Legislative Council

Thursday, 7 May 2009

THE PRESIDENT (Hon Nick Griffiths) took the chair at 11.00 am, and read prayers.

"STATE OF THE FISHERIES REPORT 2007-08"

Statement by Minister for Fisheries

HON NORMAN MOORE (Mining and Pastoral — Minister for Fisheries) [11.01 am]: I table a copy the "State of the Fisheries Report" prepared by the Department of Fisheries for the period July 2007-08. This report outlines the current status of Western Australia's major fisheries, fish stocks and their associated environments. It should be read in conjunction with the Department of Fisheries' annual report 2007-08, which has been previously tabled. In the past, the considerable time taken in the production of the document has resulted in delays in the report being tabled in this house. The Department of Fisheries is reviewing the format of future reports to reduce the production cycle. This should ensure that members of the house are provided with information on the status of the state's fisheries in a more timely manner. I table the report.

[See paper 721.]

Consideration of the statement made an order of the day for the next sitting, on motion by **Hon Ed Dermer**.

SELECT COMMITTEE INTO THE APPROPRIATENESS OF POWERS AND PENALTIES FOR BREACHES OF PARLIAMENTARY PRIVILEGEAND CONTEMPTS OF PARLIAMENT

First Report — "Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament" — Tabling

THE PRESIDENT (Hon Nick Griffiths): I table the first report of the Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament.

[See paper 719.]

Motion

On motion by **Hon Norman Moore (Leader of the House)**, resolved —

> That the first report of the Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempt of Parliament be printed.

Statement by Leader of the House

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [11.03 am] — by leave: The select committee has reviewed the appropriateness of the powers and penalties available to the houses of the Western Australian Parliament to deal with breaches of parliamentary privilege and contempts of Parliament, and made six recommendations. Foremost among these, the committee has recommended that the Parliament's power to imprison persons be abolished. The committee considered that the penalty of imprisonment should be available only to a court of law, though the committee has also recommended that the power of either house to temporarily detain persons misconducting themselves in the parliamentary precinct should be retained in order that the Parliament can protect itself against any disruption to its proceedings. The committee has recommended an expanded capacity for either house to fine a person who is found guilty of a contempt of Parliament. In part, this recommendation is a consequence of the recommended abolition of the imprisonment penalty. The current statutory arrangements restrict the Parliament's capacity to fine to a number of specific contempts. The committee considered that the houses should have the capacity to fine a person for any contempt of Parliament and for any amount determined to be appropriate by the house. The committee also recommended that the capacity for either house to expel a member of Parliament be abolished. The committee has further recommended that a set of guidelines relating to contempts of Parliament, similar to those in the Australian Senate, should be adopted by both houses of the Western Australian Parliament to provide greater clarity regarding actions that may be deemed a contempt of Parliament. The committee further recommended that five sections of the Criminal Code dealing with offences directly related to the operations of the Parliament be repealed. Lastly, the committee recommended that the WA parliamentary precinct be defined in legislation.

I commend the report to the house and encourage all members to review the report and its recommendations. I believe the house should consider this report in a timely manner and, subject to the agreement of the house, implement the recommendations without significant delay. To this end, I advise members that I intend to move to schedule consideration of this committee report for debate in the near future.

Ordered that consideration of the statement be made an order of the day for the next sitting.

PAPERS TABLED

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

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Third Report — "Robert Bilos"— Tabling

Hon Ray Halligan presented the third report of the Joint Standing Committee on the Corruption and Crime Commission in relation to Robert Bilos, and on his motion it was resolved —

That the report do lie upon the table and be printed.

[See paper 722.]

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Nineteenth Report — "Follow-up to Report 12 Balga Works Program" — Tabling

Hon Giz Watson presented the nineteenth report of the Standing Committee on Estimates and Financial Operations, "Follow-up to Report 12 Balga Works Program", and on her motion it was resolved —

That the report do lie upon the table and be printed.

[See paper 724.]

Eighteenth Report — "Budget of the Office of the Auditor General" — Tabling

Hon Giz Watson presented the eighteenth report of the Standing Committee on Estimates and Financial Operations, "Budget of the Office of the Auditor General", and on her motion it was resolved —

That the report do lie upon the table and be printed.

[See paper 723.]

NATIVE FORESTS

Motion

Resumed from 6 May on the following motion moved by Hon Paul Llewellyn —

That in light of the Forest Products Commission's poor financial performance in the native forest sector; the failure of regulation and compliance of native forest logging; the impact of logging on the habitat of vulnerable species; the compelling evidence of native forest ecosystems at risk of irreparable damage; and the compounding impact of climate change, this house calls on the government to —

(1) Set in place a full transition to plantation and farm forestry for the production of commodity timber products currently derived from native forests.

(2) Immediately develop an exit strategy for the native forest commodity timber industry.

(3) Put in place an independently refereed, scientifically based program to restore the ecological integrity of native forests which underpins the delivery of clean air, clean water, carbon sequestration, biodiversity and natural heritage values of the south west region.

HON PAUL LLEWELLYN (South West) [11.07 am]: We have introduced a wide range of arguments on the management of our native forests in Western Australia. In summary, I remind the house of my proposition that if we can meet our timber needs from plantations and farm forestry, we need not log our native forests. The second proposition is that if we are logging our native forests at a loss or without any substantial financial gain, it is a double travesty to be stripping the natural capital out of our native forests at a cost and trashing our biodiversity and the World Heritage values in the forests themselves. We have put on the table a series of arguments that suggested that the Forest Product Commission was not performing particularly well and was, in fact, performing badly and that we should remove its commercial operations from native forests by removing its licences for the extraction of timber from native forests.

I brought to the attention of the house also the handling of the forest management plan, particularly the key performance indicators that suggest that the 2004-13 forest management plan is falling behind and that the midterm review suggests that all is not well in the management of our native forests. I will just continue briefly with the argument that one of the key performance indicators would be economic performance, and I think it has been fairly clearly established that the Forest Products Commission is not performing well. The second indicator would be whether the commission is meeting its obligations to supply timber out of native forests. I made a list of the royalty prices paid for native forest and plantation timber, and I noted that there is a distinct disadvantage for native forests, in that it is cheaper, effectively, to log native forests than it is to buy timber from plantation sources. This is primarily because the royalty has been loaded in favour of stripping native forests, rather than transferring our timber production to plantations and farm forestry.

This list is interesting because it relates to the estimated and actual volumes of sawlogs removed from native forest harvests. I am sorry Hon Adele Farina is not in this place because she made considerable comment during my previous remarks. I am reading from question on notice 79 in the Legislative Council. The question asks what were the estimated sawlog volumes and what were the actual sawlog volumes that were obtained from a whole series of coupes and locations in forest operations around the south west region. I will quote a few numbers from the answer.

The amounts of sawlogs obtained vary considerably and are not in order of importance; they are in alphabetical order. Arcadia 03, CAC0306: it was expected that we would get 9 600 cubic metres of jarrah out of that forest; in actual fact we got 1 192 cubic metres—less than half the estimated volume was actually realised in the field. I will pick another random example. Cambray 01, NCM0106: the estimated cubic metre jarrah log volume was 4 000 cubic metres; the actual realised jarrah was 1 827 cubic metres—less than half the expected volume.

What is happening in our native forests if our lead agency tells us we will get 4 000 cubic metres out of a particular block of forest, and only 1 800 cubic metres is realised? It is telling us that either the asset is being poorly managed or the agency is overestimating the capacity of the asset, or both. I would advocate that the agency is both poorly managing the asset and overstating its capacity. That is clearly revealed in these figures. I am not making this up; these are the actual returns from the Forest Products Commission.

I will give an example of another random coupe. This is a forest block called Leach 01, CLE0106: the estimated volume of jarrah to be realised was 18 500 cubic metres; the realised volume was 4 086 cubic metres. This tells us that the Forest Products Commission is overestimating the volume of timber available in the forest. We can link this evidence to evidence I presented yesterday of the Forest Products Commission consistently valuing the forest estate at a higher figure to cover its losses. This is not borne out by evidence. It is not borne out by the contracts; it is not borne out by the income stream; and it is certainly not borne out by these yields. I seek leave to table this document for the house.

Leave granted. [See paper 725.]

Hon PAUL LLEWELLYN: I have not quite finished quoting from it, but I will certainly table it.

THE DEPUTY PRESIDENT (Hon George Cash): If it was not the case that the member was coming to the end of this term, I would have to say to him that once the document is tabled, it is taken into the custody of the Clerks. However, we will just watch the member; that is all!

Hon PAUL LLEWELLYN: I am not going to knock this particular piece of paper off, because I really want the house to have it.

I will now turn to the south west region total estimated volumes for jarrah timber in cubic metres. The total estimated volume of timber that would be realised was 132 230 cubic metres; the actual realised volume in the field was 76 950 cubic metres. That estimation was 50 per cent out across the entire region. If that is the case, it would clearly explain why the Forest Products Commission is in financial difficulty and is not delivering an appropriate dividend to the people of Western Australia. Something is wrong with native forest management in Western Australia. I suggest it is a fundamentally uneconomic and ecologically unsustainable system if the Forest Products Commission expected to get that volume but did not.

I will now turn to the Warren region. For those who do not know, the Warren region is one of the southern regions that grows both jarrah and karri. I will quote the end figure realised because it makes the point quite clearly. The southern forests are often very much more productive than the northern forests because of the lower rainfall. Members might remember that I outlined the very clear relationship between rainfall, growth and carbon sequestration and so on. This is borne out in these figures. For the entire Warren region, for a series of something like 20 coupes logged in 2006, the total estimated volume was 151 760 cubic metres of jarrah; the actual realised volume was 101 562 cubic metres, which translates to one-third of the actual estimate in this highly productive landscape. No wonder we are posting a loss in our native forest management. No wonder the agency is having to cost shift and hide the costs of running its operations by charging taxpayers, through the Western Australian government, for the cost of producing the forest management plan, when it should have been a cost assigned to the cost of getting the timber out of the forest.

I think those points are very clearly made. Those figures I quoted relate to jarrah, but there was a slightly better performance in the case of karri. To be even-handed, I will put on the record that the estimated volume for karri in the entire Warren area was 50 590 cubic metres; the actual derived volumes were in the order of 69 540 cubic metres. The agency was also unable to make an accurate estimate of the karri resource. We must bear in mind that when we log native forests, about 80 per cent or more of the forest is turned into low-grade charcoal and chip logs and less than 12 per cent ends up as sawn timber. For that privilege, the state actually loses money and we lose our biodiversity and impact on our assets. I cannot understand how Western Australia can allow this business operation to continue and how a government trading enterprise can operate on that basis. Now I can table this document.

At the end of yesterday's discussion, I was talking about other key performance indicators in the "Forest Management Plan 2004-2013: Mid-term audit of performance report" by the Conservation Commission of Western Australia. I listed a number of species that had been impacted on as a result of logging operations fundamentally in the native forest sector. One of the key performance indicators is the status of critically endangered, endangered, vulnerable and conservation-dependent forest-dwelling species and ecological communities as determined by listing. The objective of key performance indicator 2 is to assess the success and implementation of the forest management plan in achieving its targets through monitoring the status—that is, the protection category—of threatened flora, fauna and ecological communities so that ecosystem management activities can be assessed and appropriate actions to better achieve the objective can be identified. The interesting thing is the results in the case of flora.

Hon Donna Faragher: I have the answer, but I've written on the back of it now.

Hon PAUL LLEWELLYN: The minister has the question and answer. I thank her very much. I lost track of my notes yesterday. It was an embarrassing moment, but I now have them. I have the Conservation Commission's report and I am quoting from page 140, which states —

> Eight species of flora within the FMP area have moved to a higher category of threat since 2004. Six were previously listed as priority species and two species were new additions to the list. It is the view of the Department that there is no evidence to suggest that these species have been elevated to a higher category of threat as a consequence of management activities, …

What is causing these species to go to a higher level of risk if it is not the activities of the department? That is an extraordinary claim. The principal activities in native forests are mining, logging and burning, which are managed by this agency. It is not meeting its key performance indicators and it is claiming that in this case the agency is not responsible. I think that is interesting.

On the matter of fauna, the report states —

> Four species of vertebrate fauna have moved to a higher category of threat since 2004 …

They are all tabulated, and I have mentioned some of these. It continues —

> The elevation in category of threat of the noisy scrub-bird is not related to management activities and therefore is not a shortfall in relation to the performance target for this KPI.

The noisy scrub-bird effectively appears in coastal areas and is not specifically a forest-dwelling species. I will go through the species. The report continues —

> For the red-tailed black cockatoo it is uncertain if the move to a higher category of threat is related to management activities.

That is one species about which there is some uncertainty, but the cause of the move to a higher category certainly has not been ruled out. The report also states that the conservation status of the woylie has changed to a higher status. I think I have previously read out this list, so it is not that important for me to go through it again now. Nevertheless, the Conservation Commission is very clearly saying that, on this key performance indicator—that is, the threat to species and ecological communities—there are measurable impacts from the management of our native forest sector.

The report goes on to refer to timber yields, and I have just gone through that in quite some depth. It is clear that the management of our native forests under the forest management plan is depleting the resource and is running down the ecological assets and the economic—if it can be measured in economic terms—timber assets, because the kinds of returns that are expected are not being achieved. However, we are expected to believe that this is a profitable enterprise and a fruitful endeavour. I argue that it is neither profitable, fruitful nor intelligent to be depleting native forests in the south west when there is a stream of other economic values, including the ecosystem services for clean air, clean water, biodiversity, soil protection and so on.

I return to the motion, because I have been trying to work my way through it. I moved it on behalf of Hon Giz Watson. It states —

> That in light of the Forest Product Commission's poor financial performance in the native forest sector; the failure of regulation and compliance of native forest logging; the impact of logging on the habitat of vulnerable species; the compelling evidence of native forest ecosystems at risk of irreparable damage; and the compounding impact of climate change, this house calls on the government to —
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> (1) Set in place a full transition to plantation and farm forestry for the production of commodity timber products currently derived from native forests.
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> (2) Immediately develop an exit strategy for the native forest commodity timber industry.

(3) Put in place an independently refereed, scientifically based program to restore the ecological integrity of native forests which underpins the delivery of clean air, clean water, carbon sequestration, biodiversity and natural heritage values of the south west region.

I turn my attention to the assertion about the compounding impact of climate change. The Conservation Commission stated in its midterm review that we have underestimated the impact of climate change not only in the productivity of forests, but also in their role in carbon sequestration. The commission has made some very clear statements to outline its deep concerns in that regard. The commission is saying that we should act earlier rather than later in a number of places. From the beginning of 2009, the Department of Environment and Conservation is giving greater weight to climate change whenever it makes management decisions; in other words, it is concerned that there is no delay in making these decisions as rainfall declines and the climate changes.

