiccups with vaccine supply and despite the fact that we got vaccines later than other states and have not had the COVID outbreaks that other states have had, vaccination rates in Western Australia are higher than in most countries around the world. Our vaccination rate is now higher than France, the United Kingdom, the United States, Germany, Greece, Brazil, Thailand and Hong Kong. In other words, we are getting our citizens vaccinated. I encourage all people across Western Australia to get vaccinated for their own safety as soon as possible.

WATER CORPORATION — WATER PIPES

794. Dr D.J. HONEY to the Minister for Water:

I refer to the Auditor General's report into the Water Corporation's management of water pipes.

(1) Can the minister confirm that despite spending $465 million on the pipe network since the 2014 audit, there has been no progress overall in reducing water loss?

(2) With the volume of unbilled water, including due to leaks and bursts, measuring some 52 billion litres, equal to almost 14 per cent of the total supply, what is the minister doing to ensure that the Water Corporation reduces these substantial losses?

Ms M.M. Quirk: It's in the pipeline!

Mr D.J. KELLY replied:

(1)–(2) I missed that.

Government members: It's in the pipeline.

Mr D.J. KELLY: I would have been disappointed today if I had not got a question on this topic, but I knew it would come from the Liberal Party and not the National Party, who were the stewards of the water portfolio under the previous government.

What the member probably does not understand, because he probably has not read the whole of the report, is that the Auditor General did a report in 2014 because there was a series of really substantial pipe bursts, mainly in the metropolitan area in 2013, which caused a huge amount of disruption in the metropolitan area. I was the shadow minister at the time. It was an interesting time to be shadow Minister for Water. I remember driving along Vincent Street on my way to work. There was a small car halfway into a sinkhole on Vincent Street because a pipe burst and it caused major disruption in the metropolitan area. Therefore, the Auditor General decided to do an investigation into how the Barnett government was managing the pipe networks. The report was absolutely scathing. Basically, it found that the Water Corporation under the previous government was not monitoring its major pipe networks and was basically running them to fail: "How do we know when they are going to break? The water will start flowing." It was then they would do something. The Auditor General was very, very critical about the management.

Since then, $460 million has been spent on improving the Water Corporation's systems, so that it now actively monitors, basically, the main trunk mains. It uses use all sorts of very sophisticated technology so that it has a better understanding of what is going on with those big mains. The little mains are very difficult, but even with those, it has introduced really innovative technology. Members have probably met Kep the dog, the world's first water leak detection dog, who is able to detect leaks in small pipes. A lot has been done by the Water Corporation, so it is proactively managing its pipes.

The Auditor General's report was very complimentary of the improvements that the corporation has made in that regard, but she still highlights that there is too much unbilled water. The member picked up on the 51 billion-litre figure. What that includes—the member did not mention this in his question—are things like water that is used for firefighting purposes. When a hydrant is used to put out a fire, we do not bill people for that water. When there is maintenance and pipes need to be flushed, we do not bill for that water. The amount of water that could potentially be recovered is significantly less than that. What the report does note is that Perth has the lowest rate of leaks and burst water mains of any capital city in Australia—not the worst, the member might think from his question, but the best.

We are still doing a lot to recover and improve the rate of water that is lost. There is 35 000 kilometres of pipe in Western Australia, the biggest jurisdiction for a water utility anywhere in the world, so it is inevitable that there will be some loss. For the member to cherrypick the Auditor General's report without reflecting on the appalling record of the Barnett government—that is why the Leader of the Opposition is head down with a pen at the moment—really just shows that the member does not do his homework.

WATER CORPORATION — WATER PIPES

795. Dr D.J. HONEY to the Minister for Water:

I have a supplementary question. With pipes continuing to fail, as recently seen in Port Hedland and Elleker, and losses not significantly improving, when can we expect Water Corp to meet its own water waste targets?

Mr D.J. KELLY replied:

Did the member just mention Elleker?

Dr D.J. Honey: I did.

Mr D.J. KELLY: Elleker had a major rain event that affected the drainage system. It had nothing to do with a burst pipe. It just shows that the member does not do his homework.

Several members interjected.

The SPEAKER: Order, please, members!

Mr D.J. KELLY: The other report the member might have seen this week is from the Economic Regulation Authority. It released this week the *2021 Water Corporation—asset management system review: Review report*. There have been two reports this week. One was from the Auditor General, who overall was very, very complimentary. The second was the ERA's asset management system review report, which was very, very complimentary. I suggest that the member reads both reports. They did only come out this week, and I know that the member is busy—flat out like a lizard drinking and all that sort of stuff—but he should read those reports before he comes in here trying to score some cheap political point based on no real substance at all.

CORONAVIRUS — VACCINATIONS

796. Ms C.M. COLLINS to the Minister for Health:

I refer to the McGowan Labor government's commitment to keeping Western Australians safe and ensuring that our health system is well prepared for when we reach 90 per cent vaccination status and ease our controlled border.

(1) Can the minister update the house on how WA is tracking with regard to the state's vaccination rollout?

(2) Can the minister please advise the house how many workers in our health system have committed to keeping Western Australians safe?

Mr R.H. COOK replied:

(1)–(2) I would like to thank the member for Hillarys for the question and for her support for the Roll Up for WA campaign to get everyone vaccinated. It is the only way that we are going to stay safe. Western Australians are doing an incredible job to ensure our community is safe, rolling up for WA at our state-run clinics and at general practitioners, pharmacies and respiratory clinics to get themselves vaccinated. As the Premier mentioned a short while ago, the latest figures are that we have an 83.7 per cent first dose rate and 70.8 per cent double dosed. We know that it is desperately important that our crucial workers in our community, our essential workers, get vaccinated also, and this is no more important than for our healthcare workers. That is the reason I am very proud to report today that of the 14 368 tier 1 workers—those working in the most exposed areas—the number of workers who have chosen to either resign or complete their time at the department is 19, or 0.13 per cent. Of the over 42 500 tier 2 and tier 3 workers, just 33 will be leaving the service. That means that 52 people out of over 53 000 healthcare workers in WA will not be working with us into the future. That is 0.098 per cent. It is an outstanding result that goes to show the commitment that our doctors, nurses, allied health and other frontline healthcare workers have to making sure that we keep Western Australians safe.

WA has done more to vaccinate its population than any other state. The commonwealth was originally assigned to do 67 per cent of the overall doses in WA, with the state doing just 33 per cent. Instead, Western Australia has delivered 50 per cent of the vaccines in Western Australia to the commonwealth's 50 per cent—proportionately higher than any other state in Australia. This is an important observation that the Auditor General made today.

It is extraordinary that with all this effort going on in the community, there is one group of people that is not supporting the Roll Up for WA campaign. I have been doing a little bit of maths today, looking at the Liberal shadow Minister for Health's social media posts for the year.

Several members interjected.

The SPEAKER: Order, please, members!

Mr R.H. COOK: The member for Vasse has been busy posting over 600 social media posts in the last 12 months; there were 320 Twitter posts and 290 Facebook posts. Members, in how many of those some 600 posts has the member for Vasse encouraged Western Australians to roll up for WA and get vaccinated? None.

Point of Order

Mr V.A. CATANIA: I have a point of order.

Several members interjected.

The SPEAKER: The point of order is to be heard in silence, please.

Mr V.A. CATANIA: I do not see how the member for Vasse's Facebook posts have anything to do with the question. Under standing order 78, there is no relevance.

The SPEAKER: There is no point of order. Sit down.

Questions without Notice Resumed

Mr R.H. COOK: I am sure that everyone is interested to know who is supporting the Roll Up for WA campaign. I will say that the Leader of the Opposition is providing a great example for the community through some very positive posts—not so much her Liberal Party colleagues. I did a bit of a review of Liberal Party posts on Facebook to see how many of those over the last 12 months have encouraged Western Australians to get vaccinated—three! Such is the effort by the Liberal Party to get everyone vaccinated. This is the political party —

Several members interjected.

The SPEAKER: Members! Member for North West Central, you are running out of warnings and you may just get the leave pass that you are desiring today if you keep this up, so I hope that you have not got a question.

Mr R.H. COOK: Madam Speaker, thank you very much, and I apologise for the interruptions. They are very sensitive today.

Despite the efforts from the Leader of the Opposition, we have the Liberal Party. This is the same party that tried to tear down Western Australia's borders when we were at our most vulnerable. It is an absolute disgrace. It puts itself ahead of the Western Australian community all the way along, trying to find political gain at Western Australia's loss. Have Liberal members suggested that Western Australians roll up to get vaccinated? No. Have they done anything to support the regional rollout? Have they called on the federal government to take responsibility for vaccinating Aboriginal people? The Liberal Party is a disgrace. The shadow Attorney General is publicly opposing the mandating scheme. The spokesperson for the Leader of the Liberal Party is encouraging anti-vaxxer protesters to intimidate and bully members of Parliament when coming into this place, and the shadow Minister for Health has not put out one positive social media post encouraging people to roll up for WA. Thank goodness the Western Australian community are ignoring you all.

MIXED-USE DEVELOPMENTS

797. Mr T.J. HEALY to the Minister for Planning:

I refer to the McGowan Labor government's commitment to deliver responsible development that supports jobs as well as provides housing choice for Western Australians, and the Leader of the Liberal Party's question yesterday regarding apartments.

(1) Can the minister provide the house with further examples of schools that are in close proximity to mixed-use precincts that involve multiple-unit dwellings or hospitality venues?

(2) Can the minister advise the house whether it is correct that people living in apartments are a threat to children, as asserted by the Leader of the Liberal Party in this house yesterday?

Ms R. SAFFIOTI replied:

(1)–(2) I thank the member for Southern River for that question. It was an incredible performance yesterday by the Leader of the Liberal Party, when he basically said that those living in apartments are a threat to children. He said that people living in apartments are a threat to your children—that is what he said. Let us go through the Leader of the Liberal Party's comments and his views. His view is that there are some suburbs that people should not be able to move into. There should not be new residents in some suburbs—that is the Leader of the Liberal Party's view. Over time, we have seen a lot of different approaches to development in the state. There is the possibility of continuous urban sprawl. There is the approach of subdividing every property outside the western suburbs, which was the approach taken by the Liberal Party—the wholesale subdivision of all suburbs except some parts of the western suburbs—or there is the approach that we are taking, which is housing choice and diversity in our suburbs. That means ensuring that not every block in WA is subdivided. In fact, the majority do not change, but we are creating active housing precincts across our community and across our suburbs. We do not believe that any suburb should be off limits. We actually believe there should be housing choice in every suburb. Yesterday in this place, the Leader of the Liberal Party asked me to give him some examples —

Ms S.E. Winton: No, he said one.

Ms R. SAFFIOTI: He asked me to give him one example, which we did yesterday, but I will give him some more today. Yesterday, he asked for an example of a school that has an apartment building opposite.

Dr D.J. Honey: No, no—adjacent to the oval.

The SPEAKER: Order, please, members!

Ms R. SAFFIOTI: The member is refining it to a nothingness now. But yesterday, it was about overlooking schools. The member for Roe, who is sitting opposite, knows Wesley College pretty well. I gave the quick example of Wesley College, where the early childhood centre is overlooked by a block of apartments. As members of this place will know, we did a little straw poll today, did we not? We said, "Look, you know your areas; give us some suburbs where your school may be adjacent to some apartments or a liquor store or a bar." We did a quick straw poll; I thank members for their quick response. We asked for suburbs that have high schools, primary schools, public schools and private schools and might have some apartments or mixed-use developments nearby. This is just a quick snapshot: Kelmscott, Armadale, South Perth, East Fremantle, Fremantle, Victoria Park, Shenton Park, Mosman Park, Claremont, Floreat, Perth, Karrinyup, Darch, Belridge and Woodvale. That is just a quick list from a quick straw poll of where we have primary schools and high schools adjacent to mixed-use developments.

Member, we know that the Liberal Party is good at trying to create division and hatred in the community. We know that is the approach, but we have a shared and collective responsibility to build homes for future generations. This is not about today; this is about our children and our children's children into the future. Where will people live? We are taking an approach that we believe there should be diversity of housing choice and that older people can continue to live in their own suburbs in a smaller place, that young people should have the opportunity to buy in the suburb that they grew up in. That is our approach. The fear and divisiveness of the Leader of the Liberal Party in trying to scare people about people living in apartments is a disgrace, and we will point out to everybody living in an apartment what he thinks of them.

CORONAVIRUS — ELECTIVE SURGERY

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

I refer to the latest elective surgery monthly report that shows that waiting times in October have blown out to 66 days.

(1) Can the minister confirm that these are the highest ever wait times on record?

(2) What excuse can the minister possibly have for such terrible figures when there is no COVID-19 in our community?

Mr D.J. Kelly: Why did you let him ask a question on pipes first?

The SPEAKER: Minister for Water, I am giving the call to the Deputy Premier. Perhaps we can hear from him.

Mr R.H. COOK: Madam Speaker, I do not know where to take the conversation after that!

The SPEAKER: Perhaps you could answer the question, please.

Mr R.H. COOK replied:

(1)–(2) We all know that all our hospitals are under pressure at the moment. Whether they are at the Bendigo hospital, the Ballarat hospital, the Brisbane hospital or the Joondalup hospital, all our hospitals are under pressure from a significant level of demand. As a result, all elective surgery is under equal demand. In Western Australia, we have not had the mass cancellations of elective surgery that is currently being experienced in Victoria and New South Wales, but it is under pressure. We are working as best we can to make sure that we get through the elective surgery waitlists as quickly and expeditiously as possible, making our priorities priority 1s and urgent category 2s, ensuring that we get to everyone before they become over-boundary. That is the reason we invested $36 million last year when we were coming out of our COVID period, when elective surgery had to be cancelled, to make sure that we could catch up. We got to that in, I think, around about January this year. It is true that elective surgery remains a challenge for us. We are challenged because we have workforce issues and because we have demand issues, but the WA Health teams are doing an outstanding job under difficult circumstances to get to everyone. Patient safety is ultimately our prime objective. We remain resolute in that goal and will continue to make sure that we put patients first.

CORONAVIRUS — ELECTIVE SURGERY

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

I have a supplementary question. Given these figures are the worst on record, does this not highlight that the minister has completely dropped the ball with his mismanagement of the health portfolio; and his promise —

The SPEAKER: No "and". Sorry, that is the question.

Mr R.H. COOK replied:

No.

LAND ADMINISTRATION ACT — REFORM

800. Ms L. DALTON to the Minister for Lands:

I refer to the McGowan Labor government's commitment to driving economic development in Western Australia and diversifying the state's economy.

(1) Can the minister outline to the house how this government's reforms to the Land Administration Act will deliver greater opportunities for investment in renewable energy and carbon farming?

(2) Can the minister advise the house what these reforms will mean for native title holders?

Dr A.D. BUTI replied:

(1)–(2) I thank the member for Geraldton, a very positive member from the regions, unlike some of the members over the other side. I thank her for that question.

Several members interjected.

The SPEAKER: Order, please, members! I know you are all very entertained with your own comments, but I would like to hear from the minister.

Dr A.D. BUTI: Members, I cannot overstate the significance of the proposed reforms to the Land Administration Act. These are reforms that multiple governments over many, many decades have sought to address, and it is only the McGowan government that has come up with a reform package that we believe is appropriate to go forward to try to reach our zero emissions date by 2050. I would like to thank the Minister for Environment; Climate Action for her support with regard to these reforms.

As we know, Western Australia is a very vast landscape and we have a vast expanse of unallocated crown land and pastoral lands, but unfortunately under the act, pastoral leases can only be used for pastoral activity. As the Leader of the Opposition would know, Terry Redman, Minister for Lands under the previous administration, tried to bring in reforms but was unsuccessful, but we believe we will be very successful because we have followed a very careful process and will continue with our consultation in this area. Some of the reforms that we seek to do with the changes to the Land Administration Act are to ensure there is a diversification lease in the act that will allow this vast array of land to be used for purposes other than livestock grazing. In other words, we can use it for renewable energy sources. It will be economically beneficial for pastoralists, and will also provide opportunities for traditional owners to engage in ecological tourism. It will also provide great opportunities for hydrogen, wind and carbon farming. These are initiatives that will also diversify our economy. It was either the member for Moore or the member for Cottesloe who brought a motion of public importance about a month ago to say that we need to diversify our economy. These amendments will go towards that, so when we introduce this legislation into this place, we of course will be expecting their full support. This is a government that takes seriously the challenges going forward, whether they are in regard to diversifying the economy or ensuring that pastoralists have a viable plan going forward.

Several members interjected.

The SPEAKER: Order, please, members!

Dr A.D. BUTI: Other measures that we are looking at in regard to these amendments are not just a diversification lease but also changes to the rent methodology to ensure that we reduce the volatility in that process. Hopefully, if members have been listening to pastoralists, they will understand that they are very concerned about the volatility in the rent that they pay for their pastoral leases. We will be working on that and linking it to the consumer price index to be reviewed every 10 years. We will also be looking at the opportunity to extend leases up to 50 years, which is incredibly important, so that pastoralists will be able to apply for commonwealth funding in regard to renewable projects. These amendments have been long asked for and only this government will deliver them.

CORONAVIRUS — MANDATORY VACCINATIONS — TEACHERS

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

I refer to the Premier's failure to answer my question yesterday in relation to the teacher shortage and his failure to provide a clear answer for the families, students and schools of Western Australia. I simply ask: will there be a teacher in front of every class when school resumes in term 1 of 2022?

Several members interjected.

The SPEAKER: Members! It is important that all members are able to hear the question when it is asked. I think it is very rude and unparliamentary to continuously interject while questions are being asked.

Mr M. McGOWAN replied:

Thank you, Madam Speaker. We have put in place a mandate for the education workforce, which is that the first dose has to be done, from memory, by the end of this year and the second dose by the end of January, or the start of the school year next year. I encourage all teachers to do so. I encourage all education staff to do so. That is the requirement that Western Australia has. Other states have similar requirements. Our surveys show that the overwhelming—absolutely overwhelming—majority of education staff support this. When we did it with the

aged-care workforce, at the urging of the Prime Minister I might add, the initial response, obviously, was a slow take-up. But by the time the mandate commenced in mid-September, over 99 per cent of the aged-care workforce was vaccinated. Our expectation is that that is what will occur here with the education workforce, and we will get to very high levels of vaccination.

Within the system, people are moved around, whether it is teachers or other staff, to meet demand as required. But we have very few choices here. We have limited capacity to bring people in from overseas. We have limited capacity to bring people from interstate because other states, obviously, are trying to vaccinate their workforces so that they are as healthy as can be before COVID arrives. We want to make sure that everyone is vaccinated for the inevitable arrival of COVID next year so that we keep our workforce in place and we do not have large numbers of people going off sick and potentially dying.

If the member has a better option or a better alternative than what we are doing, say so. This constant undermining of what we are trying to do is your modus operandi. The fact of the matter is you cannot actually think of a better question than these dumb questions you ask!

STATE ECONOMY — DIVERSIFICATION

802. Ms H.M. BEAZLEY to the Minister for Innovation and ICT:

I refer to the McGowan Labor government's investment in diversifying the state's economy, including its efforts in supporting innovation and entrepreneurship within WA.

(1) Can the minister outline to the house how the investment attraction and new industries fund is supporting the diversification of the WA economy and helping to create new jobs?