I will go into some of the ecology of jarrah forests. Jarrah forest is remarkably uniform as a forest species across a very wide range. In most ecological circumstances, one would expect to find at least five different tree species across that range, but in Western Australia the jarrah forest has an extremely large ecological range from north of Perth all the way across to east of Albany. In normal circumstances, five or six different species would cover that range, and jarrah goes from a coastal tree right through to magnificent tall forests. The interesting thing about the jarrah forest is that the ecological diversity is in the understorey. While we have seen a decline in the harvesting rates, we will also see a major impact on the understorey species. Those are the species that are listed in the report as being lost. Another interesting thing about the jarrah forest is that there is an ecological cline as the rainfall changes from east to west. The north eastern jarrah forests—that is, the forests just south of Perth and to the east—have been most heavily impacted by dieback and declining growth rates as a result of the decline in rainfall. People are very concerned that we will lose diversity in the forest, and that some major species may be lost. The tingle forest, for example, hangs just off the bottom of the south west of Western Australia. The decline in rainfall will push the tingle forest range off the south coast of Western Australia, and we will lose that species. Decline in rainfall could even push the karri forest south. Its natural ecological rainfall range might be 100 kilometres south of the south coast. Climate change is an extremely important impact factor in the management of our forest ecosystems. Therefore, any responsible long-term management should take into account the way in which we manage the ecosystems in the long term to ensure that they can adapt to the changing climate. Stressing the forests through over-logging, over-burning, mining, and the construction of roads and powerlines does not contribute much to maintaining the ecological integrity of the extraordinary remnant of native forest in the south west. We need to take a very close look at what kind of management regime we put in place. It certainly should not be repeated, aerially-based and time-based extensive burning and logging.

Those stressor factors will deplete the capacity of our forests in this age of climate change to perform one of their key functions, which is carbon sequestration. Professor Brendan Mackey, of the Fenner School of Environment and Society at the Australian National University, has produced a book entitled *Green carbon: the role of natural forests in carbon storage*. I remind members that the Greens (WA) believe that our forests should be incorporated into carbon trading arrangements, and that we should be measuring the amount of carbon being locked up in our forest ecosystems. Brendan G. Mackey, Heather Keith, Sandra L. Berry and David B. Lindenmayer have undertaken an extensive study of the role of forests on the east coast in sequestering carbon. I think I have previously quoted from these authors. They write about emissions reductions from deforestation and forest degradation. By logging, burning and degrading the forests we are losing carbon storage. Their principal argument is that if we were to protect our native forests, we would have a massive capacity to store carbon. The document states —

> Our analysis shows that in the 14.5 million ha of eucalypt forests in south-eastern Australia, the effect of retaining the current carbon stock (equivalent to 25.5 Gt CO_2 (carbon dioxide)) is equivalent to avoided emissions of 460 Mt CO yr for the next 100 years. Allowing logged forests to realize their sequestration potential to store 7.5 Gt CO_2 is equivalent to avoiding emissions of 136 Mt CO_2 yr for the next 100 years. This is equal to 24 per cent of the 2005 Australian net greenhouse gas emissions across all sectors; which were 559 Mt CO_2 in that year.

The take-home message is that protecting native forests and allowing them to grow would reduce our emissions by 24 per cent; that is, if we had a policy of no logging, clearing or degradation of our native forests, we would be meeting our commitments under the Kyoto Protocol and we would not be having this ridiculous argument about emissions trading schemes. The Greens believe that we need to go further than that, but in actual fact there will be no loss to society; there will be only gains to society by entrapping carbon in our native forest ecosystems and keeping it there to maintain the ecological and atmospheric balance of carbon.

I turn now to another part of the proposition in this motion; that is, to set in place a full transition to plantations and farm forestry. We are talking about a full and fair transition that takes into account employment in the communities of the south west and ensures that the transition leads to benefits to the regional communities rather

than losses of employment and industry. Considerable studies exist on employment in the forest industry. It is clear that it would be possible to make the transition into plantations and farm forestry, and to generate more jobs and more economic outputs in the process. I have here a comparative analysis of some of the figures relating to employment in the forest industry. It shows the total number of people employed in the plantation forestry sector and the areas planted. In 2006, the aggregated area of plantation hardwood was 281 300 hectares, and the number of people employed was 1 169. Plantation softwood accounted for 105 100 hectares, employing 1 448 people—26 per cent of the people employed in the forestry sector. With 386 400 hectares, and 2 729 people employed, plantations accounted for 49 per cent of employment in the forestry sector. Native forestry, employing 2 840 people, represents 51 per cent of the industry. Our contention is that, with well-structured investment and planning, it is more than possible to replace that resource and shift those people into plantations and farm forestry. The evidence is already there. It requires the government to look at the long-term benefits of plantation and farm forestry and make an investment up-front. It should quit its operations in the native forest sector, because they are loss-making enterprises, and put those resources into the plantation sector.

The Greens believe that with a well-structured plantation and farm forestry strategy, a just and fair transition can be made out of native forests into the plantation sector with minimal impact on communities. People could then be reskilled for and redeployed in this more productive and reliable sector of the timber industry.

I will underpin the argument of shifting out of the native forest sector and into the plantation sector. The gross profit before tax and overheads by business for arid forests—I suspect it means the pooling of sandalwood—is $6 million, which is highly profitable; for plantations, the Forest Products Commission, $13 million; and the south west forests, the native forests, $18 million. Interestingly, we have already challenged whether there is an $8 million profit. In the 2007-08 financial year the gross revenue, by business segment, was $57 million for plantations; arid forests—the sandalwood industry—$14 million; and south west forests, $42 million. These figures suggest that the plantation and farm forestry sectors are considerably bigger and we need to have a good look at the economics of and revenue streams from the two sectors.

An argument could be put that Western Australia would be better off keeping its native forests intact by investing in and restoring the condition and integrity of our native forests. An independent refereed scientifically based program could be put in place to restore the ecological integrity of native forests, which underpins the delivery of our clean air. A case should be made that the hardwood sector of native forest logging is a loss-making enterprise and the World Heritage listing and protection of our native forests will deliver long-term benefits to the community, both economically and ecologically.

I have not raised the value of tourism and recreation from the south west forest. If we make all those arguments, it makes no sense to continue logging native forests, damaging the ecosystems and putting at risk their potential to mitigate the impact of carbon.

With those words, Hon Paul Llewellyn's introductory comments come to an end and I call on other members of Parliament to put their case for the protection or otherwise of native forests. They have an opportunity to put the evidence on the table that this is a fruitful endeavour and something that we should continue doing. It is a good way for me to leave Parliament.

HON ROBYN McSWEENEY (South West — Minister for Child Protection) [11.44 am]: The government opposes this motion, which seeks to shut down native forest harvesting quickly. The motion falsely suggests that plantation timbers can take over. The Greens (WA) do not want a balance between conservation and industry. The motion is predicated on many false claims. It seeks to link cessation of native forests with environmental utopia. Forests in developing countries will suffer if this motion is successful.

I have an article by Mark Poynter, a spokesman from the Institute of Foresters of Australia, which states —

> With respect to forestry and forest products, the environmental movement is confused. In stark contrast to its normal preference for natural, organic products, it remains bitterly opposed to native forest logging, which delivers a wide range of naturally durable and highly decorative timbers.
>
> Yet, after decades of promoting plantations as a preferred alternative, many environmentalists now deride them as bland, artificial monocultures reliant on destructive applications of pesticides and fertilisers. These conflicting attitudes highlight an impractical idealism that is counter-productive to sensible environmental outcomes. We do not live in a perfect world — something that antiforestry activists seem unable to grasp. In their ideal "green" world, it seems that wood can be obtained without felling a tree.

Hon Paul Llewellyn: Would you table that article?

Hon ROBYN McSWEENEY: I am very happy to table it.

[See paper 726.]

Hon ROBYN McSWEENEY: The article came from my file of information. Hon Paul Llewellyn and I represent the South West Region. I was saddened when all those people in the timber industry lost their jobs. That occurred because of the urging by the Greens and the environmentalists that logging in forests cease. From there questions were asked about the definition of old-growth logging. Regrowth was being harvested and the movement seemed to be saying that it was old-growth logging. Somewhere along the way their view of what was being harvested became blurred.

The loss of people's jobs saddened me because I had grown up with many of these people. They were proud foresters who loved their job and did it properly, yet they were made out to be monsters of the deep. All they wanted to do was to continue their jobs and keep living in the community that they loved. However, that was not to be.

The essence of the Greens' motion is to call on government to exit native forests harvesting in a large measure over the next five years. The Greens might support low-level harvesting of specialty timber, but consider everything else to be producing commodity timber products and, therefore, should be stopped.

The motion suggests that the impact that this would have on the WA timber industry and consumers would apparently be lessened or countered by sourcing those timber products from plantations and farm forestry. The apparent remedy mischievously ignores that it will take several decades and not five years for plantation sources to replace the quantity and quality of the native forest timber that is currently used to produce furniture, joinery and flooring. If native forest harvesting ceases over the next five years, there will not be local industry capable of using increasing quantities of plantation-grown timber. The strong evidence is that the absence of native timbers will lead to greater demand for imported timber and energy intensive materials, thereby transferring and not solving sustainability questions.

In the period leading up to the 2001 state election, the community signalled a desire to stop timber production from old-growth forest in those forests that have not been disturbed by such activities since European settlement. This was balanced by support for ongoing production of renewable resource from forests that have previously been cut, regenerated and managed for multiple uses.

In 2001 the Labor government implemented a policy that involved the dislocation of many jobs throughout the south west and metropolitan area. The figure of 875 jobs has been given, but I believe it was higher when we take the contractors into consideration. The Greens' motion now seeks to adopt an extreme position whereby any last vestige of balance is removed from forest policy in this state. It is difficult to understand this at a time when we are all becoming more aware of and planning to respond to the challenges of climate change. The Greens should be promoting the sustainable use of all renewable resources to meet the needs of our society, from high-value timber furniture through to renewable sources of energy. Instead, we have a campaign to damage this sector on a set of false propositions.

In the motion, the call for a cessation of native forest harvesting is predicated on many false claims. Despite the claim that the habitat of vulnerable species is at risk from harvesting, the "Forest Management Plan 2004-2013: Mid-term audit of performance report", released for public comment on 30 March 2009, cites no evidence that vulnerable species of flora or fauna or threatened ecological communities are at greater threat as a result of harvesting or related activities. The claim that native forests' ecosystems are at risk of irreparable damage from harvesting not only is in direct contradiction of the mid-term audit of performance report, but also ignores the fact that over half of the public south west forests are reserved from harvesting. They are reserved from harvesting, and they are there for all of us. It fails to recognise that harvesting operations in countries such as Australia have been progressively refined to minimise the adverse impacts on wildlife, water and many other forest values. It also seeks to perpetuate the green myth that forest harvesting leaves a devastating landscape instead of a vigorously regenerating young forest.

The claim that regulation of native forest harvesting is failing is wishful thinking. The Forest Products Commission publishes an annual compliance report, which shows that there is room for improvement and just where greater effort needs to be focused. The Forest Products Commission has an accredited environmental management system. The Department of Environment and Conservation monitors and acts on non-compliance in timber harvesting operations and reports annually on the number of improvement notices and management letters it issues to the Forest Products Commission. DEC also hosts community forest inspections that provide community representatives with the opportunity to inspect firsthand the systems and processes that are in place to sustainably manage the harvest of native forest trees from state forests and to note compliance with existing management systems and processes.

The recently released "Forest Management Plan 2004-2013: Mid-term audit of performance report" recognises that there are difficulties in operationalising the requirements of the forest management plan. However, that is a long way from saying that regulation of native forest harvesting is failing. The claim that the Forest Products Commission's financial performance in the native forest sector is poor is completely wrong. The Forest Products

Commission's annual report shows that over the past three financial years the south west forest segment of the business has generated an average annual profit—before tax, natural resource asset valuations and corporate costs allocation—of $13.8 million, which is an average return on the south west forest assets of 11.8 per cent.

The motion seeks to establish a link between the cessation of native forest harvesting and a substantial improvement in air and water quality, greenhouse mitigation, biodiversity and heritage protection, albeit provided the government funds a major restoration program. This would be counterproductive. There is no threat to these forest values from ongoing, well-managed harvesting. In contrast with cleared land, south west forests are recognised and cherished for these values, despite having supported a substantial timber industry for 100 years or more. Harvesting of forests, which is followed by vigorous regeneration, captures more carbon dioxide from the atmosphere, particularly when the wood is made into long-lasting products that lock up carbon for decades.

The Greens' portrayal of forest disaster also makes it more, not less, difficult to persuade landowners and investors that they will be able to grow and harvest plantations on cleared land and, in doing so, remediate salinity and capture more carbon dioxide. The best way to achieve more tree cover and more of these forest values is not to put a fence around the native forests but to encourage the full continuum of uses.

In 2008 the Australian Institute of Criminology published a report on illegal trade in timber and timber products in the Asia-Pacific region. This report highlights the high level of demand for timber and timber products, which leads to large-scale illegal logging operations in the Asia-Pacific region. Furthermore, the report shows that Australia is importing some of this timber. It is estimated that in 2002-03, some 22 per cent of imported wooden furniture involved timber from illicit sources. In 2003-04, 19 per cent of plywood and 16 per cent of veneer came from such sources. Again in the high-value end, 14 per cent of the category, including doors and moulding, also came from illicit sources.

It is also incredible that the Greens can argue that WA should reduce its production of furniture, veneer and joinery when the bulk of plantations in this state and across Australia are struggling to meet demand for structural timbers or are specifically grown to produce paper and address our resource shortage in that area.

Hon Paul Llewellyn: That's a deliberate misinterpretation of what we're saying. We are talking about extremely high-value, high-end industry and investing in that sector because that's where the profitability is. We're simply saying that it should not be based on our native forest timbers.

Hon ROBYN McSWEENEY: The member has had his say and now the government is responding. I live in the south west and I am very happy to be the one responding.

This year's "Australia's State of the Forests Report" from the Department of Agriculture, Fisheries and Forestry reports an increasing trade deficit in wood products up to $1.9 billion annually. It would be irresponsible for any jurisdiction in Australia to take the measures proposed by this motion, which would inevitably lead to Australia importing more timber from our neighbours in the region and damaging their efforts to control and manage timber harvesting that falls far short of our own standards for forest management.

As a member for the south west, I wish to say that our forests are managed very well. We have a reputation in Western Australia of managing our forests above that of any other state; in fact, anywhere in the world. We are first class in managing our forests. There is room for trees on farms. Hon Donna Faragher was just telling me how many cubic metres have been planted. There is also room for harvesting our forests if it is done properly. It seems to me that it is being managed very well.

HON SALLY TALBOT (South West) [11.58 am]: It can sometimes be helpful in these discussions to try to backtrack a little through the arguments to see whether we can get to a point at which we all agree, and then take those threads and try to work through the arguments to find out what the real points of difference are. When I think about native forests and that very significant move that the Gallop Labor government took in 2001 to cease logging of old-growth forests, a picture comes into my mind that was put there many years ago when I was in Denmark talking to one of the shire officers whose father was one of the original surveyors in the area. His father had written accounts of what he was seeing as he surveyed the forests in that region for the first time. The man described seeing the forest all that time ago, going back more than 100 years now, and counting four of these enormous trees an acre. They made up the forest, which provided a complete unbroken canopy. There was one tree in every quarter acre, which provided a complete unbroken canopy, and his description of going into those native forests was that it was like walking into a cathedral. When we think about the size of those trees, we realise how things have changed over the past century. In fact there are very few places in the south west, or indeed anywhere in the world, where we could walk into a forest and have that sensation of walking into a cathedral.

Although Hon Robyn McSweeney pointed out that she was delivering the government's response to this motion, which technically was moved by Hon Giz Watson but spoken to in some detail and at some length by Hon Paul Llewellyn, she was a little unfair in quoting Mark Poynter from *The Age* in 2007. I do not believe the position of

the Greens (WA) on the timber industry and the preservation of native forests is confused. I believe there are some major points of difference between the position of the Greens and the position that has been espoused by the Australian Labor Party, and I will point out some of those as I go along. However, I do not believe it is fair to say that the position presented by Hon Paul Llewellyn to us in this chamber—now over several hours—is confused. If I were to make a criticism of it, it would be that it did not take account of the full complexities of the argument. I am sure my colleague sitting behind me will forgive me if I say that one of the attractions of being a Green is that the Greens do not always have to take account of the full complexities of the —

Hon Paul Llewellyn: We're simple minded!

Hon SALLY TALBOT: I am not saying that the Greens are simple minded at all. I am saying that it is something of a luxury, in an argumentative sense, to be able to go for the 100 per cent position without having to be accountable to other constituencies.

That was very much the spirit in which Labor made the momentous decision at the end of the 1990s: that if and when we got back into government, we would end logging in native forests. It was a very traumatic time for the Labor Party. The Labor Party has many members and is associated with unions whose membership was placed under a great deal of strain by this decision. It was an argument that had raged within the Labor Party for many years. It was certainly a moment that made me very proud to be a member of the Labor Party when we made that decision at the conference at the end of the 1990s. The decision was largely made because we actually won the argument within the party. It was not a question of steamrolling people by using the numbers; it was a discussion that had gone on for many years. It was the argument from people like me who believed it was the right thing to do to stop logging native forests that ultimately won the day. The decision was made very much with those people who worked in the timber industry in mind, which, as we have heard in the contributions to the debate in this house, was a very large number of people. I am inclined to agree with Hon Robyn McSweeney that the figure of between 800 and 900 people is probably very conservative. I believe that around 900 jobs might have been affected; however, if we look at the communities and families whose lives were disrupted by this change, I agree with Hon Robyn McSweeney that it would be significantly more than that.

Hon Paul Llewellyn: Are you looking accurately at and have you completed your research? They actually quote all the numbers for employment in both sectors.

Hon SALLY TALBOT: No, I was referring to a comment that Hon Robyn McSweeney made when she quoted a figure from the government's response. I am therefore agreeing with Hon Paul Llewellyn that it was more than that.

The key aspect about assessing this argument—as we assessed it in the Labor Party in the late 1990s that led to the decision of the government in 2001 to stop logging in old-growth forests—is that the argument cannot be presented in black and white terms. That is my criticism of the stance that Hon Paul Llewellyn takes. These are not black and white issues.

I suppose the question remains—it will be for history to determine the response to this—about whether Labor's policy went far enough. One thing that is certain—Hon Robyn McSweeney will not be able to deny this—is the Liberal Party in opposition, and indeed the coalition government at the time, opposed this step every inch of the way. If Labor had not won the election in 2001, it is clear that we would have continued logging in old-growth forests. What does that mean? Obviously in the broader sense it means that our native forests would have continued to diminish year by year; and by now—I do not know—we might have had no native forests left.

The question I must ask is: why were we logging in those days prior to 2001? This was very much part of the discussion within the Labor Party. We were chopping down old-growth forests to make things such as roof frames. It was the wrong sort of timber for that and it was unnecessary. We were generating industries and products that without as much economic and social disruption could have been replaced years ago.

Debate adjourned, pursuant to standing orders.

COMMITTEE REPORTS — CONSIDERATION

Committee

The Deputy Chairman of Committees (Hon Matt Benson-Lidholm) in the chair.

Standing Committee on Estimates and Financial Operations — Twelfth Report — "Balga Works Program" — Motion

Resumed from 2 April on the following motion moved by Hon Giz Watson —

That the report be noted.

Hon PETER COLLIER: I will make a few more comments on this report. I have made a significant number already, but I would like to comment in particular on recommendations 11, 13 and 14. That is because these recommendations, in essence, are exactly the measures that motivated and prompted me, and I am sure

motivated virtually every member of the committee, to continue to find an outcome for the Balga Works fiasco. I am talking about the very real victims—the workers and students that we identified in the process—who have gone essentially into the ether. I want to make sure that they are identified and assisted in every way possible. Recommendation 11, which was a majority recommendation supported by Hons Giz Watson, Sheila Mills, Helen Morton and me, recommends that the government reimburse all former employees of the Balga Works program who can demonstrate their claims for outstanding wages and superannuation. Recommendation 13, also supported unanimously, recommends that the government provide assistance and support in the form of debriefing and counselling to the people affected by the Balga Works program, and that in six months the government report back to the Legislative Council on its actions. Recommendation 14 is that the government identify the young people who were involved in the Balga Works program and ensure that they are able to access educational and employment assistance to the level promised by the Balga Works program. I was not satisfied with the department's response to these recommendations. I felt that the victims themselves had been ignored throughout the entire process. It appeared that the ignorance of their plight was going to continue. That was a real concern to not just me but to all —

Hon Ljiljanna Ravlich: They were ignored by your department; what are you going to do about it?

Hon PETER COLLIER: I cannot believe that Hon Ljiljanna Ravlich can sit there and say that with a straight face, considering she was in control as the Minister for Education and Training during this whole fiasco. I will say more about that particular minister in a minute, because she should hang her head in shame. That minister was told over and again about this issue.

Hon Ljiljanna Ravlich interjected.

Hon PETER COLLIER: I am sorry, Mr Deputy Chairman —

The DEPUTY CHAIRMAN (Hon Matt Benson-Lidholm): Order, members! I would like to listen to the minister.

Hon PETER COLLIER: As I said, I and the members of the committee were concerned that consideration be given to the victims. If we were to follow the recommendations of the report, that was exactly what was going to happen. I am delighted that the committee has continued with this investigation and assessed whether the recommendations have been implemented. I really am very, very grateful to the committee for pursuing this issue. Having appeared before the committee with the department, I was very appreciative of the comments, actions and response from Sharyn O'Neill, the Director General of the Department of Education and Training. She accepted that the department had perhaps acted insensitively and perhaps had not given due consideration to the plight of the victims. As a result of her appearance before the committee, the former employees who could be contacted were contacted, and I understand that they have since met with the department and articulated their concerns about the Balga Works fiasco. They have put their view about whether they feel the outcomes have been just. They spoke to the department about whether they felt their claims for lost salaries, counselling et cetera had been addressed. They feel that the department is at last actually listening to them. That is a good, positive step forward. Although the committee remains concerned about what has happened to a number of students since the Balga Works fiasco, I think the department is doing all it can at the moment to ensure that those students are identified and assisted. However, as far as the workers are concerned, those victims are very appreciative that at last the department is being proactive.

As I said, two issues in particular needed to be identified from this report. The department should learn from the mistakes of the Balga Works fiasco. It was a debacle. It went on for two years from virtually mid-2004 to mid-2006. The government and the department were constantly being told about the issues within the Balga Works program, and their concerns were ignored. As I said, I am pleased that the department has responded to those concerns. Having said that, in conclusion, I am very appreciative of the committee for allowing me to sit in on the hearings as a substitute member. It was very worthwhile. It was a very sad and sorry episode and I do not think any of us enjoyed the experience, but, collectively, we felt as though we achieved something from it. I would like to think that, as a result of this excellent report, we learn from it, the department learns from it and the government learns from it and that more vigilance is incorporated within our schools to ensure that such an episode does not occur again. At the same time, initiatives specifically generated towards assisting disengaged youth should not be scuttled, because they are needed.

Hon SHEILA MILLS: I will keep my comments very brief because I have commented on this issue several times before. I wonder whether the Minister for Training has been able to ascertain from the department whether it is a little more amenable than it seemed to me to be to ensuring that the victims receive the lost wages they feel they are entitled to, without being bogged down in some sort of legalistic process over the status of the provider. As the minister is aware, some severe financial disadvantage has been suffered. The other issue, which I touched on last time, is the role of Mr Garnaut and the evidence he gave to the Director of Public Prosecutions compared with the evidence he gave to the committee about knowing what Merv Hammond was up to. In my view,

Mr Garnaut was almost complicit in a lot of the damage that occurred. He could not plead ignorance of what was going on because too many complaints had been made, and he seemed to have passed under the radar in this debacle and the tragedy with the Balga Works program. I would really appreciate it if the minister could find out and let me know.

Hon RAY HALLIGAN: I am interested in this report, particularly the subject matter, given that I have some knowledge of Balga Senior High School and, to some extent, Merv Hammond. More importantly, I am interested in the issues associated with how this program was able to get up and running, and not only the subsequent demise of the program but also the problems associated with the people involved in it. Many questions come to my mind. I am sure, as the Minister for Training has already mentioned, mistakes that were made have now been recognised and, hopefully, those same mistakes will not be made again.

There are many issues, not the least of which is, as the minister has already said, the need for teachers and others within the public service to be innovative, to be prepared to come forward with new ideas, to approach problems from, I think the saying is, outside the circle and to try new ways and means of achieving particular ends that are, of course, to the benefit of the people of Western Australia. But in each and every situation when we move outside the norm, when certain checks and balances have already been established for that norm, we must also ensure that those checks and balances are included in what is being proposed. That appears not to have taken place in this instance. It appears as though there were no internal controls; or if there were internal controls, they were either pushed aside or ignored.

That is not the way things should be done. We are talking about public money—taxpayer money—and, in this instance, a considerable amount of taxpayer money. It concerns me that those internal controls were not in place, operating, and protecting that taxpayer money. When we have internal controls, it is not just a checklist of things that need to be done; there must also be people keeping an eye on what should be done, as well as a checklist that ensures that things that are put in place are in fact happening. Again, that does not appear to have been the case with the Balga Works program. It took the younger participants in the program who were having problems to come forward and tell the right people that their concerns were not being addressed before any action was taken.

Of course it should have come to the notice of the Department of Education and Training a lot earlier than it did. Surely things were happening that would have caused someone to ask questions; often that is all that is required in the first instance to draw attention to problems. It seems as though the problems were kept quiet by too many people for far too long. It should not have got as far as it did. I sincerely hope that the Minister for Education and the current government have now implemented the necessary internal controls to ensure that this type of thing does not occur again. I do not think one can put it in any other way but to suggest that the previous government was asleep at the wheel about this particular program. It is unfortunate that when something of this nature and magnitude occurs, one has to ask the question: is this the only place it has happened? Are there others that are yet to be found? They are awkward and difficult questions, but they are questions that certainly come to the mind of some, including me. If internal controls are not in place in one instance, are they not in place in others? All the current government can do is go back and check to ensure that those internal controls exist.

HON LJILJANNA RAVLICH: I would like to make some final comments on this report. One of the concerns I have is that given the extensive time spent on this inquiry and the extensive time spent in hearing from the people affected by this matter, and given what the inquiry has found, I am not satisfied that the closure of this chapter has been adequately handled by the current government. People were financially disadvantaged, and some of the clients of the Balga Works program were put at risk. I am very saddened about what happened. I do not think this is an isolated case in a big bureaucracy such as the Department of Education and Training. I should say that at one level I am fairly pleased that the honourable minister actually pursued this issue; however, it came to the attention of my office when a number of employees rang to indicate that they had been involved in this program, which had been ongoing for some time, and they had not been paid. My response was to instruct the department that those people had to be paid. What I did not know was that everything was not as it seemed. The principal, Merv Hammond, was held up as one of the most progressive principals this state had ever seen because he had devised this new program. It was going to be a fantastic thing for hard-to-deal-with students, and consequently he was put up on a pedestal and awarded the principal of the year, and everyone thought that Merv was doing an outstanding job. But, of course, if one started to scratch a little beneath the surface, one realised that not all was as presented, and in fact there were some serious problems.

Every time we sought information from the department on this matter, time and time again we received briefing notes that indicated to us that this was a great program, the department was happy with the way it was progressing, Merv was a wonderful principal, and so on and so forth. Having read this report, it is quite clear that most of what was said was not true. I do not know what a minister has to do to ensure that people actually tell the truth. I am also very concerned that people do not value the notion of truth. It does not seem to be important anymore that public servants must be truthful in their dealings with people, be truthful when they present before

a committee and be truthful when they are in discussions with people and in their everyday general manner. I find it very, very disappointing that, as is evidenced in this report, quite clearly people were not open and quite clearly were not truthful.

In my view, there is certainly a culture within the education department in which the bureaucracy and employees go off and do their own thing. At the end of the day, when they get into trouble and there are difficulties, it is the minister—and rightly so—who must get up and defend them. But it is very, very difficult to defend something that is based on a series of lies or a series of actions that were never supported by a minister, or if the minister had not been told the truth. That is a part of the Westminster system, and at the end of the day that is the system we have, but it was very, very disappointing.

What is also particularly disappointing is that the then shadow minister, who is now the minister—he is not really, because at the end of the day it is really Dr Liz Constable, MLA, who has the responsibility for this—came into this place and made mileage out of the situation day after day, based on untruths. He went to the media and knowingly provided information that was not true.

Hon Peter Collier: What?

Hon LJILJANNA RAVLICH: That is borne out by this report. I can go through all the media and check.

Hon Peter Collier: What?

Hon LJILJANNA RAVLICH: The member is known to be a person who does not deal in truth. That is probably the most disappointing act in what has happened. I want the Minister for Training to follow up and make sure that the people who have been adversely affected and who have become financially disadvantaged because of their involvement in this program are, firstly, identified and, secondly, fully compensated.

Hon Peter Collier: I have. I have done it fastidiously and relentlessly.

Hon LJILJANNA RAVLICH: In response to that comment, can the minister please table in this place the names of the people he has contacted and the amounts they have been compensated?

Hon Peter Collier interjected.

Hon LJILJANNA RAVLICH: No; the minister can give me an undertaking to provide that information and to table it in Parliament.

Hon Peter Collier: You can ask the Minister for Education, but I'm sure she wouldn't mind.

Hon LJILJANNA RAVLICH: The minister could pass on that request and perhaps he can provide that information.

Hon Peter Collier: Quite frankly, I do not think that people would like their names tabled in Parliament. Give me a break.

Hon LJILJANNA RAVLICH: All I am asking for is some information. If I do not get it, I will simply ask a question in Parliament and seek the information that way. Given the history of this issue, I think it is fair enough that we know who was not paid, whom the government owed a liability to, who received financial compensation and the amount of compensation that was paid. I think they are fair questions. I will make sure that that information is made public, irrespective of any of the sensitivities that the Minister for Training is concerned about.

Hon GIZ WATSON: I want to make some concluding comments on this issue, as I have already spoken a little on the report. I was remiss in my comments in not saying a special thanks to the staff of the Standing Committee on Estimates and Financial Operations who worked on this report. As numerous members have commented, it was a very forensic exercise involving significant amounts of evidence; in fact, there were boxes and boxes of it. One of the challenges that the committee encountered was, in effect, being drowned by an enormous volume of material. I particularly acknowledge the work of Lisa Peterson in leading the committee staff on this report. I thank her very much for her excellent efforts.

I also bring to the attention of members that today I tabled a further report that relates to the twelfth report. The Standing Committee on Estimates and Financial Operations has seen fit to table a nineteenth report, which is a follow-up to this report. I encourage members to read the report. It was an interesting exercise in that the committee remained unsatisfied with the response it had received from the government on the twelfth report and undertook to speak further to the Department of Education and Training about its response and also to speak with the Director of Public Prosecutions. I will save my substantive comments for the specific debate on the nineteenth report, but one thing that came out of the follow-up report was that members were more satisfied that they had received a clear apology from the now Director General of the Department of Education and Training. I certainly felt that this director general, Ms Sharyn O'Neill, understood the matters that the committee investigated and the consequences of the mishandling of the management of the Balga Works program. She

expressed a very clear apology to those affected, and that was very much welcomed. I think that the current director general has some appreciation of the issue and will make efforts to ensure that the mistakes that were very evident in the Balga Works program are not repeated.