(2) Can the minister advise the house how the Extend program is assisting small to medium-sized enterprises scale up to compete nationally and globally?

Mr D.T. PUNCH replied:

(1)–(2) I certainly can advise the house, and I thank the member for the question. I can confirm the investment attraction and new industries fund's contribution, as part of a suite of measures of the McGowan Labor government, has been put in place to foster job creation, economic diversification and promotion of our state's world-class innovation agenda, and it is achieving results. Unemployment is at 3.9 per cent. There are an additional 3 300 full-time jobs. Since 2017, 120 000 jobs have been created. We have overcome the loss of jobs due to COVID-19 and created an additional 40 000 jobs. They are a consequence of the entire approach of the McGowan government to keeping our communities safe and the economy strong. What outstanding figures! It is no wonder the opposition wants to continually undermine the efforts of this government when confronted with those sorts of outcomes. The numbers speak for themselves.

Forming part of our $100 million election commitment, the investment attraction and new industries fund, or IANIF, supports the acceleration of new and emerging industries in WA. Launched in 2017 under the excellent stewardship of my predecessor, Hon Dave Kelly, the IANIF has so far directly contributed approximately $20 million to the innovation ecosystem, with some incredible results. In fact, a recent evaluation of the program found that for every dollar spent, there was a return of $5. That is a great return from a modest amount of money. This is one of the many reasons I was pleased to announce a continuation of these key programs at our flagship Innovator of the Year program, just a few weeks ago. In doing so, I am pleased to say that business feedback has been extraordinary regarding the desire for consistency and continuity of support that the government is providing in this sector.

One of those key initiatives within the IANIF is the Extend program, which builds up local capability and capacity for small businesses with good ideas to take their products nationally or internationally. The Extend program funds the delivery of innovation and investor educational programs, and helps foster entrepreneurs, linking them with private capital to stimulate business investment in Western Australian projects. Members, it is a fantastic program that is delivering real results, which is why we were very pleased to recently announce the third round of funding for the Extend program, totalling another $500 000.

There are fantastic success stories to this program and one of them is Atomic Sky. It was awarded $100 000 in July 2019 as a co-contribution to implement its quantum technology exchange program—an investor-ready program for companies in the space supply chain. Ninety per cent of program participants reported that the program had a positive impact on their business. Two companies were able to leverage new funding from participation in the quantum program, whilst a third was able to secure venture capital funding a year after completing the program. All attributed that to the knowledge they gained through the program. The accelerator program facilitates the exchange of knowledge, innovation, capability and technology from the mining, energy, agriculture and defence sectors to develop global companies in the space sector. This is an example of this government not only building a foundation, but also looking to the future for how we can build innovation and scale it up in commercially viable ways. We are seeing excellent capability here in Western Australia.

I encourage all WA innovators and entrepreneurs to apply for funding. I look forward to announcing successful applicants in the near future and being able to share more homegrown WA success stories. IANIF is just one of the many initiatives this government has put in place to diversify our economy and build a WA for the future.

CRIME AND ANTISOCIAL BEHAVIOUR — REGIONS

803. Mr V.A. CATANIA to the Minister for Police:

I refer to the minister's response to my question on 14 October regarding crime in Fitzroy Crossing, in which he said, and I quote, "We are addressing those challenges."

(1) If the minister has been addressing those challenges, why has the community now lost its only dentist in what community leaders say is a mass exodus of people who are leaving the town due to crime?

(2) Has the minister been working with the Minister for Health to ensure that his failure does not impact the local health services any further?

Mr P. PAPALIA replied:

(1)–(2) I have done a bit in my life, but dentistry is not my specialty. At the outset, I have to defend the integrity and performance of the Western Australian police officers in Fitzroy Crossing. They are an outstanding team. They are a wonderful, wonderful team of individuals—dedicated Western Australian public servants—who are doing an incredible job, and in just about every one of the officers' cases, they have been doing that incredible job for years in both the Kimberley and other regional areas, where they confront difficult, challenging environments. Many of them are often in far more remote places than Fitzroy Crossing, where they operate with one other police officer if they are fortunate. They are an incredible asset to the state.

To suggest that they are not doing a good job in Fitzroy Crossing is just disgraceful. I am not going to bother gracing that ridiculous question with an answer beyond saying that our Western Australia Police Force is doing a great job everywhere in this state, but particularly in Fitzroy Crossing, which is a very difficult, challenging environment that we inherited from a pathetic government. Over the eight and a half years of the Barnett government, it did nothing to assist that town.

CRIME AND ANTISOCIAL BEHAVIOUR — REGIONS

804. Mr V.A. CATANIA to the Minister for Police:

I have a supplementary question. Rampant crime is playing a role in people leaving the town. What is the Minister for Police doing to address the crime issue to reduce the number of people leaving the town of Fitzroy Crossing, which is impacting the health system?

Mr P. PAPALIA replied:

Again, in his questions in this place, and through a grievance that was possibly the worst one I have ever witnessed in almost 15 years in this place, the member constantly seeks to divide communities in both his electorate and elsewhere. Beyond that, the most disgraceful part of his behaviour is his shameless attacks on the Western Australia Police Force. I will not cop it.

Several members interjected.

The SPEAKER: Members!

Mr P. PAPALIA: I will always stand up for the WA Police Force, it does a great job, and it does a fantastic job in Fitzroy Crossing.

ATTORNEY GENERAL — UNFAIR DISMISSAL CASE

805. Ms M.J. DAVIES to the Attorney General:

I refer to the Attorney General's intervention on behalf of the state to question the power of the Public Service Appeal Board to summons people—namely the Minister for Health—to give evidence in a legal stoush between the member and his sacked staff.

(1) When he intervened, did he inquire whether a summons to appear had been made in other matters considered by the Public Service Appeal Board?

(2) If they have, what are the consequences for those matters, given the Attorney General has clearly said that the board does not have the power to summons.

Mr J.R. QUIGLEY replied:

(1)–(2) No; I did not make other inquiries about any other summonses. I received advice from the Solicitor-General that the board or the registrar did not have statutory power to issue the summons requested and was advised by the Solicitor-General that in those circumstances it would be appropriate to intervene and for the Solicitor-General to make a written submission.

ATTORNEY GENERAL — UNFAIR DISMISSAL CASE

806. Ms M.J. DAVIES to the Attorney General:

I have a supplementary question. Is there anything that prevents the Minister for Health from voluntarily providing evidence to the Public Service Appeal Board?

Mr J.R. QUIGLEY replied:

I do not provide legal advice to the Deputy Premier; Minister for Health. He is represented in these proceedings and he will get his advice from the lawyers engaged to give him advice.

LOCAL GOVERNMENT REFORM

807. Mr D.A.E. SCAIFE to the Minister for Local Government:

I refer to the McGowan Labor government's proposed reforms to the local government sector. Can the minister outline to the house how these reforms will provide greater transparency and accountability for community members and ratepayers?

Mr J.N. CAREY replied:

I want to thank the member for Cockburn for his question. Unfortunately, often where we see dysfunction and controversy and where there are toxic relationships in local government, it is the fault of the lack of transparency to ratepayers. Often there is controversy and confusion about basic information, so as part of our reforms, which are the most significant reforms to local government since the Local Government Act 1995, we are genuinely trying to empower communities and ratepayers with a vast number of reforms that will provide them with information at their fingertips. Even during COVID-19, we have seen that some progressive local governments have already moved to far greater online measures to engage and empower their local communities. I am deeply proud that these sweeping reforms will mean better performance in local government. For example, we will be mandating the recording of all council meetings, live streaming of tiers 1 and 2 meetings and recording all meetings of tiers 3 and 4, so people in their homes—whether they want to or not; whether it is the most entertaining thing they want to look at; maybe they will want to put their children to sleep—they will be able to watch the live proceedings of their local government. I am sure if David Templeman were still there, it would be an amazing singing performance!

There will also be clearer rules for what is confidential and not confidential before councils, again, eliminating sometimes the controversies about local government decision-making. We will be bringing in a vast number of new online registers—lease registers about what local governments are leasing; as we know, with sporting clubs, they can be deeply controversial—a community grants register indicating all grants online; a contracts register of all contracts worth over $100 000 undertaken by a council; an interest disclosure register that will keep standing conflicts of interest that have been declared by councillors; and an applicant contribution register about the money the local government is holding for cash in lieu and so forth. Also, we will be putting CEO key performance indicators online so that ratepayers can see how local government is going. Do not underestimate—often we see conflict, controversy, claims of conspiracy when there is a lack of information to ratepayers. These are sweeping reforms and they will help deal with those relationships and dysfunction, and ensure that we empower ratepayers and give them greater knowledge about the performance and decision-making of their local government.

PERTH CHILDREN'S HOSPITAL — AISHWARYA ASWATH — INDEPENDENT INQUIRY REPORT

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

I refer to the handing down of the independent inquiry into Perth Children's Hospital, which comprises 30 recommendations that the minister has said the government will accept.

(1) What is the minister's schedule for implementing the recommendations of the report?

(2) Have the dangerous staffing shortages at PCH now been addressed?

Mr R.H. COOK replied:

(1) When the root cause analysis report was handed down, an implementation team was put together at the hospital to implement the recommendations that came from the root cause analysis. That same team will take up the responsibility for implementing the 30 recommendations from the PCH inquiry report.

(2) With regard to staffing matters, it is for the record now that the inquiry authors commended the hospital for having implemented a range of staffing initiatives in relation to the emergency department, so I commend the report to the member.

PERTH CHILDREN'S HOSPITAL — AISHWARYA ASWATH — INDEPENDENT INQUIRY REPORT

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

I have a supplementary question. Can the minister clarify when the 30 recommendations will be fully implemented?