It was also interesting to check with the Director of Public Prosecutions that the work of the standing committee had not in any way impaired his work in seeking to prosecute Mr Hammond. The committee was very concerned to hear some feedback that the work of the standing committee had in fact been constructive, rather than problematic, in his investigations. I think it was a useful exercise for the operations of an inquiry to be held while at the same time another inquiry was being carried out for a police prosecution. It is very important that the work of the standing committees of this place does not in any way impede the work of the Director of Public Prosecutions. As members of standing committees will know, sometimes that line is a very fine one to tread. We were very pleased that Mr Cock recognised that the committee's inquiry and investigation had assisted him in this process and that there was nothing that the committee could have done that would have assisted him more or made his job any easier, other than that we found some interesting comparisons of evidence, particularly by Mr Garnaut about his role in this scenario, as other members have pointed out.

The nineteenth report contains one recommendation; that is, that the Attorney General investigate the apparent anomaly of public servants resigning and thereby avoiding any further penalty for alleged misconduct. I flag that recommendation at this point, because that legal loophole played a significant part in the saga of the Balga Works program. The committee sincerely requests that the government look at this matter to determine whether there is a need for some legislative amendment to deal with that anomaly.

Again, I am pleased to have been part of a very exhaustive inquiry. It is interesting to note the ultimate dilemma when a report is tabled in the period of a new government. In that kind of dilemma, I guess we see what we have seen a bit of today. What responsibilities fall to the former minister or government and what responsibilities rest with the current minister and government? The current government can say that it did not happen on its watch, and the former government can say that the current government was passionate about this issue then and can ask why it is not doing something about it now. As a neutral observer to a large extent, the key point that we must not forget in all of this is that the committee was very clear—the committee is made up of members of a range of political persuasions—that it wants to ensure that students and employees who might be in a similar situation in the future have their concerns addressed in a timely and thorough manner. If anything came out of this inquiry, it is that the biggest losers were the students and former employees, many of whom are still dealing with the repercussions. Let us not lose sight of that fact. Let us work out what each of us can do within our own capacity to address those ongoing needs.

Question put and passed.

Standing Committee on Environment and Public Affairs — Eleventh Report — "Annual Report 2007"

Resumed from 12 March.

Motion

On motion by **Hon Sheila Mills**, resolved —

That the report be noted.

Standing Committee on Environment and Public Affairs — Twelfth Report — "Overview of Petitions"

Resumed from 12 March.

Motion

On motion by **Hon Sheila Mills**, resolved —

That the report be noted.

Standing Committee on Environment and Public Affairs — Fifteenth Report — "Annual Report 2008"

Resumed from 19 March.

Motion

On motion by **Hon Sheila Mills**, resolved —

That the report be noted.

Standing Committee on Estimates and Financial Operations — Fifteenth Report — "Annual Report 2008"

Resumed from 19 March.

Motion

Hon GIZ WATSON: I move —

That the report be noted.

I do not have much to say about this annual report. The bulk of the work done during this period was the Balga Works inquiry that we have just dealt with. It would be superfluous to comment further on that, because we dealt with it in discussing that committee report. I have no further comments.

Question put and passed.

Joint Standing Committee on the Corruption and Crime Commission — Second Report — " Report on the Relationship between the Parliamentary Inspector and the Commissioner of the Corruption and Crime Commission"

Resumed from 19 March.

Motion

Hon RAY HALLIGAN: I move —

That the report be noted.

Members will be aware that last year some problems were being aired in the media that were associated with the then parliamentary inspector, Malcolm McCusker, and the commissioner, Len Roberts-Smith, of the Corruption and Crime Commission. I quote from page xi of the foreword to this report —

> In 2007 and 2008, five reports prepared by Mr Malcolm McCusker AO QC, the Parliamentary Inspector of the Corruption and Crime Commission of Western Australia ('the Parliamentary Inspector') were tabled in Parliament which were critical of investigations undertaken by the Corruption and Crime Commission ('the CCC'), and the expressions of opinion by the CCC that certain individuals had engaged in misconduct ('Misconduct Opinions').
>
> Mr McCusker's reports gave rise to a dispute between the Commissioner of the Corruption and Crime Commission of Western Australia ('the Commissioner') and Mr McCusker as to whether the Parliamentary Inspector could:
>
> - critically review Misconduct Opinions reached by the CCC; and
> - table directly with Parliament a report which contained this critical review.
>
> At the height of the dispute, the Commissioner commenced two sets of proceedings in the Supreme Court of Western Australia in December 2008 seeking a declaration as to the legality of Mr McCusker's actions in tabling such a report with Parliament.
>
> The litigation was discontinued on 6 February 2009, following a day-long workshop held between the Commissioner, Mr McCusker and the new Parliamentary Inspector, Mr Christopher Steytler QC, hosted by the Committee on 4 February 2009.
>
> The dispute has raised many important issues as to the functions, powers and responsibilities of the CCC and the Parliamentary Inspector as they pertain to each other. The Committee views that it is inevitable that issues of this nature will arise with new legislation such as the *Corruption and Crime Commission Act 2003* ('the CCC Act'). A similar dispute occurred in Queensland between the Criminal Justice Commission and the Parliamentary Criminal Justice Commissioner.
>
> The purpose of this Report is to inform Parliament of the progress of the Committee's consideration of these issues to date. In this regard I would like to express my gratitude to the former Committee, upon whose work a substantial portion of this Report is based.
>
> It should be noted that despite, at times, the potentially divisive nature of the dispute, several positive outcomes have eventuated.
>
> **First** the CCC has reaffirmed:
>
> - its position that the role of the Parliamentary Inspector in monitoring its operations is absolutely essential to the effective operation of the legislative scheme. This includes the audit of the CCC's activities in terms of its compliance with State laws;
> - that without such external and independent oversight to scrutinise the performance of the CCC's functions, community and Parliamentary confidence in the appropriateness and integrity of its processes, and consequently those of the public sector, would be severely diminished; and
> - that it welcomes any recommendations from the Parliamentary Inspector for improvements to its efficiency and effectiveness appropriate to this role.
>
> **Second** since commencing in the office in June 2007, the Commissioner, the Hon Len Roberts-Smith RFD QC, has reviewed various aspects of the CCC's practices, and where appropriate, refined them.

> The Commissioner's attention in this capacity has been particularly focused on improving processes concerning the CCC's interaction with witnesses and those subjects of an investigation, both during continuing investigations and at their conclusion and reporting stage.
>
> **Third** the Commissioner has implemented a number of enhancements to CCC practices for both external and internal purposes. Externally, these are aimed at increasing clarity for witnesses of their rights and obligations in regard to investigations and the CCC Act. Internally, this refinement has resulted in more robust, transparent and reviewable practices in performing the CCC's functions and improving the quality of CCC reports.
>
> The Committee notes the CCC's commitment to the continuous improvement of its practices and procedures, assisted by the oversight of the Parliamentary Inspector and looks forward to the continuation of the constructive dialogue between the Commissioner and the new Parliamentary Inspector.

That should suggest to members that, although things were a little untoward last year between a number of the players that this Parliament was relying on to provide the oversight to this very strong committee, measures are now firmly in place that will continue to enhance the role between the players, and make members of this chamber feel far more comfortable with the operations of the Corruption and Crime Commission. A number of recommendations were made in the report. These are recommendations to the executive government, which has indicated that it intends to bring forward amendments to the act on the issues that have been highlighted in the Gail Archer report. Therefore, the joint standing committee felt it imperative that recommendations, by way of this report, be brought to the attention of executive government for its consideration. Recommendation 1 states —

> The Committee recommends that in any report prepared by the Parliamentary Inspector that is critical of the CCC, the Parliamentary Inspector include in his report all CCC submissions as to the Parliamentary Inspector's adverse comments and that the CCC not use section 85 of the CCC Act to table Administrative Matter Reports as a method of replying to the Parliamentary Inspector's adverse comments, and that if necessary section 85 of the CCC Act be amended to clarify this.

The recommendation indicates that section 85 deals with administrative matters. As with many areas within our legislation, the interpretation thereof can be to one person quite broad, to another quite narrow and to others anywhere in between. That applies to section 85. The commissioner found that in his opinion the only avenue open to anybody to respond to the parliamentary inspector's adverse comments was to table a report under section 85. The committee would like the government to now review the operation of section 85 and, if necessary, clarify its intent by way of amendment.

Recommendation 2 states —

> The CCC Act should be amended so that the Parliamentary Inspector is required to table his reports through the Committee, accompanied by a recommendation by the Parliamentary Inspector as to whether it is in the public interest to be tabled publicly in Parliament.
>
> If the Committee has not tabled the Parliamentary Inspector's report in Parliament within 30 days, then, if the Parliamentary Inspector is of the belief that it is in the public interest to do so, the Parliamentary Inspector can proceed to table his report direct with Parliament without further consultation with the Committee.

The reasoning behind this recommendation revolved around the issues that were before the public last year—that is, the adverse comments by the parliamentary inspector, by way of report to this Parliament, about the CCC's actions in certain instances. The committee felt that rather than have open debate in the public arena, it would be far better if the committee was given the opportunity to bring matters before Parliament, by way of a draft report, to enable them to be discussed between the parties involved—the stakeholders—in an endeavour to try to overcome the issues that may exist. It had never been the intent, and this is why recommendation 2 is worded as it is, to stop the parliamentary inspector from ever reporting to Parliament. That is his right. He is independent and should be able to do so. The committee would like the parliamentary inspector to have, by way of amendment to the legislation, an obligation to present the report to the committee to give it the opportunity to discuss the matter between the subject parties. If a resolution can be found that causes the report to be withdrawn or the wording amended, the committee believes that that may well be a positive aspect of such an amendment to the act. Again, I repeat, it is not the committee's intent to try to cause the parliamentary inspector to do something that he has no wish to do—that is, bring to light, by tabling in Parliament, a report outlining the issues that he feels strongly about. Again, it reminds the parliamentary inspector of the avenues available to him to overcome some of the problems that came to light last year.

Recommendation 3 comprises two parts. Recommendation 3.1 states —

> The operation of section 200 of the CCC Act should be extended beyond its current application to encompass situations where the Parliamentary Inspector intends to express an opinion that is adverse to a person or a body (including the CCC) and is likely to be made public, or in correspondence with a complainant. In such situations the Parliamentary Inspector should be required to provide a draft of the intended adverse opinion to that person or body, so as to afford that person or body a reasonable opportunity to make representations concerning the intended actions of the Parliamentary Inspector.

Again, the reasoning behind that recommendation is that other sections of the act state that anybody who has an adverse comment made against him must be given the opportunity to respond to that adverse comment prior to it being made public. We had some situations last year in which letters were written to individuals who had had an adverse comment, or were likely to have had an adverse comment, made against them. It gave the recipients of those letters the opportunity to make the information public. Again, we could have a situation in which the media have only part of the facts, which unfortunately is often the case, and start writing stories that create enormous problems for everybody concerned. Quite frequently the media name people who should not have been named in the first place. It is the belief of the committee that certain amendments to the act might overcome these problems.

Recommendation 3.2 states —

> The CCC Act should be amended so that if Parliamentary Inspector intends to express an opinion that is adverse to a person or a body (including the CCC) and is likely to be made public, or in correspondence with a complainant, then the Parliamentary Inspector be required to provide the Committee with an advance draft copy of such an intended opinion, so as to afford the Committee a reasonable opportunity to consider the Parliamentary Inspector's intended actions.

Again, this amendment is similar to recommendation 2. It provides little time for negotiation between the parties prior to the matter becoming public. I remind members that on recommendations 2 and 3.2, Hon Ken Travers disagreed with the majority of the committee.

I should also mention that within the last few pages of the report the committee set out some other issues that it intends to look at. I refer members to page 49 of the report, which is headed "Other Issues in Dispute". I recommend to members that they look at not only the report in general, but also those issues of concern that have been spelt out in the report, starting at page 49. The committee intends to engage in these concerns to try to overcome some of those problems and frame, through the government, an act that best suits the current circumstances and the will of the Parliament. Of course, when the amendments are brought to this place and are debated we will know what the will of the Parliament is. That will certainly be for the betterment of not only the act, but also the operation of the commission.

Sitting suspended from 1.00 to 2.00 pm

Hon RAY HALLIGAN: Prior to the luncheon suspension, I was talking about the other issues in dispute raised in the second report of the Joint Standing Committee on the Corruption and Crime Commission. I will quickly go through those issues in dispute and trust that members will take note of these issues. Members should be aware and mindful of these issues and, of course, at sometime in the future they should ensure that the joint standing committee does in fact report on them. The introduction on page 49 of the report states —

> In addition to the issues previously canvassed in this report, a wide variety of additional issues have been brought to the attention of the former Committee and this Committee as to the relationship between the Parliamentary Inspector and the Commissioner.
>
> A number of these issues are canvassed below. They do not represent the totality of all of the issues that have been the subject of debate and represent the Committee's preliminary views only. The issues discussed are complex and require further analysis and input from the relevant parties before a concluded view can be expressed by the Committee.

The first of these issues in dispute is headed —

> **Should the CCC be able to table a report that contains an opinion that a public officer has engaged in "inappropriate conduct"?**

Members may be aware that in some previous reports that had occurred. Rather than having an opinion as to whether a public servant had engaged in misconduct or serious misconduct, the report of the Corruption and Crime Commission spoke about inappropriate conduct. That needs to be clarified.

A further issue is whether the Corruption and Crime Commission should be able to table a report that contains a misconduct opinion. There are conflicting opinions as to whether that should in fact occur. As I said previously, a lot more analysis needs to be undertaken in that regard.

Another issue is whether the Corruption and Crime Commission await the outcome of disciplinary proceedings before tabling a report that contains a misconduct opinion. The issue behind this question arises when the

commission tables a report naming a particular individual as having engaged in misconduct and is then sent back to that individual's agency for action. It may well be, as has been the case in a number of instances, that that agency has in its opinion found that the individual did not engage in any misconduct. Therefore, that individual has the problem of trying to clear his or her name, so to speak, having already been named in a report tabled in this place.

The next question is: should the Corruption and Crime Commission have to provide a draft of its report that contains a misconduct opinion to the parliamentary inspector? Again, in a lot of instances it would overcome some of the problems that have occurred in the past when individuals were named in a report only to later be found to have not conducted themselves in any way that could be considered misconduct.

Another question asked to what extent should the parliamentary inspector accord natural justice to the Corruption and Crime Commission and its officers if the parliamentary inspector intends to table a report critical of the CCC or its officers. Again, the same principle applies; namely, any person or body who is adversely named in a report should be given the opportunity to respond to that adverse comment prior to it being made public, whereas it would appear that the parliamentary inspector can, of course, currently present a report to Parliament not having necessarily afforded the CCC that opportunity to respond.

Another question is: what is the committee's view on how assertions of conflict of interest made against the parliamentary inspector are to be addressed? One imagines that when Malcolm McCusker, QC was the parliamentary inspector, he had quite a number of dealings with people who were likely to have an adverse comment made against them in which case in some instances it was concluded by some people that there may well have been a conflict of interest. That needs to be resolved, even though we have another parliamentary inspector in our midst.

I ask members to look at the report and consider it closely.

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

CITY OF ARMADALE SIGNS AMENDMENT LOCAL LAW 2008 — DISALLOWANCE

Motion

Pursuant to standing order 152(b), the following motion by Hon Kim Chance was moved pro forma on 17 March 2008 —

> That City of Armadale Signs Amendment Local Law 2008, published in the *Government Gazette* on 3 June 2008 and tabled in the Legislative Council on 19 June 2008 under the Local Government Act 1995, be and is hereby disallowed.