Mr R.H. COOK replied:

They will be progressively implemented. Some have already been implemented. It entirely depends on the nature of the recommendation involved. If the member wishes to get updates, she can ask that through questions on notice

The SPEAKER: That concludes question time.

ABORIGINAL CULTURAL HERITAGE BILL 2021

Consideration in Detail

Resumed from an earlier stage of the sitting.

Debate was interrupted after clause 81 had been agreed to.

Clause 82: Protected area orders —

Mr V.A. CATANIA: Subclause (1) states —

> The Governor may, by order made on a recommendation of the Minister under section 81(5), declare an area as a protected area for the purposes of this Act.

I asked a question at clause 81 about the Governor's involvement and why it does not come to Parliament. Can the minister explain the recommendation that the minister will have to make under clause 81(5) that will go to the Governor? Can the minister explain the process of the minister going to the Governor?

Dr A.D. BUTI: It is a recommendation that an area should be protected.

Mr V.A. CATANIA: Clause 82(3) states —

> An order under subsection (1) must —
>
> (a) provide a name for the protected area; and
>
> (b) describe the boundaries of the protected area in a manner sufficient to identify it; and
>
> (c) state that Aboriginal cultural heritage of outstanding significance for the purposes of this Act is located in the protected area; and
>
> (d) state the conditions, if any, to which the declaration of the area, or areas, as a protected area is subject.

I do not think anyone would doubt the order, under subsection (1), that the minister should provide the Governor. Is there any evidence from, say, traditional owners, who are the authority? Are they providing that information to the minister? Why is there not perhaps a paragraph (e), or I would say paragraph (a), to make the point that the minister has got the evidence from the traditional owners who are the authority on the land that the application will deal with? Why is that not written into clause 82(3)?

Dr A.D. BUTI: This is actually at the end of the process. The application would have already gone through the processes of the Aboriginal Cultural Heritage Council and the local Aboriginal cultural heritage service, so the traditional owners, obviously, would have had their say then. I refer the member to clause 75 on that.

Mr V.A. CATANIA: I suppose the point I am trying to make is that we talk about, and the minister has spoken about, how this bill is about Aboriginal people or traditional owners. I would have thought that this is a good position to write into the legislation that an order under subsection (1) must have had traditional owners, who are the authority for the land they speak for, provide that information and sign off on the order so that if there is any uncertainty when it goes to the Governor, the Governor can truly say that the process has been signed off by all.

Dr A.D. BUTI: In some cases, for cultural purposes, it may not be appropriate to disclose the name of the traditional owner.

Mr V.A. CATANIA: The name of the traditional owner does not have to be disclosed. The legislation could at least have, as I said, a paragraph (e) that states that traditional owners have given their consent; it does not have to name the traditional owners. There could be at least a paragraph in the legislation for the consent that has been granted to get to this point in acknowledgement of the authority of the traditional owners.

Dr A.D. BUTI: The consent will have already been given; otherwise, we would not have the process in which a recommendation is being made for a protected order. That would have come from the Aboriginal people who are seeking to protect their cultural heritage. They would have already consented; otherwise, it would not be at this point in the process.

Mr V.A. CATANIA: I understand that, but this is a matter of respect. It is very hard to find traditional owners mentioned in the legislation. There is a lack of acknowledgement of traditional owners, although the intent of the bill is to deal with traditional owners, I imagine. I think highlighting that in clause 82(3) would really show respect that they are included in the process, even though they would have been included up to that point. It should be in written form as part of this bill.

Dr A.D. BUTI: The member mentioned traditional owners. We are really talking about the knowledge holders. We are protecting Aboriginal cultural heritage and it is the knowledge holders who will have gotten us to this stage of the process. As we have said a number of times, the significance of this bill is that it will bring Aboriginal people into the centre of the negotiations, which we do not have under the current legislation. Knowledge holders will be respected and we would not be making a recommendation under clause 82 for a protected area order if it had not come from the knowledge holders.

Clause put and passed.

Clause 83: Amending and repealing orders —

Mr V.A. CATANIA: I refer to clause 83(3)(c), which states —

> the removal of a condition to which the order is subject …

Who will the consultation be with and will there be any consultation about the removal of a condition to which an order is subject? Paragraph (d) states —

> the imposition of a new condition to which the order is to be made subject, or a change to a condition to which the order is subject, relating to any of the following —
>
> (i) the management of the area;
>
> (ii) access to the area;
>
> (iii) the other matters, if any, prescribed for the purposes of this subparagraph.

Dr A.D. BUTI: The process for the amendment or repeal of a protected area will be the same as the process for the nomination of a new protected area and will therefore ensure that the opinions of Aboriginal people and affected parties are taken into consideration. Also, I should add that a protected area cannot be repealed or amended to reduce the area unless it has been laid before and approved by a resolution by both houses of Parliament.

Dr D.J. HONEY: It is a pretty simple straightforward question. The clause says —

> An application for the amendment or repeal of a protected area order may be made …

It was not clear to me in that particular clause who that application is made to.

Dr A.D. BUTI: It is the same process as the original application, so it will be made to the council.

Dr D.J. HONEY: It is not clear that it is made to the Aboriginal Cultural Heritage Council. In other clauses in the bill, it is very, very clear who it is made to, but in that clause —

Dr A.D. Buti: Yes.

Dr D.J. HONEY: It is definitely to the council. Thank you very much.

Mr V.A. CATANIA: Subclause (4) states —

> (b) for the purposes of section 82(1), the Minister may make a recommendation to the Governor for the amendment of the protected area order under this subsection; and
>
> (c) before making a recommendation under paragraph (b), the Minister must —
>
> (i) give to the persons described in section75(1) written notice of the proposed change to the name of the protected area that provides a reasonable opportunity to make submissions to the Minister about the proposed change to the name of the protected area …

Again, minister, with reference to paragraph (b), why will the minister have to make the recommendation to the Governor? Why will it not come to Parliament to say that there is a change to the protected area? Why will it go to the Governor? Can the minister explain that?

Dr A.D. BUTI: This is a process of protecting cultural heritage sites. We want to reduce the burden on that. When an area is to be reduced or amended, it will come to Parliament. We do not want to add that hurdle to having a new protected area. But if a protected area is to be reduced or amended, it will come to Parliament.

Mr V.A. CATANIA: Can any member of the public seek information on the register of Aboriginal cultural heritage sites?

Dr A.D. BUTI: There is a public registry, but obviously the member will be aware that culturally sensitive information may not be disclosed.

Mr V.A. CATANIA: I keep going back to Parliament and whether the bill should be amended. As the minister already intends to amend what is a protected area, perhaps he could propose an amendment so that any change to the register will first go to Parliament and the register can be tabled, in a sensitive way, say, every 12 months or whatever period is required under the reporting mechanism for government departments. Perhaps the bill could be amended to report progress to Parliament on the protection of Aboriginal cultural heritage sites and whether that list is growing or some elements are falling off that registry. It is probably incumbent on the minister or the government of the day to provide information to Parliament so members are aware of any changes that have taken place, either

positive or negative. I imagine that five, 10 or 30 years in the future it could be in the negative. Surely we could have a reporting mechanism to Parliament to alert members to changes, positive or negative, that occur by way of amendment by the minister. It should go not just to the Governor but also to Parliament.

Dr A.D. BUTI: Under the existing act, amendments are made not by the minister, but by the Governor, and are then tabled in Parliament. Amendments go on a directory that is available to the public. I refer the member to clause 218, under which protected areas are gazetted.

Clause put and passed.

Clause 84 put and passed.

Clause 85: Repeal of protected area order, or amendment to reduce area declared as protected area —

Mr V.A. CATANIA: The clause reads —

> A protected area order must not be repealed or amended to reduce the area or, if in relation to a cultural landscape, areas declared as a protected area, unless the recommendation of the Minister under section 81(5), as applied by section 83(2), to repeal or amend the order —
>
> (a) has been laid before each House of Parliament; and
>
> (b) has been approved by a resolution passed by both Houses of Parliament.

Can the minister explain why this will be laid before both houses? Is it laid in both the upper house and this place at the same time?

Dr A.D. BUTI: I am not sure, but the point is that it has to be approved by a resolution passed by both houses of Parliament. The reason for that is to provide the highest degree of accountability, because here we are seeking to reduce the protected Aboriginal cultural heritage. This is not unlike similar provisions in the Land Administration Act for the vesting of an A-class reserve, land reserve or national park; it requires consultation.

Mr V.A. CATANIA: So that I am aware of how this process works, when it is laid upon the table in both houses, is there an opportunity for members to debate it or disallow it? The Leader of the Liberal Party mentioned previously that our job is to think of any unintended consequences of the bills before the house. We have to think of every avenue to protect Aboriginal cultural heritage sites. For example, we could get a rogue minister who has been lobbied by the resource companies to make changes to or reduce the size of a site, or whatever the case may be, and Parliament will need to scrutinise this. Does this clause allow members to scrutinise any amendments that will be laid on the table of both houses? Ultimately, whoever is in this chamber may need to look at the second reading speech and the debates we have had to determine the intent of the bill about the protection of Aboriginal heritage significant sites.

Dr A.D. BUTI: The clause states that there must be a resolution in both houses of Parliament, which answers the member's question. Clause 308 sets out the process for laying documents before a house of Parliament that is not sitting. The process is quite clear in this clause, and then clause 308 sets out the process when Parliament is not sitting. It would have to be passed by resolution of both houses of Parliament, which is the highest form of scrutiny available.

Clause put and passed.

Clause 86: Provisions about protected area orders —

Mr V.A. CATANIA: Subclause (1) reads —

> A protected area order must be published in the *Gazette*.

Does that remain in the *Government Gazette* for 28 days before it is removed?

Dr A.D. BUTI: It is the normal publication process in the *Government Gazette*.

Mr V.A. CATANIA: How many days is that? I cannot remember.

Dr A.D. BUTI: It stays as a gazetted item. It does not come off.

Clause put and passed.

Clauses 87 to 89 put and passed.

Clause 90: Meaning of harm to Aboriginal cultural heritage —

Dr D.J. HONEY: Subclause (1) states —

> To ***harm*** Aboriginal cultural heritage includes to destroy or damage the Aboriginal cultural heritage.

Then there is the caveat in subclause (2) below —

> … in relation to Aboriginal cultural heritage by an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities …

Just to be clear, that is very specific. I am assuming that it has to be an Aboriginal person who is associated with that area, and if another Aboriginal person who is not from that area comes into that area, they would not be included in that exception; is that correct?

Dr A.D. BUTI: The determining factor there is written in that clause, where it states "an Aboriginal person acting in accordance with the person's traditional rights, interests and responsibilities". That is the determining factor, not necessarily where they are from. Obviously, there will usually be a geographical connection, but the connection is the person's traditional rights, interests and responsibilities in respect of the Aboriginal cultural heritage.

Dr D.J. HONEY: I thank the minister. Who will determine that? If it came to a dispute or some matter or some concern and someone said, "No, you didn't have a right to do that; you didn't have a right to go there or touch those sacred objects" or the like, would that responsibility fall back to the LACH service as the authorised group under this bill, or would there be some other person—for example, an elder within the community—who might not have responsibility through the LACH service?

Dr A.D. BUTI: Aboriginal people will be central to determining whether there is a connection for the Aboriginal person under clause 90(2), but obviously harm will be determined by Aboriginal people. The LACH service and also the council will have a role to play, but if a prosecution is to take place, obviously, it will be the prosecuting authority.

Dr D.J. HONEY: I thank the minister. As I say, we have reinforced this a couple of times and the member for North West Central has reinforced it. I appreciate it is unusual, but I have heard of disputes of that nature whereby people dispute who has the right to be in a particular area or do a particular thing. It is not just a hypothetical; situations will arise.

I refer to the term "harm". Harm occurs when someone breaks something or digs up an area of significance—those sorts of things are really clear. I know we had a discussion on this before, but it has been a long and late process for some of us, including the minister. Would harm in this sense include a situation whereby someone, through their action, harms an intangible aspect of cultural heritage, whatever that may be? I think the example I gave last time was a man who inadvertently or deliberately goes into a women-only area. Let us say they did it deliberately to be mischievous. Does that intangible aspect also trigger harm? Again, I return to the grey nomads who travel all over Australia—they are everywhere. Obviously, many areas of significance to Aboriginal people are remote and often unattended, so men could be camping in an area that is strictly a women-only area. Would that sort of event trigger the potential for penalties under this section?

Dr A.D. BUTI: I will make a few comments on that. If it were a recreational activity on crown land, it would be exempt. In regard to harm, the term is deliberately non-exhaustive. Obviously, it can include many things, such as the removal of Aboriginal cultural heritage or the physical alteration of the Aboriginal cultural heritage to its detriment or degradation, or potential detriment or degradation, and the potential detriment of the Aboriginal cultural heritage located in that area. It could also include defacing, disturbing or interfering with Aboriginal cultural heritage. But, obviously, you would then have to go and look further to see whether it is a material harm or a serious harm, which comes later in the bill.

Dr D.J. HONEY: I thank the minister; I think that provides some clarity.

Clause put and passed.

Clause 91 put and passed.

Clause 92: Serious harm to Aboriginal cultural heritage —

Mr V.A. CATANIA: Clause 92 is titled "Serious harm to Aboriginal cultural heritage". I want to talk about the penalties. The penalties listed here are —

(a) for an individual —

(i) imprisonment for 5 years or a fine of $1 000 000, or both;

(ii) a daily penalty of a fine of $50 000 for each day or part of a day during which the offence continues;

(b) for a body corporate —

(i) a fine of $10 000 000;

(ii) a daily penalty of a fine of $500 000 for each day or part of a day during which the offence continues.

I cannot remember, but I think it was in the second reading debate that there was mention about Juukan Gorge and that Rio made I think $135 million from being able to desecrate that Aboriginal sacred site. The penalty for an individual of potential imprisonment for five years or a fine of $1 million or both is quite —

Dr D.J. Honey: Disproportionate.

Mr V.A. CATANIA: — disproportionate to the penalty for a body corporate such as Rio or BHP or some mining giant. Like I said, in the example of Juukan Gorge, that activity earned Rio $135 million. I am not saying that Rio did anything illegally, but if a company were to do something illegally, knowing that the fine could be $10 million but the windfall could be $135 million, it would be a pretty good risk for that company to take, because it would potentially make $125 million. The fine is $10 million for a corporation. Imprisonment for five years and/or a fine

of $1 million for an individual is quite disproportionate—thank you, Leader of the Liberal Party—compared with a body corporate that could easily pay that $10 million fine, knowing that it could pocket $125 million. Why is it so disproportionate between the two?

Dr A.D. BUTI: These are maximum limits. Obviously, an individual may not actually receive the maximum penalty. These are the highest penalties in Australia. We have transverse legislation throughout Australia. These penalties are much higher than those contained in the Aboriginal Heritage Act 1972.

The member made the point that someone could do an economic cost–benefit analysis and determine that, for example, the penalty will be $1 million but they will make $10 million. Yes, they could do that, but, really, I hope that they would not. I am strongly confident that the reaction that resulted from that terrible act and what the company had to endure to try to restore relationships would be deterrents in themselves. But, obviously, these are very, very high penalties. These are the highest, harshest penalties in Australia. Also, we have to look at what else we have in the proposed legislation that will reduce the chances of such an event happening again.

Mr V.A. CATANIA: I accept that. I can imagine the publicity around someone choosing the economic analysis and benefit of accepting a fine of up to $10 million in lieu of getting, say, $125 million in their pocket. I hope that someone would never do anything like that. As I said before, our role as an opposition is to ensure that we think of any way possible that this legislation can be manipulated or taken advantage of. That is why I raised the disproportionate nature of an individual versus a corporate; I think the corporate can pay the fine, but it is a harsh penalty for an individual. As the minister said, it is one of the biggest, or the biggest, in Australia.

Dr A.D. Buti: Overall, it is the highest penalty in Australia.

Mr V.A. CATANIA: Everyone accepts that; do not get me wrong. The corporates could use it to their advantage. Can the provision be strengthened to ensure that the unthinkable never occurs?

Dr A.D. BUTI: Before I answer the question, is the member proposing that the penalty be strengthened or increased?

Mr V.A. Catania: Ensuring you don't have that situation where a company can take advantage of the cost–benefit analysis of paying the $10 million.

Dr A.D. BUTI: I am asking you: do you believe they should be increased?

Mr V.A. Catania: I am just saying there is huge disparity between the penalty for an individual, which has imprisonment.

Dr A.D. BUTI: There is an interaction between employment law and criminal law. This act may not prevent a director from being imprisoned. It depends how the incident is prosecuted. There will always be the possibility that a director could be prosecuted, but it will obviously depend on the interaction between a number of pieces of legislation and the actual involvement by any particular director.

Mr V.A. CATANIA: That is interesting. Potentially, if a board member of a company has done that cost–benefit analysis or if a CEO of a company has made that decision, could the penalty of imprisonment for up to five years plus a fine be afforded to them? Is that possible? Could an individual be imprisoned for five years or receive a fine of $1 million or both? Can that apply to a CEO or a board member of a company if they get their cost–benefit analysis wrong and find themselves not only paying, but also potentially imprisoned?

Dr A.D. BUTI: I refer the member to clauses 263 and 264, which deal with the criminal liability of officers.

Dr D.J. HONEY: I am coming at this from a slightly different direction. I thought the body corporate fine was very large and it looks like it will certainly be a disincentive. I resonate with the point the minister made that reputational harm is a bigger issue for larger organisations. The minister would be more aware than most that the costs that Rio Tinto has incurred are substantially greater than the fine. Yes, it would not want the fine, but there would be public odium.

I found the fine for an individual a little eye-watering. Yes, it is a disincentive, but an application can be made for the maximum penalty. Given the minister's significant legal experience, I was after a guide of what occurs in other areas when a corporate offence occurs versus an individual offence. Is that ratio of 10 to one usual? It struck me that $10 million is a large fine for a body corporate but a maximum fine of $1 million seems to be disproportionately large for an individual. Is this a standard ratio or is it exceptional for an individual in this particular case?

Dr A.D. BUTI: Under the Interpretation Act, if it is not prescribed in a particular act, the fine for a corporate offence is usually four times the fine for an individual, but we have made it 10 times the amount.

Dr D.J. HONEY: That gives me a calibration and indicates that the penalty is not extreme when compared with the upper penalty.

I am sure that the minister and my wife could answer my next question very readily. Within the clause, on line 7, is the word "penalty". On line 19, there are the words "summary conviction penalty". I am certain there is a very clear legal difference between the two. On page 76 of the bill, "penalty" is on line 7 and then there is "summary conviction penalty". I want to understand the difference between those two terms. I do not imagine that it is complex, but it is for me.

Dr A.D. BUTI: There is a difference between indictable offences, simple and summary. Obviously, indictable offences are known as crimes and are more serious and carry more severe penalties. These matters start in the Magistrates Court and progress either to the District Court or the Supreme Court. These matters progress to the higher courts under section 32 of the Criminal Code, and the indictable offence is triable on indictment only. That means that an accused person has the right for the matter to be heard by a judge or jury and this cannot occur in the lower court. Summary offences are also known as simple offences. A simple offence in Western Australia is a criminal act referred to in the Criminal Code Act 1913 as an offence, not a crime. The Magistrates Court in Western Australia has exclusive summary jurisdiction and deals with all types of simple offences. Simple offences cannot be dealt with in the District Court or the Supreme Court. An "either way" offence is an offence described as a crime for which the legislation sets out two maximum penalties—one that applies when the matter is dealt with in the summary jurisdiction, such as the Magistrates Court, and another that applies when it is dealt with on indictment in the District Court or the Supreme Court. Either way, offences are dealt with in summary jurisdictions unless the prosecution or defence makes an application under section 5(2) of the Criminal Code that the charge be tried on indictment.