HON RAY HALLIGAN (North Metropolitan) [2.10 pm]: The issue before the house is the City of Armadale Signs Amendment Local Law 2008 disallowance. As a member of the Joint Standing Committee on Delegated Legislation, I feel I need to try to convince members that this particular local law should, in fact, be disallowed. Members will be aware that the twenty-ninth report of the Joint Standing Committee on Delegated Legislation has already been tabled. Normally the committee, after having placed on the notice paper what it terms a protective notice of disallowance, then decides, for a variety of reasons, to continue with that particular motion. Under the heading "Overview", the twenty-ninth report states —

> 1.1 The City of Armadale — Signs Amendment Local Law 2008 was gazetted on 3 June 2008. It amends the City of Armadale Signs Local Laws 2007 by deleting the previous definitions of "approval" and "Scheme" in that principal local law and inserting new definitions of those terms. These amendments fulfil an undertaking provided to the Joint Standing Committee on Delegated Legislation (**the Committee**) by the City of Armadale to rectify drafting defects in the principal law, which defects rendered that local law of no effect.
>
> 1.2 However, the City of Armadale has not rectified a further fundamental problem identified by the Committee: that is, in so far as it did no more than purport to enforce planning schemes prepared by the City of Armadale under the Town Planning and Development Act 1928, the Planning and Development Act 2005 and the Armadale Redevelopment Act 2001, the principal local law was not authorised or contemplated by empowering legislation. The City of Armadale declined to provide the Committee with an undertaking in respect of this authorisation issue.
>
> 1.3 While the drafting amendments introduced by the City of Armadale — Signs Amendment Local Law 2008 may enable some sub-clauses of the principal local law (those which do not enforce the provisions of a planning scheme made under another Act) to become effective, the Committee is of the view that the amendments otherwise do no more than confer ostensible validity on a local law that is not authorised. The Committee considers that the Local

Government Act 1995 does not authorise or contemplate that the local law-making powers conferred by section 3.5(1) will be utilised to amend ineffective legislation, other than to render that legislation effective (Committee's Term of Reference 3.6(a)).

1.4 The Committee considered the circumstances of the City of Armadale — Signs Amendment Local Law 2008 were not such that it could clearly discriminate between authorised and unauthorised provisions so as to recommend a partial disallowance.

1.5 The Committee, therefore, recommends disallowance of the City of Armadale — Signs Amendment Local Law 2008 in total.

There is an additional recommendation in the report. The first recommendation was that the City of Armadale Signs Amendment Local Law 2008 be disallowed. The second recommendation reads —

> **The committee recommends that the Minister for Local Government recommend that the Governor repeal the *City of Armadale Signs Local Law 2007*.**

Members will be aware that under section 3.17(1) of the Local Government Act 1995, the Governor has the power to amend or repeal a local law. If the house decided to support the disallowance of the 2008 local law, the City of Armadale would be able to revert back to the 2007 local law which, as I have just mentioned, the committee also believes to be defective; hence the second recommendation for the minister to recommend to the Governor the repeal of the 2007 local law.

I commend the report to the chamber, and hope that members will agree with the committee's recommendations.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [2.16 pm]: The government will support this disallowance motion on the basis that the Joint Standing Committee on Delegated Legislation has, for a very long time, established itself as a committee with a significant reputation for dealing with such matters. As we have noticed on many occasions in this chamber, the committee has put motions for disallowance on the notice paper, pending a response from whichever agency is responsible for the relevant regulations. Many of them relate to local government matters, and it is very rare for the committee and the local authority to be unable to reach agreement. It is the normal practice on virtually every occasion that when a disallowance motion is placed on the notice paper, it is subsequently withdrawn at the request of the committee because the issues of concern to the committee have been satisfied. However, it seems that in respect of the City of Armadale and its local law relating to signs, the committee and the local authority have been unable to reach a satisfactory outcome. It is my view that the committee's recommendations ought to be agreed to by the house. Hon Ray Halligan mentioned in his comments that the twenty-ninth report of the committee contains two recommendations. The report has not yet been dealt with by the house; it is, in fact, the next or subsequent report to be considered by the house in due course. Today the house is dealing only with the disallowance of a local law, and therefore the issue of the minister recommending that the Governor repeal the City of Armadale Signs Local Law 2007 is not part of today's question. The house can consider that matter in due course; however, we are being asked to disallow the local law, and the government will support the committee.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [2.18 pm]: The opposition will also support this disallowance motion. I thank Hon Ray Halligan for his explanation of the committee inquiry and the committee's position. Between the lines, we can pick up some of the frustrations experienced by the Joint Standing Committee on Delegated Legislation in this case. As the Leader of the House said, this committee has, time and again, demonstrated its diligence in investigating these matters and ensuring that local government laws are appropriate and take a commonsense approach. Although we still have the report to deal with, I indicate that we certainly support this disallowance motion on this occasion, and we look forward to the debate, at a later stage, on the actual report.

Question put and passed.

ADDRESS-IN-REPLY

Motion

Resumed from 6 May.

Debate adjourned until a later stage of the sitting, on motion by **Hon Bruce Donaldson.**

SENTENCE ADMINISTRATION (INTERSTATE TRANSFER OF COMMUNITY BASED SENTENCES) BILL 2009

Committee

Resumed from 6 May. The Chairman of Committees (Hon George Cash) in the chair; Hon Simon O'Brien (Minister for Transport) in charge of the bill.

Clause 20: Decision on request —

Progress was reported after the clause had been partly considered.

Hon SIMON O'BRIEN: When progress was reported yesterday, Hon Giz Watson was exploring some of the themes that she had identified in this clause. I will briefly summarise the debate that we had yesterday, because that may be a good way of kicking off today's consideration and may help to expedite the debate. The process that is contemplated in clause 20 has its roots in clause 19, which deals with the registration criteria. Clause 20 deals with the decision to accept or decline a request for registration. The first hurdle that needs to be jumped is that the registration criteria need to be met. If that hurdle is not cleared, the matter cannot be progressed any further. That is clearly understood by everyone.

Subclause (2) of clause 20 states —

> In deciding whether to register the interstate sentence, the local authority must have regard to the registration criteria, but may have regard to any matter prescribed by the regulations and any other relevant matter.

The regulations are obviously yet to come, subject to the passage of this bill. The bill does not prescribe what may or may not be a relevant matter. That is because it is very difficult to contemplate what may arise in what is, let us face it, a situation in which each case clearly needs to be considered on its merits. I have given one example of a reason that a request for registration may be declined. There are probably a lot of other reasons as well. That is provided for in subclause (3), which states —

> The local authority —
>
> (a) may decide not to register the interstate sentence even if satisfied the registration criteria are met; …

Subclause (6) states —

> If the local authority decides not to register the interstate sentence, the authority must give written notice of the decision to the offender and the interstate authority.

If the authority did give written notice of the decision not to register, it is most likely—it is certainly what is contemplated by the government as the sponsor of this bill—that that notice would include the reasons for that decision, rather than simply just convey the news that the request has been declined.

I do not know for how much longer the member wants to explore this clause before we put it to a vote. I am at the member's service if she wants to explore this matter further, but that brings us to where we were when the member raised this matter last night.

Hon GIZ WATSON: We have probably dealt with this clause as far as we can. However, there are two further matters on which I seek some clarification. The first is with regard to subclause (4), which states —

> The local authority may decide whether to register the interstate sentence, or to impose any preconditions, on the information and documents given to the authority under this Part, and any other information or documents available to the authority, without hearing the offender.

I have some concerns about the fact that the local authority may make a decision without hearing from the offender. For the record, I ask for confirmation that the offender will be routinely involved in determining the content of the application, and for a description of how this will occur.

Hon SIMON O'BRIEN: I am advised that there is a draft national framework, as is to be expected when dealing with uniform legislation, and draft operational procedures that set out the accepted guidelines to be followed for the transfer of community-based orders once the legislation before us is enacted. That draft framework requires that in order for the transfer to proceed, the offender must consent to the transfer, be fully informed of the consequences of transferring his or her sentence and sign the offender consent form. The application process is actually initiated by the offender. The supervising officer explains to the offender the process and the consequences of transferring. The offender is fully involved at that stage. The offender information sheet, which explains the process and implications of transferring, is used to assist the offender prior to the offender making the application. The supervising officer will complete the application form, which includes the reason for transfer that was provided by the offender. It is unlikely that the offender will be provided with the whole content of the application, because there may be issues that are relevant to community safety or other matters that cannot be disclosed to the offender; for example, if there is information from the police about the person with whom the offender intends to live. That is the situation that clause 20(4) contemplates. Although the offender initiates the application for transfer, and thereby is fully involved in the process of providing information, other sources also provide information that will be considered. Clause 20(4) makes it clear that it is not compulsory for the local authority to hear from the offender about any particular information that the authority works through.

Hon GIZ WATSON: Clause 20(6) requires the local authority to give written notice of a refusal for a request for transfer, but there is no requirement for the offender to be given a reason for the refusal. I note that

subclauses 21(3) and (4) are in similar terms regarding the preconditions and the variation of preconditions respectively. There is no review process set out in the bill either. For the record, I would like confirmation that the reasons for a refusal to register the sentence or to impose or vary the preconditions will routinely be provided. I would also like a description of the review process.

Hon SIMON O'BRIEN: I am not quite sure what information the honourable member wants me to provide to her.

Hon GIZ WATSON: I understand that the practice in WA is that the reason for refusing a transfer are routinely provided on the form that records the decision and also that if an error is found to be made, the matter is reconsidered. For the record, I want a description of how that practice works, or perhaps confirmation that that is the practice.

Hon SIMON O'BRIEN: The member's question is very precise and I wanted to get advice that hopefully will meet her needs. The member might be aware—I think this was referred to in my second reading speech—that there are already some informal mechanisms in place that relate to the interstate transfer of community-based orders. Part of the purpose of this bill, of course, is to regularise those. That means we already have a bit of experience about these matters in this jurisdiction, which is helpful right now. I can tell the member that a letter of decline is sent when this or a similar situation occurs and a decision is made to decline an application. The standard practice is to give the reasons for declining the application. That is the information the member was looking for. However, there may be occasions when specific and detailed reasons might not be given. A general reason would probably be given for declining the application but not a specific reason in the case of a particularly sensitive matter or when something is known about the person's associates or possible associates who are residing in Western Australia. Generally, the letter would provide the reasons for declining the application.

The matter of a review is yet to be developed and is not contained in this legislation. The only capacity for a review would be by a request to the governing authority, or possibly to the government via the responsible minister seeking a review. Therefore, the usual common law capacity for review is always available, but there is no provision for a review in this bill. That is basically the answer to the member's question.

Clause put and passed.

Clause 21: Preconditions for registration —

Hon KATE DOUST: I have a simple question, and I am not sure whether Hon Giz Watson has already asked it. Will the minister give me a couple of practical examples of the types of preconditions that would be required? I know that an offender must report to an authority, but I wonder what other types of preconditions might be imposed.

Hon SIMON O'BRIEN: The member asked the question in a very general sense and so without seeking to provide an exhaustive list of the sort of preconditions, an example of a fairly standard precondition will be for the offender to report to the office of a nominated community corrections officer or, possibly, to participate in an ongoing drug rehabilitation program. They are very similar to the sort of preconditions that are often applied to other community-based orders that originate here or, indeed, to parole or bail applications.

Clause put and passed.

Clauses 22 and 23 put and passed.

Clause 24: Effect of registration generally —

Hon GIZ WATSON: Clause 24 deals with the penalties for breach, and I am particularly interested in subclause (1)(h). I raised this issue in the second reading debate. The effect of registration is to convert the sentence from a sentence of the original jurisdiction to that of the receiving jurisdiction so that local law applies to any sentencing breaches. However, clause 24(1)(h) provides that changes may be prescribed by the regulations. I gather that one change that the courts will take into account is the penalty for a breach under the law of the original jurisdiction so as not to avoid the sentencing intention of the original jurisdiction, albeit the explanatory memorandum points out that penalty matching between jurisdictions is not a realistic option. When considering an appropriate penalty for a breach, what practices will be in place to ensure that the people who make these decisions are knowledgeable about the levels of sentencing penalties in the other jurisdictions? What means will there be for the court prosecutors and the defence to find out about the penalties for the breach in the original jurisdiction, when relevant to the proceedings, and how will that occur? It is fairly obvious that the defence and the court prosecutors will be familiar with the penalties in their own jurisdiction, but they might have to deal with a number of other jurisdictions in that new capacity.

Hon SIMON O'BRIEN: I think I can address the member's concerns. It is proposed that when an interstate department sends Western Australia an application package for consideration of an interstate sentence transfer, it will also provide the relevant sections of the other state's Criminal Code or equivalent and the sentencing options

available to the court in the primary jurisdiction. Likewise, when Western Australia forwards an application for consideration of a sentence transfer to an interstate authority, we will send it the relevant sections of our Criminal Code. It will have that information even before the process starts so that if, later down the track, a situation arises whereby the court in the new jurisdiction has to consider sentencing options after a breach of the original order, all that information is available to that court. The regulations contemplated under clause 24(1)(h) will be consistent with ensuring that those matters are the ones that guide the court's consideration.

Clause put and passed.

Clauses 25 to 29 put and passed.

Clause 30: Evidence of registration and registered particulars —

Hon GIZ WATSON: This is just an interesting little query that arose during my study of this bill. Clause 30(6) reads —

> A court must or may admit into evidence other documents prescribed by the regulations in the circumstances prescribed by the regulations.

It seemed to my research officer and me that including "must or may" in that sentence creates somewhat of a conundrum. I would have thought it should be either one or the other. Perhaps the minister could suggest why it reads "must or may". It may, in fact, be an error—but it may not.

Hon SIMON O'BRIEN: I thank the honourable member for raising this subject and have to say: really, an error? The government thought it had made an error once, but it was mistaken! The member is quite right and I thank her for raising it. At first blush, this seems to be a curious paradox, or is it an oxymoron? It is one or the other.

Hon Giz Watson: It is still of concern.

Hon SIMON O'BRIEN: I am still shaking my head over the error from yesterday in which proposed section 108A followed section 107 rather than section 108.

Hon Kate Doust: It's a brave new world!

Hon SIMON O'BRIEN: It is obviously a brave new world.

Fortunately, the use of the term "must or may" in clause 30(6) will do the trick because of the context in which it will ultimately be used. It is contemplated that the regulations will prescribe things that are necessary to be prescribed by regulations. When that happens, it may be in the context of prescribing things that must be admitted as evidence or, quite separately, the regulations may also provide that certain documents may be admitted into evidence. The context of this is that, regardless of which regulation is relied on and whether it says a court "must" admit into evidence other documents or a court "may" admit into evidence other documents prescribed, this clause provides the legal head of power for the court to do so either way.

Hon GIZ WATSON: I think I follow the minister's explanation. The minister is saying that because the matter is to be prescribed in regulations, the regulations may choose to express it in terms of "must" or "may"; therefore, clause 30 has to provide for both options. Is that, in effect, correct?

Hon Simon O'Brien: That is about the extent of it.

Hon GIZ WATSON: Okay.

Clause put and passed.

Clause 31 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Transport)**, and passed.

SELECT COMMITTEE INTO THE POLICE RAID ON *THE SUNDAY TIMES* — RECOMMENDATION 6

First Report — "Select Committee into the Police Raid on The Sunday Times" — Motion

HON GEORGE CASH (North Metropolitan) [2.51 pm]: I move —

> That recommendation 6 of the first report of the Select Committee into the Police Raid on *The Sunday Times* be adopted and agreed to.