Dr D.J. HONEY: Thank you very much, minister; that was very clear. How is it determined where that goes? Does that relate to the tier 1 or tier 2 or 3 level of interference or is it simply the case that the prosecutor would decide based on the facts of the case that that offence would be heard in a superior court or the Magistrates Court?

Dr A.D. BUTI: It would be determined by the prosecuting officers or body. Under clause 92, the harm has to be of a serious nature. A determination will be made by the prosecuting body.

Mr V.A. CATANIA: What penalties do we currently have and not have in Western Australia? What is the comparison between what is being proposed and what we currently have?

Dr A.D. Buti: Do you mean under the current Aboriginal Heritage Act?

Mr V.A. CATANIA: Yes, if there are any.

Dr A.D. BUTI: It is up to $100 000, but there is no penalty for serious harm under the current act.

Mr V.A. CATANIA: The penalties for an individual and a body corporate are broken down. As the Leader of the Liberal Party said, the penalties for a summary conviction for an individual and a body corporate are defined. How do those fines compare with what we currently have, if there are any?

Dr A.D. BUTI: The fine for a body corporate is $50 000 for a first offence and $100 000 for a second offence. The fine for individuals is $20 000 for a first offence and imprisonment for nine months; and for a second or subsequent offence, the fine is $40 000 and imprisonment for two years.

Mr V.A. CATANIA: What was the second one? Is that for a body corporate?

Dr A.D. BUTI: For an individual, for a second or subsequent offence, it is $40 000 and imprisonment for two years.

Mr V.A. CATANIA: What is it for a body corporate?

Dr A.D. BUTI: It is $50 000 for the first offence and $100 000 for the second, and subsequent.

Clause put and passed.

Clause 93: Serious harm to Aboriginal cultural heritage, including by accident —

Dr D.J. HONEY: I really am surprised about the quantum of the fines in this clause because effectively they are half the penalties imposed for serious harm under clause 92. By comparison, this clause includes in the heading the words "by accident"; the other one should be "with intent". I would think that the fines for serious harm caused by accident would be significantly less, not just half. Let us assume a company decides, exactly as the member for North West Central said, to blast in an area. Let us assume it is not one of the big companies, but one that has discovered a concentration of gold in an area. They have to blow it up but they cannot get approval from the local Aboriginal corporation or the LACH service to do that. At the end of the day, they do not care much about their reputation because they are just going to take the money and disappear, and it is worth much more than $10 million, as a hypothetical. I understand there are reparation clauses as well so I appreciate that that will be an additional requirement, potentially. But what will happen if someone drives a vehicle through an area and they unknowingly, or simply sheerly by accident—again, I know we should not talk in hypotheticals because we cannot cover every situation—runs into, say, a rock feature or a tree with a significant marking on it, as the minister knows, and destroys it purely because they have a blowout or whatever? I thought that it would have been made clear in the bill that there was no intent. They have just done it purely, as it says, "by accident", either through ignorance or misadventure. It seems that the penalties for those offences are really high when compared with the penalties for offences committed by someone who knowingly causes destruction. Can the minister explain the logic for why those penalties are so high? It seems to me that they are disproportionately high compared with those for someone who knowingly does the wrong thing.

Dr A.D. BUTI: This is about strict liability, which is not unusual or unheard of in the legal system. Doping offences in sport come under strict liability. All that needs to be proven is that a person had a prohibitive substance in their

system and there is strict liability. It is probably a much greater fine than $500 000 for a person who has been training for 20 years and it prevents them from going to the Olympic Games. It is not unusual. In certain workplaces, safety provisions come under strict liability. The fact is that people have to do their due diligence. If people do their due diligence, they pick up on the fact that there are Aboriginal cultural areas that need to be protected. The penalties are much lighter than if there is intent, as the member pointed out, and it is a strict liability offence. We make no apologies for that, because the government is strongly committed to protecting Aboriginal cultural heritage.

Dr D.J. HONEY: I understand that point, but in this clause it is purely by accident. A fine should be a deterrent; the purpose of a fine is to act as a deterrent. But if someone does something that they absolutely did not intend to do, I find it harder to see how this could be a deterrent. I imagine that will occur in some circumstances, but in the great majority of these circumstances I find it harder to understand how this could be a deterrent. It is about something they did not know. They do not want to do it. They did not intend to do it. They did not mean to do it. They did it by accident, so a deterrent is almost meaningless in that sense because they never intended to do it in the first place. I understand the need for a very high penalty when it is a deterrent, but in the case of someone who has a genuine accident, with no intention whatsoever, I do not see the sense of having such a huge potential penalty when it cannot reasonably act as a deterrent because they never, ever intended to do that.

Dr A.D. BUTI: I refer the member to clause 98, which talks about defences that can be utilised, such as a due diligence defence. When a person does their due diligence properly, that may be a defence. Obviously, if they had have done their due diligence properly, they would not harm the area because they would know about it. But the point remains: strict liability is not unheard of in the legal system. I would say that a doping offence in sport, which attracts strict liability, is not as serious, actually, as protecting Aboriginal culture. We make no bones about this or apologies for it. If people follow the due diligence, they will know about it, but it is a possible defence.

Dr D.J. HONEY: Thank you, minister. I guess sometimes we look at things from different perspectives. I appreciate the answer the minister has given in relation to due diligence. If someone is not thorough and they do not scope out the work, to a degree it could be seen to be accidental if it is not within their control. But I was thinking more literally along the lines of an accident. An accident is a physical misadventure—something happens. That is different from someone who gets the coordinates wrong when they plot a line, for example, to dig a trench and they go through an area of significance. Again, I think the minister has been clear about the intention, but I think that there is a difference between those two things. I understand the point the minister is making on due diligence. My point is about misadventure—straight misadventure. I assume that the minister might say that that is not a defence. I am not sure; I cannot read that quickly enough with my tired brain at the moment. But there is a difference between those two things: misadventure versus someone simply not doing enough work up-front.

Dr A.D. BUTI: The penalties in clause 93 are maximum penalties, as they are in clause 92. Obviously, when a determination is made, the determining body will consider the so-called misadventure—how it came about. All I will add is that Aboriginal people have for centuries dealt with misadventures that have destroyed their Aboriginal culture. It is about time that they did not have to do that anymore.

Mr V.A. CATANIA: What were the penalties prior to this? What are the current penalties that exist? Is there a difference like there was in relation to clause 92?

Dr A.D. BUTI: Under the current system, it is just the same as the penalties that I read out previously—$25 000, $50 000 and $100 000 for corporates. Also, there is no strict liability under the current act.

Mr V.A. CATANIA: Say I own a farm in Wyalkatchem and have ploughed the land for generations, but when I clear some land, I come across some Aboriginal cultural heritage artefacts that I have disturbed by accident. Will that mean that I, as that farmer, will be trapped by, or will have committed an offence under, this clause?

Dr A.D. BUTI: It is dependent on the circumstances. It depends on the degree of the disturbance and harm, and the regulation co-design will determine the tier structure, which will determine the severity of the harm and the consequences.

Mr V.A. CATANIA: Would the same situation exist if an owner of an 1 100-square-metre block in Armadale decided to put in a pool, for example, and they came across something that could be considered to be Aboriginal cultural heritage? Will this clause apply to that owner if they unknowingly or by accident destroy an artefact or ancestral remains—whatever the case may be? Will it be the owner of the property or the person who is digging the swimming pool, building the shed or disturbing the ground, who has potentially committed the offence because they have not done due diligence to ensure that there is no Aboriginal cultural heritage located on that block?

Dr A.D. BUTI: Is the member saying that block is over or under 1 100 square metres?

Mr V.A. Catania: It is over.

Dr A.D. BUTI: Obviously, there will have been harm, and then we will look at how serious the harm is. I cannot give the member an answer now because part of the co-design process is to work out the tiers of activity and disturbance and the resultant consequences. In that example of a person coming across an artefact on their block, the first thing they should do is to report it.

Ms M.J. DAVIES: I will start with the premise that we understand the intent of this provision, which is to make sure that we preserve and not damage this important cultural heritage. I am trying to think of the things that I will be asked about from an electorate point of view. The majority of farms in my electorate would fall under these categories. Can the minister run me through the process? Is it expected that every landowner, given that they disturb the land on a regular basis with seeding and harvesting, will have to go through the process of having their land assessed by the local Aboriginal cultural heritage service to prevent themselves from falling foul of committing an offence either by accident or otherwise? That is something that immediately comes to mind. I will start getting phone calls from landowners fairly shortly asking, "How do we make sure that we don't fall foul of this legislation? Do we have to contact the LACH service?" Who will that LACH service be? I presume it will be a group within the South West Aboriginal Land and Sea Council, but that is not clear to me at the moment.

I assume that everyone would like to avoid finding themselves in this situation, but I can imagine a significant amount of work in a short period, given that these activities in the agricultural sector are seasonally driven and we will need to get it done without putting people in jeopardy and potentially doing harm, as this bill seeks to prevent.

Dr A.D. BUTI: The obligation imposed in this act is currently in the Aboriginal Heritage Act 1972; it is not necessarily that different. If the member goes back to clause 8, "Objects of Act", she will see that subclause (1)(c) states —

> to manage activities that may harm Aboriginal cultural heritage in a manner that provides —
>
> (i) clarity, confidence and certainty; and
>
> (ii) balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community;

The specific answer to the member's question is that the co-design process will determine tier 1, tier 2 and tier 3 activities. Only tier 2 and tier 3 activities will require approval or consent, and stakeholders—that is why it is called coexistence—including farmers and agricultural people, will be offered an opportunity to be involved in the co-design process.