In moving the motion, I want to take the opportunity of running through some of the issues that were raised when the select committee considered matters pertaining to the police raid on *The Sunday Times*. As members would be aware, on 14 May 2008 the Legislative Council established the Select Committee into the Police Raid on *The Sunday Times*. We were required to inquire into and report on all the circumstances surrounding the police raid on *The Sunday Times* that occurred on 30 April 2008. Members may recall that *The Sunday Times* of Perth published an article on 30 April 2008 that disclosed certain information that was believed to have been leaked by a person or persons unknown to *The Sunday Times* in circumstances that indicated that there may have been a disclosure of confidential information, and, as such, that there may have been a breach of section 81 of the Criminal Code. For the benefit of members, I indicate that section 81 in chapter XII of the Criminal Code deals with the disclosing of official secrets. I want to just put on record the substance of section 81 so that members are aware of what we are dealing with when it comes to a breach of this provision. Section 81(1) reads —

> In this section —
>
> ***"disclosure"*** includes —
>
> (a) any publication or communication; and
>
> (b) in relation to information in a record, parting with possession of the record;

It goes on to define "government contractor", having defined what disclosure is to mean in this section. It reads —

> ***"government contractor"*** means a person who is not employed in the Public Service but who provides, or is employed in the provision of, goods or services for the purposes of —
>
> (a) the State of Western Australia;
>
> (b) the Public Service; or
>
> (c) the Police Force of Western Australia;

"Information" is also defined to include false information, opinions and reports of conversations. "Official information" is defined to mean information, whether in a record or not, that comes to the knowledge of or into the possession of a person because the person is a public servant or government contractor. "Public servant" in the context of section 81 of the Criminal Code means a person employed in the public service. "Unauthorised disclosure" means —

> (a) the disclosure by a person who is a public servant or government contractor of official information in circumstances where the person is under a duty not to make the disclosure; or
>
> (b) the disclosure by a person who has been a public servant or government contractor of official information in circumstances where, were the person still a public servant or government contractor, the person would be under a duty not to make the disclosure.

Section 81(2) provides a penalty in the following terms —

> A person who, without lawful authority, makes an unauthorised disclosure is guilty of a crime and is liable to imprisonment for 3 years.
>
> Summary conviction penalty: imprisonment for 12 months and a fine of $12 000.

It can be seen that the disclosing of official secrets, as provided for under section 81 of the Criminal Code, is a serious offence.

The report of the select committee is divided into a number of discrete areas, each of which generally relates to a specific facet of the select committee's inquiry. Those who have had the opportunity of reading the report will have noted that after taking considerable evidence and receiving a number of submissions on the subject matter, the committee made 11 findings and six recommendations.

The period of the inquiry was lengthy. Part of the reason was that an election occurred during the inquiry. The members of the subcommittee were Hon Giz Watson, Hon Adele Farina and me as chairman of the committee. Mr Paul Grant, Clerk Assistant (Committees), assisted us with great professionalism. He was assisted by a number of other officers from the committee office of the Legislative Council. In that regard the committee as a whole has already expressed its appreciation to those officers, but I do so again for the record in this house. I acknowledge and convey the committee's appreciation for the tremendous amount of work that Mr Paul Grant did in particular and also the work that other officers did in contributing to what was a lengthy and, in some cases, complex inquiry.

The inquiry generally appears to have been based on the belief that the government of the time, which was a Labor government, had given some direction to either the police or a public servant in relation to the

investigation of an allegation of a leaked confidential cabinet document to *The Sunday Times*. I should say at the outset, so that there is no confusion, that having listened to all the evidence, read all the submissions and considered the substance of both the evidence and various submissions, finding 1 makes it very clear that no direction was given to either the police or a public servant. Finding 1 is in the following terms —

> **The Committee finds that there was no direction given to the Western Australia Police, in relation to its investigation into the alleged leak of confidential Cabinet information to *The Sunday Times*, by any Minister, Parliamentary Secretary or Member of Parliament or their staff.**

I want to place that on the record early in the consideration of this report so that it is very clear that the committee found no evidence whatsoever of any direction being given. It was media speculation that seemed to generate a suggestion or belief that there had been some direction given. It is true, of course, that when the information in the article was published, it would no doubt have caused some concern within the government. The document, which was said to be a document from a cabinet subcommittee on communication that was to be transmitted to the cabinet Expenditure Review Committee, revealed that $16 million was being sought by the subcommittee. The first amount was $5.25 million for the first half of 2008 and a further $10.75 million until July 2009. A considerable amount was being requested by the cabinet subcommittee on communication, and the article said that the government was going to spend the money on what was termed "strategic advertising campaigns". *The Sunday Times* made inquiries after it had received this information from its source, and sought confirmation from the government. However, the article written by Paul Lampathakis, a senior journalist at *The Sunday Times*, indicated that the sources said that other major campaigns, such as antidrug and police recruitment ads were already funded, so this was clearly extra cash to help "buy" the government victory in the state election.

Once this particular article had been published in *The Sunday Times*, a number of things were put in train. For instance, on 12 February 2008—recognising that the article was published in *The Sunday Times* on 10 February 2008—Mr Mal Wauchope, the Director General of the Department of the Premier and Cabinet, wrote to the officer in charge of the major fraud squad of Western Australia Police referring to the suspected disclosure of the draft ERC submission as a possible offence under section 81 of the Criminal Code. Mr Wauchope's letter of referral to the police informed them that he had also referred the matter to the Corruption and Crime Commission, as he was required to do under the law.

When the committee had the opportunity of taking evidence from Mr Wauchope, he told the committee that, in part, the reason his referral went to the major fraud squad was that that squad had absorbed the old public sector investigations unit. Prior to this referral, Ms Ward, who was an officer within Mr Wauchope's department, had spoken briefly to the State Solicitor's Office, and that office agreed that it would be reasonable to refer the matter to the investigations branch of WA Police as it was a potential breach of section 81 of the Criminal Code.

As I indicated, the matter was also referred to the CCC, and Mr Wauchope made it clear to the committee that he had legal obligations under the Corruption and Crime Commission Act. In his evidence given on 9 June 2008, describing the requirement for him to refer these types of allegations to the CCC, he said —

> My legal obligation under section 28 of the Corruption and Crime Commission Act as a principal officer is to notify the CCC as soon as possible of a suspicion, which I had formed, as I indicated, on the Friday, confirmed by the Sunday article. It is to be done as soon as practicable after the suspicion has been formed. Section 29 of that Act says the duty to notify is paramount.

He went on to say, "If you put the two together, it is a fairly strong obligation." That is recognised, I would think, by all principal officers who are under that obligation in section 28 of the Corruption and Crime Commission Act.

The committee sought some further information from Mr Wauchope on just how many times unauthorised disclosure of documentation had occurred. Mr Wauchope indicated to the committee that in his memory the last unauthorised disclosure within the government that he could recall was in 2004, and that matter was also referred to the CCC for investigation. That matter was investigated by the CCC, which published a report that is referred to in "Report 1: Select Committee into the Police Raid on The Sunday Times". The reason that I mentioned the separate CCC report is that, at the time, the CCC expressed the view that it was somewhat difficult to obtain a conviction under the provisions of section 81 in its current form, and the CCC also made some other observations about the leaking of information from departments generally. That earlier event was in respect of certain information from the Department of Treasury and Finance. I want to make clear what was contained in the CCC's report into the 2004 leaking of certain information from the Department of Treasury and Finance, which is reported in the current select committee's report at paragraph 12.42 as follows —

> *[T]he Commission has concluded that there is not an adequate legislative base for the prosecution of persons involved in the unauthorised access and disclosure of official information.*

The next paragraph of our report is also pertinent, and reads —

In relation to s 81 of *The Criminal Code* the CCC report states:

> *Whilst s.81 encompasses employees of DTF, it does not include many others who have access to confidential government information. Employees and members of non-SES organisations are excluded from these provisions. This means that s.81 does not cover state MPs and local government councillors, local government employees, police officers, university staff and employees of corporatised bodies such as port authorities, Western Power and the Water Corporation. Consideration needs to be given to amending s.81 to bring these within its ambit.*

The CCC's 2004 report goes on to say —

> *Problems also arise in determining when a duty not to make a disclosure might arise, as The Criminal Code does not address this point. It is necessary to define the parameters of this duty. This might be achieved by codes of conduct or the inception of a public sector oath to clarify the duty not to disclose.*

The reason that I raise the CCC's report is that in its current report the Select Committee into the Police Raid on *The Sunday Times* made recommendations in respect to the current wording of section 81 of the Criminal Code, and I will come to that in a moment.

Today I indicated to the house that that matter was referred to both Western Australia Police and the CCC. The committee then spent considerable time looking at the procedure and general practices surrounding the WA Police investigation of the allegations of leaked information.

I indicated that the complaint letter was sent by Mr Wauchope, the Director General of the Department of the Premier and Cabinet, to the major fraud squad on 12 February 2008. In the first instance it was assessed by the fraud desk officer, Detective Sergeant Gangin. That occurred on 15 February 2008. Then it seems that there was somewhat of a delay within the police force on further action in respect to the complaint record. Our report indicates that the major fraud squad investigation file cover sheet shows that on 22 February 2008 the complaint was allocated to the major fraud squad.

The committee was advised that at this point in time the matter was placed on what the police described as a stockpile by the police force, due to staff workload considerations. The committee makes the observation within this report that it was almost seven weeks before the complaint was allocated to an investigating officer. We were able to deduce this information based on the evidence that was given to the committee by police officers who attended before the committee. They produced records that indicated that WA Police referred this matter at 9.30 am on 8 April 2008 to Detective Senior Constable Elissa Mansell for investigation. There was the original allegation, the complaint letter sent on 12 February, but it was not allocated to a specific investigating officer until 8 April 2008. That in itself raised some concerns within the committee. We also were advised that Detective Senior Constable Mansell worked part time at the major fraud squad. She did not personally receive the file until 9 April 2008, so some time had elapsed before the complaint was before a police investigating officer who was required to take action in respect of the matter.

The police conducted their initial inquiries. They had some discussions with other parties prior to determining that they would seek a warrant to enter the premises of *The Sunday Times*. There were a number of communications between the police and the Corruption and Crime Commission prior to the raid on *The Sunday Times*. I am very much paraphrasing the report and I indicate that the report comprises 166 pages plus an appendix. It is available for all members to read. In brief, Mr Wauchope referred the allegation to both the police force and the CCC. The police force began its investigation some time after original receipt of the complaint letter. During its investigations it spoke with the CCC about the matter on a number of occasions.

On the evidence that came before the committee, it seems that whilst the CCC act requires the CCC to take a certain course of action in respect of a complaint, it does seem it adopted the view that because it was aware that the police also had a complaint allegation, that the CCC would take—I use the term "a back seat"—and let the police get on with the investigations, recognising that there are certain provisions within the CCC act that would require the police, in due course, to report whatever action they took to the CCC. The CCC adopted the view that the police should be in the driving seat, but the CCC at all times retained the right to have the police report to it in due course on the manner in which they conducted their investigations.

On the evidence that we received from CCC officers and, separately, from police officers, there seemed to be some confusion by both parties on their respective powers. The CCC, as the report indicated, seemed to find it convenient to shift the responsibility of investigation to the police. The police, on the other hand, were concerned that because the allegation involved *The Sunday Times*, a media organisation, that any investigation was going to attract public comment, certainly publication, by the very virtue of it involving a media organisation. The police in fact at one stage referred to any action they took—that is, if they were to raid *The Sunday Times*—becoming a media circus. That in itself indicated the police knew there was going to be wide publication of any action they took. The CCC was told about the police concerns of a media circus, but the CCC, in general terms, was trying to convince the police that it should not be involved at this stage because its main role was to investigate

organised crime and this particular allegation did not represent a matter dealing with organised crime. I think it is fair to say—and the report sets it out very clearly—that there was reluctance by the police to move forward without some sort of sanction from the CCC. At the same time the CCC was keen for the police to take independent action without being caught up in what might become a media circus.

I am representing my views in respect of the evidence that was given to the committee. It is only proper that members read the report in its entirety to get a full understanding of the words expressed by the parties. I think it is fair to say that the police were keen for the CCC to take over the investigation. If it was not going to take over the investigation, they wanted to have the CCC join with the police so that the police would be able to invite the CCC to use its coercive powers contained within the CCC act to have a hearing in private to require the journalist to divulge the source of his information. That was a course of action the CCC was not keen to pursue. In fact, evidence given to the committee by the CCC indicated that it valued its coercive powers and had a policy not to use those coercive powers unless necessary. I was going to say "absolutely necessary"; but I think "unless necessary". Notwithstanding the comments of the CCC, there were examples later on given to the committee in which it had used those coercive powers in fact to interview some journalist to obtain certain information, but there were particular circumstances surrounding those inquiries.

The CCC commissioner, Len Roberts-Smith, gave evidence. He was keen to have the committee understand that the CCC was reluctant to use its coercive powers unless they were being used as a last resort. I refer in particular to paragraph 9.16 of the committee report which has part of the transcript of the evidence given by Commissioner Len Roberts-Smith. That transcript is included so that members get an understanding or a flavour of the way in which the CCC believes its coercive powers should be used. However, the point to be made is that the police were not able to convince the Corruption and Crime Commission to come along for the ride, so to speak, to join them in the investigation. Certainly, the CCC showed reluctance to agree to a joint investigation on the basis that it believed the police themselves should do it. It was the evidence of the police that they indicated to the CCC that they were prepared to hold off on the exercise of the search warrant on *The Sunday Times* premises to give the CCC some additional time to consider its position on the matter—that is, to consider whether it would join the police. The CCC was keen to advise the police there and then that it did not need any further time; that the police should proceed as they saw fit. I interpret that to mean that the CCC was indicating to the police that they should proceed as they saw fit on the basis that the police would wear any of the pain caused by the raid. I think it is fair to say that the police understood that and that indicated in part some of their reluctance to proceed. If that is the case and the police were reluctant to proceed on the basis that they believed any raid would turn into a media circus, of course it raises the question as to why we ended up with a situation in which 27 police officers were involved in raiding *The Sunday Times* only a matter of hours after their last discussions with the CCC.

Chapter 10 of the report deals with the police raid on *The Sunday Times*. Police officers, some of whom were involved in the raid, provided the committee with layout plans of *The Sunday Times* building so the committee could understand the size and general layout of the building, and the number of employees in the building at the time the raid was carried out. In the first instance, five police officers were detailed to go to *The Sunday Times* and they entered the premises of *The Sunday Times* in Stirling Street, Perth at 2.06 pm on 30 April via the Stirling Street ground floor entrance. Detective Sergeant Jane, the officer in charge of the investigation, was one of the five police officers who first attended the search site. I must say that Detective Sergeant Jane, who gave evidence to the committee, impressed me, and I believe impressed other members of the committee, as a very committed police officer who was very professional in the way in which he carried out his duties, and as a person who had experience in the execution of search warrants for buildings. In my view, he carried out his duties in not only a professional but also a very courteous manner. He was accompanied by the investigating officer, Detective Senior Constable Mansell, whom I referred to earlier on; a video camera officer, Detective Senior Constable Brewster; an exhibits officer, Detective Sergeant Phillips; and a search officer, Detective Senior Constable Sofield. Detective Senior Constable Pratt was also in attendance at or around the commencement of the raid but did not play the same role as the first five officers whom I have mentioned.