Ms M.J. DAVIES: Representatives will be involved in the design process; I understand that.

Dr A.D. Buti: They will be invited.

Ms M.J. DAVIES: They will be invited and included, thank you. I grew up on a farm with neighbours who had a site that we know was a watering hole—Derdibin Rock. It has been managed quite well between some of the local families and the family that has farmed that property. I imagine that when a person knows that there are culturally significant areas, they can be identified quite easily. But I presume that there will be some sensitivity to whole properties being covered and, realistically, how will that be managed so that we do not overburden those LACHS? We would want some assurance that this will not create a backlog and do more harm and create more anxiety for both sides of the equation. If we could have some assurance that that is how we are approaching this situation, it would make it far easier for me to have this discussion at a local level.

Dr A.D. BUTI: Yes, member, the whole idea is to ensure that stakeholders can be involved in the consultation process. In the majority of cases, farmers and Aboriginal people have coexisted very well and I do not see this as being necessarily any different. It would just be a matter of negotiating, coming up with a design and making sure that it is clear. As I referred to before, clause 8, "Objects of Act", will provide clarity, balance and a sensible outcome.

Ms M.J. DAVIES: Just so that this is on the record, I agree with the minister; there have been long and strong relationships. In fact, in my electorate we have had exhibitions in Quairading that have celebrated the role that Aboriginal people have played in clearing the land and being involved in agriculture, which is not something that is often spoken about publicly. Some wonderful work was done. I am trying to think of who conducted it; the Community Arts Network might have worked with the community there. But it comes down to the timing factor. I know that the minister is unable to give an answer today because it will be part of the co-design process, but just for the record, we need to be mindful of the fact that there are agricultural processes—much like in the mining industry when companies go in for final investment—that are seasonal and regular and we will need to have in place very clear guidelines to ensure that people do not fall foul of this provision, because they need to get on with work in the window for seeding or harvesting or any other activities that are required.

Dr A.D. BUTI: This will be determined in the transitional period of at least 12 months after royal assent of the bill.

Dr D.J. HONEY: With regard to this area, I am concerned about a significant unintended consequence, if you like, of this legislation. I understand the genuine intent that the government has to protect Aboriginal cultural heritage and that it is legislating for a number of ways to deal with that, but I will run through a situation that is subject to this clause and its penalties. For the great majority of farming activities, a single person is involved and there is no-one else to observe them or no-one else who knows what is going on. I am a farmer who is digging a trench at the back of my shed. I am going through some soft sand and I come up with some bones in the bucket of my excavator and say, "Crikey! I actually read that bill from cover to cover. I've now accidentally harmed what would be regarded as significant cultural remains."

I believe that currently, in the great majority of cases, people would report that because they think it is the right thing to do, and I think overwhelmingly that people in rural communities especially have great respect for Aboriginal heritage. I would want to report that, but even though I had done it completely inadvertently, with no way of imagining that it was there, I would potentially be subject to a half-million-dollar fine. The minister could perhaps confirm this in his answer, but many farms are companies for taxation purposes. Potentially, they would be subject to a $5 million fine. I could just bury those bones in the ground and not another person on this earth would know that I had buried those bones. I could continue on, complete that activity and not potentially be putting my whole family's livelihood at risk and me at enormous financial risk.

I have gone through that because I think it is a realistic scenario, because it is not just funds. An enormous amount of activity occurs when only one or two people are cooperating together and doing that sort of activity. Rather than protecting and revealing Aboriginal heritage, we could have a situation in which people will have a substantial financial motive not to reveal. If no-one else knows, and there is no way that it would ever be found out and in practical terms they do not reveal it, we would lose the opportunity to bring out more Aboriginal heritage. It is an overarching concern that I touched on in my contribution to the second reading debate that when penalties are so high, in particular for accidental, inadvertent activity by which people reveal things, there will be a huge motive to discourage people from revealing things. The magnitude and onerousness of all the penalties will discourage that act. Can the minister recognise that that is a concern in that scenario that may have the opposite effect of what the government intends with the bill?

Dr A.D. BUTI: I recognise the seriousness of damage to Aboriginal cultural heritage. Regarding the member's question, we are talking about serious harm under the clause being dealt with at the moment. The member talked about ancestral remains. If he came across them and then reported them, that would not amount to serious harm. I refer the member to clause 61 that refers to a defence and how ancestral remains must not be disturbed or removed. Clause 61(3)(a) states, in part —

> (iii) was lawfully on the land where the Aboriginal ancestral remains were present and did not reasonably suspect that ancestral remains were present on the land or that the person's actions would disturb or remove Aboriginal ancestral remains present on the land;

And paragraph (b) states —

> the person ceased carrying out the activity … that caused the disturbance …

Mr V.A. CATANIA: Touching on private property and potentially falling foul of the law by accidentally damaging Aboriginal cultural heritage on property that is greater than 1 100 square metres, what role will local governments play in ensuring that approvals are necessary to renovate a house, put in a swimming pool, build a shed or a wine cellar or whatever the case may be? Is any work being undertaken with local governments to ensure that when someone puts in an application for a development, there will be notice for that property owner as well as the local government that someone is consciously looking at or ensuring that perhaps they need to have a heritage survey on that property? Has any work been done with the Western Australian Local Government Association or local governments in general to have that as part of their approval process?

Dr A.D. BUTI: Yes, there has been consultation with WALGA. It wants to be involved in the consultation process and public awareness programs going forward.

Mr V.A. CATANIA: It is good that there has been consultation, but has there been ongoing consultation through the approval process to ensure that once this new law goes through Parliament, an individual property owner will not fall foul of any illegal activity unbeknownst to them? Will there be an education campaign with local governments around the state? What financial assistance will the government provide those local governments that may ultimately take on the responsibility of ensuring that property owners who own property over 1 100 square metres do not fall foul of this clause?

Dr A.D. BUTI: Unlike the member for North West Central—I would never want to get between a bucket of money and the member for North West Central—WALGA has not asked for any consideration of funding. It has been involved in the process, and going forward we are looking at how it can be more involved to hopefully streamline the process and be involved in the ultimate objective of this bill, and that is to protect Aboriginal cultural heritage.

Mr V.A. CATANIA: I totally agree with what the minister has said; never get between a bucket of money and me! I agree that this is all about protecting Aboriginal cultural heritage. I totally agree and there is no question from my point of view or this side of the house—or corner, one would say—but one issue that many people have with this bill is the financial support to go forward to ensure that people do not fall foul of the law by accident, more than anything. Local governments will play a major role in ensuring that their ratepayers do not fall foul of the law. The biggest criticism of this bill is the lack of funding by the state government for this transition moving forward under this new legislation. Would the government consider it if WALGA came to the government and said that it needed money, especially those local governments that have property well and truly over 1 100 square metres, like a lot of regional towns?

Dr D.J. Honey: Smaller councils with big areas.

Mr V.A. CATANIA: Yes. There are smaller councils with huge areas, large blocks and obviously a very small ratepayer base. They do not have those means to educate the community on awareness, especially if they are putting in a development application. Is it up to local government to assess the property or sign off on it? If the local government signs off on a property and the individuals tick the box, will the local government also be potentially liable?

Dr A.D. BUTI: Some of the matters that the member referred to still have to be worked through, and the most efficient way to deliver them is what will take place. The Western Australian Local Government Association has not come to government—from my recollection; I am not the actual minister—seeking funding. The member keeps mentioning that one of the main criticisms of this bill is financial issues. I have not heard that at all. It may be, but I have not heard that at all. In the Barnett Liberal–National government, the Nationals WA, in regard to royalties for regions, built many facilities in local government areas. Did the National Party then provide local government with the money to run the swimming pools and gyms? I think probably not.

Mr V.A. CATANIA: I will just answer that question, minister. That is local government decision-making, and local governments actually chose to build those projects, so that is a decision of the local government on how it spends its royalties for regions.

Dr A.D. Buti: Wasted!

Mr V.A. CATANIA: Local decision-making.

Dr A.D. Buti: Wasted!

Mr V.A. CATANIA: Local decision-making.

Dr A.D. Buti: Wasted!

Mr V.A. CATANIA: Keep saying that. Because we want to get back to this bill, minister, I am happy to talk about royalties for regions every day of the week. I am on this side of the house because we believe in regional development and regional communities.

Dr A.D. Buti: Now we know why you became a rat!

The ACTING SPEAKER (Mr D.A.E. Scaife): All right! Members, let us just —

Mr V.A. CATANIA: Yes, it was. But your ship will sink at some stage and those rats will start coming out!

The ACTING SPEAKER: Member for North West Central! You know that I am bringing this back under control. We do not need it. Let us get back to the bill.

Mr V.A. Catania interjected.

The ACTING SPEAKER: Member for North West Central!

Mr V.A. Catania interjected.

The ACTING SPEAKER: Member for North West Central, back to the bill! Thank you.

Mr V.A. CATANIA: Will the minister undertake an education campaign for all residents in Western Australia? There are about 50 000 properties over 1 100 square metres in Western Australia. Will the government and the Minister for Aboriginal Affairs write to each of those property owners to inform them that if they want to disturb the ground, these are the considerations that they made need to undertake?

I think it would be good to have an education program. I think it would help promote the importance of ensuring that Aboriginal cultural heritage sites are protected, but, more importantly, it will ensure that those individuals do not fall foul of this piece of legislation, as it may capture people who may accidentally disturb Aboriginal cultural heritage artefacts, ancestral burial sites, or you name it. I think it is important that there is a bit of an education campaign. Will the government consider providing funds to the Western Australian Local Government Association, the Western Australian Farmers Federation, the Pastoralists and Graziers Association and the Kimberley Pilbara Cattlemen's Association just so everyone can be aware? I think it is important that people are educated about the legislation as it could affect their property and livelihoods—ensuring that they truly negotiate and protect those Aboriginal cultural heritage sites.

Will the minister embark on an education campaign and will the government consider funding it through some of those organisations that I have just mentioned?

Dr A.D. BUTI: We are dealing with the consideration in detail of the actual bill before us, not some of the issues raised by the member. I will just repeat what has been said a number of times: the government will be engaging in an extensive consultation program and a public awareness program, as will the councils. There is not really much more I can add for probably the tenth time in that respect.

Mr V.A. CATANIA: I just want to put on the record again: will the government strongly consider an education program when it comes to the Western Australian Local Government Association, the Western Australian Farmers Federation, the Pastoralists and Graziers Association, the Kimberley Pilbara Cattlemen's Association and any other

large membership of property owners that this legislation and this particular clause will capture, to ensure that people do not fall foul of the law? Will it also educate the community on how important it is to protect Aboriginal cultural heritage sites, artefacts and, like I said, anything that this legislation will capture?

Dr A.D. BUTI: I think I said that there will be an extensive public consultation education program, which will involve all the stakeholders that need to be involved. That is what the consultation process revolved around in regard to various drafts of the bill. There will be a consultation and an educational process going forward.

Dr D.J. HONEY: I am sure that this is a very simple question. I just do not have time to look up the code. Clause 93 states —

> (2) Despite *The Criminal Code* section 23B(2), it is immaterial for the purposes of subsection …

Why is that subclause in the bill?

Dr A.D. BUTI: It is in the bill because it deals with a strict liability issue.

Dr D.J. HONEY: Section 23B(2) of the Criminal Code states that an accident is a defence, but here in the bill it is a strict liability issue, as the minister said.

Dr A.D. BUTI: That is correct.

Clause put and passed.

Clause 94: Material harm to Aboriginal cultural heritage —

Dr D.J. HONEY: I think the minister can guess my question here. This clause is about material harm to Aboriginal cultural heritage. Can the minister please explain the difference between material harm and the previous penalty?

Dr A.D. BUTI: I refer the member back to clause 91.

Clause put and passed.

Clause 95: Harm to Aboriginal cultural heritage —

Mr V.A. CATANIA: Clause 95 states —

> A person commits an offence if the person harms Aboriginal cultural heritage.

Can the minister describe the difference between clause 94 and clause 95? There is obviously a huge difference in penalty as well.

Dr A.D. BUTI: Clause 94 refers to material harm and clause 95 refers to harm that is not considered to be serious material harm.

Dr D.J. HONEY: Minister, we had a discussion before concerning a farmer going about their activities and the risk that, fearing a penalty, they might hide what they find as opposed to reporting it to an authority, but the minister said that there is a defence. The farmer may have gone through and dug up a skeleton and broken its bones. Would these penalties be triggered, given that they are at a lower level, or would the defence that the minister mentioned before still apply to these lower level offences? The minister can see where I am coming from here; that is, the farmer is obviously not going to say that the action was deliberate. There is no defence against it being deliberate harm or serious harm. But does that then mean the farmer can fall foul of these penalties, which are lower penalties and have a definition of less serious harm? I think the minister understands my question, but I am happy to go through it again if he does not.

Dr A.D. BUTI: Going back to the member for Cottesloe's issue about ancestral remains, if the person stopped at the time, they would not be caught up with that because they would have stopped at the time and reported it. They would not have actually harmed them under the provisions of the bill before us. However, if they continued, of course, it would be a different matter.

Dr D.J. HONEY: I am sure the minister has seen plenty of excavators in his day. They can dig up enormous volumes and get buckets half full of bones and leave parts of skeletons of ancestral remains in the ground. They will have caused harm, although not deliberately. They could stop, but they would have stopped when they had caused harm. Would they be potentially subject to these lower level penalties for having done that?

Dr A.D. BUTI: It is possible, but, obviously, certain mitigating factors will come into play that will determine whether there will be any degree of penalty and the severity of that penalty.

Clause put and passed.

Clauses 96 and 97 put and passed.

Clause 98: Other defences —

Dr D.J. HONEY: At clause 98(a)(i) it states, in part —

> … that there was no risk of harm being caused to Aboriginal cultural heritage by the activity …

How can a person make an assessment that there is no risk?

Dr A.D. BUTI: By undertaking a due diligence assessment.

Dr D.J. HONEY: I reach the inescapable conclusion that the only way we can have a view that there is no risk is for a local Aboriginal cultural heritage service to be determining on every activity; otherwise, I do not see how anyone can make that assessment. It seems that every activity that has significant disturbance will have to have a LACH service involved; otherwise, how will we demonstrate there is no risk in the activity?

Dr A.D. BUTI: This relates to the Aboriginal cultural heritage management code, which will be subject to a co-design. It will set out the required process that needs to be followed to assist the proponent in completing the assessment. Through that co-design process, the government will work with all stakeholders to determine the categorisation of tier 1, 2 and 3 activities.

Clause put and passed.

Clause 99: Compensation for harm to Aboriginal cultural heritage —

Mr V.A. CATANIA: Can I have some explanation, especially on subclause (1), which states —

> The CEO may, with the prior written approval of the Minister, decide that compensation is to be paid in respect of Aboriginal cultural heritage to which harm has been caused as a direct or indirect consequence of the commission of an offence under Division 2.

Can the minister explain what that means in layman's terms and what compensation the CEO may pay and who will pay the compensation?

Dr A.D. BUTI: The trigger will have to be a conviction under the Sentencing Act. The proposed act amends schedule 1 of the Sentencing Act to allow penalties for harm to Aboriginal cultural heritage offences to be paid to a special purpose account rather than the government consolidated revenue to facilitate the payment of compensation to the Aboriginal parties. The fine will be paid to the special purpose account to ensure that compensation can be paid.

Mr V.A. CATANIA: It could be that an individual on a property or a mining company pays it into a special purpose account. Will it be a trust account or an interest-bearing account? What role will the CEO have in this? Will the CEO be the signatory to this account? Will the CEO make the payment once the issue is resolved or there is an outcome? Will the CEO pay the compensation that is in the special purpose account to the individual or the Aboriginal organisation to cover the situation that has unfolded?

Dr A.D. BUTI: The CEO will determine whether compensation is paid. Clause 99(4) states —

> A determination under subsection (3) must be made in accordance with the criteria, if any, prescribed.

The special purpose account is dealt with in clause 279.

Mr V.A. CATANIA: For compensation to be paid, the penalty will have been agreed to and it will have gone into a special purpose account. At some stage, the CEO of the department will be authorised to release the funds to, as clause 99(6)(c) states —

> the Aboriginal person, group or community to whom the compensation sum is proposed to be paid in full, or the Aboriginal persons, groups or communities between whom it is proposed that the compensation sum be shared and the amount of each share.

Will any restrictions be imposed on where the compensation can be spent? Are there any criteria around that or is there a process for that?

Dr A.D. BUTI: I do not think there is any intention to do that because it would be quite discriminatory to pay compensation to Aboriginal people and tell them they can only spend it in a certain way. We do not do that normally in other compensation matters.

Mr V.A. CATANIA: I tend to disagree. We do that with native title settlements. Governments tell Aboriginal people how they can spend their money. If we are talking about that, it needs a major overhaul of the Native Title Act to bring that into —

Dr A.D. Buti: It's a commonwealth thing.

Mr V.A. CATANIA: I agree. I hope that the minister and the government can lobby to change the Native Title Act and modernise it to make it more workable. The point is exactly that: conditions are generally put on how Aboriginal people can spend their money. I am just wondering —

Dr A.D. Buti: Are you advocating for it?

Mr V.A. CATANIA: Absolutely not. I asked the question because it is important to get clarity on how that compensation will be paid. It is good to hear that there will be no strings attached, as one would say. Clause 99(3)(c) states —

> the Aboriginal person, group or community to whom the compensation sum must be paid in full, or the Aboriginal persons, groups or communities between whom the compensation sum must be shared and the amount of each share.

That just shows that it is important that there are no strings attached to how Aboriginal people will be able to spend the money that they will get through the right avenues of compensation.

Dr A.D. BUTI: I have heard of no intention that there will be strings attached to compensation, but obviously everything in this area will be determined under the co-design process and the regulations that will be implemented.

Dr D.J. HONEY: I apologise, minister; I just had to pop out of the chamber for a second on urgent parliamentary business, so if the minister has covered this question, I am happy to go back through *Hansard*. Otherwise, how will the quantum be determined? For most offences, when a person commits an offence, it goes to a court. One of the advantages in our court system is that we have judges who are experienced in these matters and they have some guidelines on the penalties they can apply, but they can do that unemotionally in a way that the quantum is fairly relevant to other people who have had that penalty applied to them. How will it be determined what is an appropriate quantum in this case? Perhaps while the minister is there—I do not want to drag this out at all—if someone is unhappy with the penalty and thinks it does not reflect the seriousness of the harm that was done, is there a process for that to be appealed to a higher authority, if you like, to say, "Well, we think this is wrong"?

Dr A.D. BUTI: Is the member talking about the compensation paid?

Dr D.J. Honey: Yes, I am, minister.

Dr A.D. BUTI: Firstly, I have repeated ad nauseam that under clause 99(4) a determination on compensation under subclause (3) must be made in accordance with the criteria, if any, prescribed. That will be worked out in the regulations. But there will be no right of appeal on compensation.

Clause put and passed.

Debate adjourned, on motion by **Mr D.A. Templeman (Leader of the House)**.

House adjourned at 4.31 pm