Detective Sergeant Jane and his colleagues entered the building. Detective Sergeant Jane sought to speak with the editor of *The Sunday Times*, Mr Sam Weir. There was discussion in which Detective Sergeant Jane indicated to Mr Weir that he had a lawful search warrant to enter and search the premises and that he intended to exercise that warrant. Mr Weir, as would reasonably be expected, suggested he wanted to seek some legal advice on the exercise of the search warrant. Detective Sergeant Jane agreed to not proceed with the execution of the warrant pending Mr Weir receiving some legal advice. A Mr Steven Edwards, who was the solicitor to *The Sunday Times*, was contacted. He attended the premises of *The Sunday Times* and provided certain advice to Mr Weir in respect to the lawfulness of the search warrant.

It seems there was a critical time during the initial raid on *The Sunday Times* when a decision was made to bring in support police officers on the basis that the police believed *The Sunday Times* was not cooperating with them in the execution of the search warrant. That seems to be the police view on why additional police officers came

to the building by way of backup. There is clear evidence from *The Sunday Times* that indicates it did not believe it was uncooperative with the police in any sense, and that all Mr Weir wanted to do was to satisfy himself that it was a lawful search warrant and that the matter would be handled in the usual lawful way. However, at some stage during the discussions between Detective Sergeant Jane and Mr Weir, Detective Sergeant Jane formed the view that *The Sunday Times* was not cooperating and he instructed one of his fellow police colleagues to call for backup. As a result of the call for backup, police headquarters deployed, in all, 22 additional police officers. Not all officers arrived at the same time, but by the time they had all assembled at *The Sunday Times* by way of support, there were 27 police officers on the premises of *The Sunday Times*. I have not been involved in any murder investigations and I certainly have not been involved in any drug raids, but it seems to me that deploying 27 police officers to a commercial premises in, basically, the heart of Perth was an overreaction to the circumstances at the time. The report itself determined that, having heard all the evidence.

Hon Bruce Donaldson: How could these police not get 27 people to some of the major disturbances that have occurred in WA over the past 12 months in which people have been either killed or seriously injured, yet they can't get more than four there?

Hon GEORGE CASH: That was the dilemma that obviously faced the committee because the committee was aware of complaints by the police from time to time about a lack of resources. The committee was also aware that it is a rare occurrence to deploy 27 police officers into, in this case, a commercial building when the alleged offence does not involve a serious threat to human life in the form of serious injury or even the death of a person. We discussed this particular dilemma with the police on a number of occasions, but I must say to Hon Bruce Donaldson that it is interesting that when we interview police officers they all manage to fall into line. By the time the committee had —

Hon Bruce Donaldson: Is that the "thin blue line" as they call it?

Hon GEORGE CASH: In this case, the thin blue line had widened to 27 police officers in breadth, so to speak. It was no longer a thin blue line; it was a pretty broad blue line.

It is fair to say that in their evidence the police told the committee of the circumstances as they saw them. They believed that there was a need for 27 police officers; in fact, as chairman of the committee, I asked some police officers at one stage a question to the effect that, if they could have their time again, would they deploy 27 police officers, knowing what they knew now. I presumed that the answer may be no, that they would have done it differently. However, the police officers to whom I directed the question all answered that yes, they would do it again, and that in fact, if necessary, they would deploy more officers. I do not say that as a criticism of the police, but merely by way of an observation on the practices of the police force. I understand why Hon Bruce Donaldson asked the question. The interesting thing is that, notwithstanding the fact there were 27 police officers at the premises of *The Sunday Times* at some stage during the raid, within an hour or so police officers were being sent back and the number of officers decreased so that by about six o'clock at night, there were only about 13 officers, I think, present during what we describe as phase 2 of the search.

The police provided advice to the committee that they needed police officers to man the various exits at *The Sunday Times*, and that because it was a multistorey building, it required more police officers. They thought they needed 27 officers for all sorts of reasons, but it is clear that they did not convince the committee that there was any need, at any time, for 27 police officers. Some months after the raid, the Commissioner of Police made the point at a media conference in Perth that he thought the raid was a waste of time anyway, and that the police should not waste their time dealing with these sorts of matters. When this report was tabled in Parliament about three weeks ago, the commissioner made a brief comment that he did not agree with the committee's finding that the use of police resources was disproportionate to the degree of threat apparent at the time of the raid. However, it seems to me that the police commissioner cannot have it both ways. He cannot, on one hand, argue that the police should not have been involved, but then argue that when they are involved, any criticism of their numbers is not valid criticism. The point I should make is that the police quite clearly need to discuss with the Attorney General the provisions contained within section 81 of the Criminal Code. We had discussions with the police and with the Corruption and Crime Commission on the wording of section 81. It was clear to the committee that there is an opportunity available to better clarify section 81 in respect of, for instance, the gaining of certain evidence and the involvement of persons who might potentially unlawfully disclose official information. It seems that there is an opportunity there to clarify these situations.

The Sunday Times did not believe that it had obstructed the police at all. The evidence provided by *The Sunday Times* indicates that senior management was offended by the fact that 27 police officers were on the premises at one time. I might add that because *The Sunday Times* is a media organisation that has video and television cameras available on its premises, when the police commenced the raid, *The Sunday Times* began filming and beamed the footage directly to the internet as a live raid, so to speak. That is certainly within the constraints of a media organisation; one would expect it. It was big news as far as they were concerned. My interpretation of the evidence that the police gave is that they were somewhat offended at being filmed. Again, if there was any issue

of obstruction, the police seemed to use that in part as some of the substance to justify the number of police officers there.

Hon Bruce Donaldson: Was there any access to coffee and tea during the day for the officers?

Hon GEORGE CASH: Not that I am aware of, but had *The Sunday Times* been aware of the police raid in advance, I am sure that tea and coffee, or even lunch, would have been provided, because in my view *The Sunday Times* went out of its way to try to cooperate with the police. Equally, I must say that the police were courteous during the raid. There was an attempt in some evidence to indicate that the police were less than courteous. The committee had the opportunity to view the video footage of the raid taken by the police. On the basis of the video footage I saw, I think that Detective Sergeant Jane and his officers carried out their duties in a very disciplined and professional manner. There is no question about that.

Hon Bruce Donaldson: Did they indicate at all how many officers would normally be needed for a raid on a building of that type?

Hon GEORGE CASH: The committee posed the question: had it been an accountant's office or a solicitor's office in West Perth, would the police have deployed 27 officers? I do not think the committee got a definite answer, so to speak. In my view, the police did not want to hypothesise about what might occur during raids. They were attempting to justify using 27 police officers in this particular raid. As much as the police were trying to justify this, they failed to convince the committee that there was a need for the deployment of 27 officers at commercial premises situated almost in the middle of Perth. There was no obvious threat of injury to either the police or the people within *The Sunday Times* building at the time of the raid.

Hon Brian Ellis: Were the police armed?

Hon GEORGE CASH: Yes, some of the police were armed. Their revolvers were evident in some of the video footage, but not all the police appeared to be armed.

Hon Bruce Donaldson: Was the TRG stationed outside?

Hon GEORGE CASH: The committee did not hear any evidence about the tactical response group being involved; whether it was to be called as additional backup is something that the committee did not investigate. I doubt whether the police saw a need to bring in the TRG, although some staff at *The Sunday Times* may have believed that that occurred during the height of the raid.

I turn to the question of government involvement. As I said, there was a significant degree of speculation soon after the publication of the report and before the committee inquiry was underway that there had been direction from government ministers or other senior government officials to attempt to influence the police in respect of the allegation of disclosure of official documentation or secrets, so to speak. I have made the point very clearly that there is no evidence whatsoever of any direction. In fact, one of the questions that was put to many of the witnesses was, "Can you tell me if any minister, parliamentary secretary or member of Parliament has spoken to you about this particular matter?" Alternatively, we asked, "Are you aware of any minister, parliamentary secretary or member of Parliament attempting to influence the police in respect of this matter?" I indicate again—I want to underline this—that the committee was advised by all witnesses to whom those questions were put that there was no such communication or attempt to influence. Therefore, I think we have well and truly laid that issue to rest. However, that was not the issue in the end. The issue was why 27 police officers had been deployed to raid the offices of *The Sunday Times* in Perth.

I need to run through some of the issues that arose and some of the observations made by the committee in its report. I have indicated that the complaint letter from Mr Wauchope was sent to both WA Police and the Corruption and Crime Commission. It seemed to the committee that notwithstanding the fact that the police took a long time to get an active investigation under way, the CCC was more than happy to have WAPOL take the lead in this matter. Given the CCC act, it seemed to the committee that the CCC should have done more than it did with the complaint letter that it received. The committee believes that the CCC should have assessed the complaint more fully before it referred it to WAPOL for investigation. The committee also questioned the procedural investigation by the CCC into the Department of the Premier and Cabinet but not into the Department of Treasury and Finance. We need to remember that this was a document that, on the face of it, would have had Department of Treasury and Finance input. The committee also raised the question of the adequacy of telephone communications between WAPOL and the CCC. The report sets out some transcripts of discussions between WAPOL and the CCC. I have also made some comments on those matters.

The committee was also keen to look at the opportunity for joint operations between WAPOL and the CCC. The committee notes in paragraph 12.24 of its report that the Commissioner of Police in his evidence had expressed the view that there would be benefit in the CCC providing WAPOL with more assistance in certain investigations. However, by this time, of course, the raid had occurred, so we were talking to the commissioner after the event. The commissioner indicated also that certain procedures were in place through which the police

have reasonably regular contact with officers at the CCC on various matters, and that there could be an opportunity for greater cooperation in joint operations.

The committee report also discussed whether the CCC could have taken over the WAPOL investigation on 30 April, and it arrived at certain conclusions. The committee report also sets out various comments by WAPOL and the CCC about the way in which offences against section 81 of the Criminal Code should be investigated. Recommendation 1 of the report deals with that matter and states —

> **The Committee recommends that the Attorney General conduct a review of s 81 of *The Criminal Code*.**

Under section 41 of the Corruption and Crime Commission Act, the CCC is able to review WAPOL investigations. The committee was somewhat concerned about that matter because one of the submissions that was made to the committee by the CCC indicated that even though the CCC had determined a particular view of the WAPOL investigation, the CCC still required that WAPOL provide a report to it under the provisions of the CCC act. I should indicate also that section 40 of the CCC act provides that the CCC can monitor a WAPOL investigation. However, that does not appear to have occurred in the manner that is contemplated by the CCC act.

I turn now to the raid itself.

Debate interrupted, pursuant to standing orders.

[Continued on page 3551.]

Sitting suspended from 3.45 to 4.00 pm

QUESTIONS WITHOUT NOTICE

GOVERNMENT EMPLOYEES SUPERANNUATION BOARD — MUTUALISATION

430. Hon SUE ELLERY to the parliamentary secretary representing the Treasurer:

Given that the Government Employees Superannuation Board is advising its members via its website that mutualisation is imminent, can the Treasurer advise the house of a definite time line for this long-promised reform?

Hon BARRY HOUSE replied:

I thank the member for some notice of this question.

GESB's website states that progress towards mutualisation and choice of fund is continuing. I continue to support the reform of GESB, and significant progress has been made to date on its mutualisation. However, two outstanding matters remain: the tax status of West State Super and the level of reserves for GESB Mutual Ltd. These issues need to be resolved before a date for mutualisation and choice is set.

PINJAR TO GERALDTON ELECTRICITY TRANSMISSION LINE

431. Hon KATE DOUST to the Minister for Energy:

I refer to the Premier's comments today about the planned 330-kilovolt line to Geraldton and his refusal to guarantee that the project will proceed.

(1) What will be the impact on residential customers in the mid-west if this critical powerline is not constructed?

(2) To what extent will future mining and industrial growth in the region be limited as a result of the failure of the government to deliver this critical infrastructure in a timely manner?

Hon PETER COLLIER replied:

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

(1)-(2) The Deputy Leader of the Opposition is referring to what the Premier said in regard to the north country line and she is assuming that the project will not go ahead. I can reiterate and reinforce what the Premier has said, which is that it certainly is under review. There is no doubt about that whatsoever.

Hon Kate Doust: It has moved from being a definite project to being under review, which looks to be uncertain. Is that what you are saying?

Hon PETER COLLIER: It is uncertain. However, it is only prudent that the government review the situation. The Deputy Leader of the Opposition would know how much was allocated to the 330-kilovolt line, which is —

Hon Kate Doust: It is $295 million.

Hon PETER COLLIER: It is $270 million.

Hon Ljiljanna Ravlich interjected.

Hon PETER COLLIER: That is why we have to review it. The current estimated cost of the line is around $600 million. That is in excess of twice the amount that was allocated in the original submission. As a responsible government, we must assess whether that is the most effective way to deliver safe and secure electricity to the mid-west region. We are not for a moment going to, dare I say it, ignore the people in the mid-west, the developments there or the people of Geraldton. I can assure the member of that. We are doing the most responsible thing. We are assessing whether that is the most effective means to deliver that electricity. There are other options that the member would be aware of. As I said, at this stage I can give no definitive response other than to reiterate what the Premier has said and to say that we are reviewing that time line.

FISHERIES OFFICERS — MANDURAH

432. Hon JON FORD to the Minister for Fisheries:

Some notice of the question has been given.

(1) What is the current full-time equivalent of fisheries officers permanently allocated to the Mandurah office of the Department of Fisheries?

(2) How many additional officers are allocated above the FTE allocation to the Mandurah office in peak seasons such as school holidays, Christmas and special local and regional events?

(3) What will be the FTE allocation to the Mandurah office of the Department of Fisheries when the marine operations centre and the Mandurah ocean marina are completed and operational?

Hon NORMAN MOORE replied:

I thank the member for some notice of this question.

(1) Eight.

(2) Additional officers are assigned on an operational-needs basis. The number of officers is determined by the operational managers, in line with the resource requirements identified in the operational plans.

(3) Eight.

DAYLIGHT SAVING — ENERGY, WATER AND PHYSICAL ACTIVITY AUDITS

433. Hon GIZ WATSON to the Minister for Energy:

I refer to the answer to question without notice 396 regarding the energy consumption trends during the three summer daylight saving trial periods. After studying the information on the Western Power website, as referred to by the minister, I seek further information on how Western Power obtained its results.

(1) Were the results based on actual measurements, modelling, or a combination of the two?

(2) If any modelling was involved, what was its purpose?

Hon PETER COLLIER replied:

I thank the member for some notice of this question. Before I respond to the honourable member, the results show that there has been only a virtually negligible or marginal impact on electricity use as a result of daylight saving.

(1) The results were based on actual measurements and by comparing these with the Metrix load forecasting package used by Western Power's system management.

(2) Energy consumption is affected by a number of variables, and the modelling package used enables these variables to be taken into consideration to understand the impact of daylight saving. Variables that need to be taken into account when measuring energy consumption include, but are not limited to, temperature, humidity, economic growth, the day of the week, the time of day and the previous day's load.

POLICE OFFICERS — RENT REDUCTION IN REGIONAL AREAS

434. Hon LJILJANNA RAVLICH to the minister representing the Minister for Police:

I refer to the government's election commitment to reduce rental costs for police officers in regional areas by reducing the Government Regional Officers' Housing rental charge by 50 per cent after the first year of service, a further 25 per cent after the second year of service, and charging no rent after the third year of service.

(1) Has the Minister for Regional Development written to or discussed this matter with the Minister for Police?

(2) What is the cost of providing free rent to police officers in regional areas at a 50, 75 and 100 per cent rental reduction?

(3) If this program has not been costed, will the minister commit to doing so and provide the details at the next day's sitting?

Hon PETER COLLIER replied:

I thank the member for some notice of this question.

On behalf of the Minister for Police, I provide the following response —

(1) No.

(2) Based on the rental deductions for the 2008-09 financial year, the cost of providing free rent across the state for police officers would be approximately $4.098 million. This figure is based on the average payroll deduction multiplied by 26 pay periods over the full financial year. Using the above formula would result in a first-year cost of $2.049 million at a 50 per cent reduction; an additional cost of $1.24 million in the second year at a further 25 per cent reduction, and a further $1.025 million in the third year following a further 25 per cent reduction, making a total of $4.098 million.

(3) Not applicable.

ESPERANCE CLEAN-UP

435. Hon SALLY TALBOT to the Minister for Environment:

I refer the minister to the statement made yesterday on the Department of Environment and Conservation website that the public meeting that was scheduled to be held in Esperance next Tuesday, 12 May, has been cancelled. The meeting was intended to provide the community with an update on the Esperance clean-up and provide the results of the human health and ecological risk assessment.

(1) Has the minister seen this assessment?

(2) Is it true that the meeting was cancelled on legal advice?

(3) If yes to (2), what was the legal advice?

(4) Can the minister advise when and if this public meeting will be held?

Hon DONNA FARAGHER replied:

I thank the member for the question. I ask that the question be put on notice. I will be happy to get back to her, if I can, by the end of question time. I understand that some advice was provided to my office and that some legal issues were raised. I would prefer to check on that before I give an answer, just to make sure that I give the correct information. I will try to get that information to the member.

BELMONT SMALL BUSINESS CENTRE

436. Hon BATONG PHAM to the parliamentary secretary representing the Minister for Commerce:

I refer to minister's decision to defund Belmont Business Enterprise Centre.

(1) Given that this centre currently receives $1 million over four years in federal funding and that the federal funding is contingent on state funding, what is the economic logic of the minister withdrawing the state's component of $93 000 a year?

(2) Is the minister also aware that the $93 000 cut will result in job losses and the cutting of services to small business operators at a time of greatest need?

(3) Will the minister now be targeting other business enterprise centres in Labor electorates for funding cuts?

Hon BARRY HOUSE replied:

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

(1) The federal funding to the Small Business Centre, Belmont is not solely contingent on state funding.

(2) There are no indications that this decision will lead to job cuts. Currently, 80 per cent of the centre's activities are directed to the statewide textile, clothing and footwear industry, which means that at best only 20 per cent of small business in the Belmont region can access this service under the current arrangements. The Small Business Development Corporation in conjunction with the City of Belmont and the other six metropolitan small business centres are working to ensure that services provided to the small business sector in Belmont are not only maintained, but improved.

(3) No.

GENETICALLY MODIFIED CROP TRIALS

437. Hon PAUL LLEWELLYN to the minister representing the Minister for Agriculture and Food:

I refer to the Genetically Modified Crops Free Areas Exemption Order 2009 published in the *Government Gazette* on 17 February 2009 and tabled in the Legislative Council on 18 March 2009 under the Genetically Modified Crops Free Areas Act 2003, to widespread public concern about the issue of genetically modified crops in Western Australia and to farmers registering to take part in these trials.

(1) Has the state government notified neighbouring GM-free farmers of the GM trials taking place?

(2) Has the state government notified neighbouring GM-free farmers of the possible risks of crop contamination associated with the GM trials occurring in close proximity?

(3) Has the state government sought the written permission of neighbouring GM-free farmers prior to allowing the GM trials to take place?

Hon DONNA FARAGHER replied:

I reply on behalf of the Minister for Child Protection. The response provided reads —

I note the honourable member makes use of the marketing term "GM-free" rather than the Australian Grains Industry accepted standard of non-GM.

(1)-(3) No. The government has indicated an area in which the trials are likely to be undertaken. The process of selection of trial participants is still being undertaken. Once trial locations are decided, the area in which the trials will take place will be published on the website of the Department of Agriculture and Food.

WATER POLICE UNIT — MANDURAH

438. Hon SHEILA MILLS to the minister representing the Minister for Police:

(1) When is the water police unit expected to be fully operational at the Marine Operations Centre in Mandurah?

(2) What will be the staffing numbers of the water police unit at Mandurah's water police facility?

(3) What will be the proposed roster arrangements for the water police unit?

Hon PETER COLLIER replied:

I thank the honourable member for some notice of this question. On behalf of the Minister for Police I provide the following response —

(1) It is expected to be operational by the end of July, beginning of August 2009.

(2) Western Australia Police advises that due to operational sensitivities, specific information relating to staffing levels of individual police stations or operational units is not released.

(3) Rosters are set on a fortnightly basis as per the Western Australia Police industrial agreement and are amended according to local policing issues, operational demands, seasonal factors et cetera. Accordingly, the rosters will provide a maximum policing presence on the waterways of Peel at peak demand times.

LOCAL GOVERNMENT ADVISORY BOARD INQUIRY — SERVICE DELIVERY TO INDIGENOUS COMMUNITIES

439. Hon MATT BENSON-LIDHOLM to the minister representing the Minister for Local Government:

I refer to the Local Government Advisory Board inquiry report into service delivery to Indigenous communities.

(1) When will the report be released?

(2) Do the recommendations of the inquiry have significant implications for relevant local governments?

(3) What discussions has the minister had with the Western Australian Local Government Association about the recommendations of the inquiry?

(4) Have the recommendations of the inquiry been given due consideration in his negotiations with the commonwealth?

Hon PETER COLLIER replied:

On behalf of the Minister for Local Government, I provide the following response —

(1) The report will not be released publicly while negotiations are in progress.

(2) There are 24 local governments likely to be affected by recommendations in the report. Each of those 24 local governments has been informed of the status of the report and advised the report will not be released while negotiations are in progress.

(3) WALGA has written to the minister requesting release of the report. For reasons stated in answer to (1), the minister has advised he was not prepared to release the report to WALGA at this time.

(4) There is ongoing discussion regarding this report at officer level between the commonwealth, Department of Local Government and Regional Development, Department of Housing and the Department of Indigenous Affairs.

PRISON POPULATION RATES

440. Hon ED DERMER to the minister representing the Minister for Corrective Services:

(1) What is the total adult prison muster as at 30 April 2009?

(2) Of this number what is the total number of —

(a) adult males; and

(b) adult females?

(3) What is the total juvenile detention centre muster?

(4) Of this number what is the total number of —

(a) juvenile males; and

(b) juvenile females?

Hon SIMON O'BRIEN replied:

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

(1) 4 158.

(2) (a) 3 841.

(b) 317.

(3) 141.

(4) (a) 132.

(b) 9.

PINJAR TO GERALDTON ELECTRICITY TRANSMISSION LINE

441. Hon KATE DOUST to the Minister for Energy:

In the minister's earlier response to my question about the 330 kilovolt line he alluded to alternative options to the 330-kilovolt line being available. Will the minister outline what they are?

Hon PETER COLLIER replied:

I thank the member for the question. One of the most obvious solutions would be to improve electricity generation in Geraldton. We must also look at the route of the line, which zigzags, as I am sure the member is aware, from Pinjar to Moonyoonooka. What we must do is to ascertain the most effective means to provide a safe and reliable electricity system to the mid-west region. All I am saying at this stage is that what we must do as a responsible government is to ascertain the most effective system. The cost of a 330-kilovolt line has more than doubled. We must ask whether that is providing value for money for people in the mid-west and for Western Australians as a whole. There is nothing clandestine about it. All we are doing at the moment is ascertaining whether that is the best option. When we do the review, other solutions may emerge. Perhaps looking at electricity generation in Geraldton is one other option. If it provides a safe and reliable electricity system for the mid-west region to cope with the development of the mining industry in that region, plus the pressures from Oakajee and residential demand, we will go with it. As I said, I think the most appropriate thing at this stage is to review the situation and come up with the most logical, cost-effective and efficient method.

TRIAL PARAMEDIC POSITIONS IN REGIONAL TOWNS

442. Hon JON FORD to the minister representing the Minister for Health:

(1) Will the trial paramedic positions continue as permanent positions for the following towns —

(a) Newman; and

(b) Kununurra?

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

(3) If yes to (1) will the state ensure the full cost of recurrent funding for those positions?

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

(5) Will the state be rolling out a similar model in other regional towns?

(6) If yes to (5), which towns?

(7) If no to (5), why not?

Hon SIMON O'BRIEN replied:

(1)-(2) The decision regarding continuation of the paramedic positions in Newman and Kununurra is dependent on the outcomes of the evaluation of the trials and will be part of the contract renewal negotiations between St John Ambulance Australia WA and the Department of Health.

(3)-(7) This is dependent on the outcome of the review of the trials.

NURSES — RENT REDUCTION IN REGIONAL AREAS

443. Hon LJILJANNA RAVLICH to the minister representing the Minister for Health:

I refer to the government's election commitment to reduce rental costs for nurses in regional areas by reducing the government regional officers' housing rental charge by 50 per cent after the first year of service, a further 25 per cent after the second year of service, and charging no rent after the third year of service.

(1) Has the Minister for Regional Development written to or discussed this matter with the minister?

(2) What is the cost of providing free rent to nurses in regional areas costed at 50, 75 and 100 per cent rental reduction?

(3) If this program has not been costed, will the minister commit to doing so and providing the details at the next day's sitting?

Hon SIMON O'BRIEN replied:

(1) Yes.

(2)-(3) This was a National Party election commitment, and I understand that the Minister for Regional Development is currently working through the various models with the Department of Treasury and Finance to explore these options.

COMMUNITY FOREST INSPECTIONS PROGRAM

444. Hon SALLY TALBOT to the Minister for Environment:

(1) Can the minister advise if the community forest inspections program is to be continued?

(2) If yes to (1), which community groups will be included?

(3) If no to (1) why not?

Hon DONNA FARAGHER replied:

(1) Yes.

(2) Community groups represented at community forest inspections usually include peak conservation groups such as Western Australian Forest Alliance, local conservation organisations and local government authorities.

(3) Not applicable.

DEPARTMENT OF CORRECTIVE SERVICES — FORMER OFFENDERS

445. Hon GIZ WATSON to the minister representing the Minister for Corrective Services:

I refer to the United Kingdom report "Unlocking Potential" published by Clinks —

(1) What contribution is currently being made by former offenders in respect of —

(a) professional development of department staff?

(b) criminal justice policy and practice?

(2) What research has the department undertaken into ways for offenders, former offenders and their families to contribute to policies, services and practices that affect them?

(3) If no or nil to (1) and (2), what strategies will the department use to achieve contributions by offenders, formers offenders and their families to policies, services and practices that affect them?

Hon SIMON O'BRIEN replied:

(1) (a) Nil.

(b) Former offenders may influence the development of the Department of Corrective Services' policy and practices through consultation with its community and consultative groups.

(2) Nil.

(3) DCS currently implements the government's framework and a code of conduct directing the appropriate ways to engage offenders, former offenders and their families in consultation. This framework incorporates focus groups that are conducted with offenders who have completed programs in both prison and the community to inform program development, group process, facilitator and program standards; and the peer support group, which involves consultation across all prisons gathering information to influence local prison policy and operations.

INTRASTATE AIR ROUTES

446. Hon ANTHONY FELS to the Minister for Transport:

Given that competition has made air travel consistently cheaper from Perth to Sydney than from Perth to Esperance, and more recently on the international routes cheaper from Perth to Tokyo, Hong Kong, Singapore, Bali or Jakarta than it is to fly to Esperance will the minister allow competition to Skywest Airlines on the Perth to Esperance, Perth to Albany, and Perth to Geraldton routes to give the long-suffering residents, tourist operators and visitors to those towns affordable air travel?

Hon SIMON O'BRIEN replied:

As I have already indicated to the house, after suitable consultation and consideration with colleagues, industry stakeholders and the community, the government will shortly receive recommendations from me on the future policy for intrastate air routes; it needs to be a whole-of-government decision.

I have also made it clear to the house that I want to ensure that all of the communities that are currently serviced by air services—and very important services they are for many regional and remote Western Australian communities—will continue to have access to those services. The only change I want to see is a better service for these communities. What I do not want to see is intemperate decisions —

Hon Anthony Fels: What about cost?

Hon SIMON O'BRIEN: — that lead to a decline in services. I am not satisfied that the case has been made for open deregulation of Western Australian intrastate air routes.

Hon Anthony Fels: So you are happy with a monopoly situation?

Hon SIMON O'BRIEN: The member should not try to put words into my mouth; he has asked me a question! I am concerned that we have good services. There are plenty of examples throughout Australia in recent history when air services have been interfered with in the name of free markets and competition and so on. It can happen that the resulting low fares from the initial composition are a short-lived benefit, as aspiring airlines go out of business. When one looks back at recent history, the number of airlines that have gone out of business in Western Australia because they thought they were better at providing services than they were is quite alarming. We do not want to see that happen again and end up with the potential situation, say on the Esperance route, where no-one is left standing after competition.

I cannot prejudge the decision that I will be asking cabinet to make because that is a whole-of-government decision. I think I have given the member a clear indication of my view about the future of intrastate air services in Western Australia. While I am minister I will ensure they are guaranteed to the greatest extent that any government can.

PINJAR TO GERALDTON ELECTRICITY TRANSMISSION LINE

447. Hon KATE DOUST to the Minister for Energy:

I refer to the response that the minister provided earlier that he had been alerted to the review of the 330-kilovolt line. Has that review commenced and who is conducting it? Given the minister has already provided information in another response that some pre-construction work has already commenced on the 330-kilovolt line, what is the minister's time frame for a formal decision on the future of the 330-kilovolt line?

Hon PETER COLLIER replied:

As I said, there are no definites in terms of the 330-kilovolt line. We are reviewing the situation. I will not pre-empt anything that will be in the budget. The honourable member will have to wait for the budget for a definitive position. I will repeat for the third time today: any responsible government will re-assess a project that has more

than doubled in size in less than 12 months. If we are looking at a project that was estimated to cost $270 million and that is now upwards of $600 million, the Western Australian public at large will legitimately say to the government, "What on earth is going on?" I was shadow minister for works and services when the Perth arena project first started, and the estimates for that project have almost trebled. We do not want to get into that situation.

We are very cognisant of the inevitable increase in demand for electricity in the mid-west region with growth in the mining area, plus Oakajee, plus the inevitable development of Geraldton. As a result of the massive blow-out in the cost of the line, once again I say that we, as a responsible and prudent government, must assess all options. But in terms of making a definitive response, wait until this time next week when the budget comes down, and then the honourable member will see for herself.

BHP BILLITON — SECTION 45 REPORT

448. Hon JON FORD to the Minister for Mines and Petroleum:

I refer to the section 45 report that was delivered to the minister at the end of last month into BHP Billiton's operations and to the answers that he gave me in response to why the section 45 report may not be tabled in this house. As I remember, the minister was going to discuss it with the State Mining Engineer. The minister told me in a further discussion that there may be some legal impediment in that it is a report that belongs to the mining engineer. During a radio report this morning, I heard the minister announce that that report may not be released because of the possibility of litigation. Can the minister elaborate on the reasons the section 45 report may not be tabled in Parliament?

Hon NORMAN MOORE replied:

I thank the member for the question. Let me explain this again in as clear terms as I can, which I thought I had done on Tuesday when the member asked me a question about this. I discovered that Hon Jon Ford had gone to ABC radio to cause some mischief. That is why I responded —

Hon Jon Ford: They came to me. I gave them your response.

Hon NORMAN MOORE: That is fine, but that is not what they told me. That is beside the point. That is the reason I was on the radio this morning explaining—in response to an issue the member had raised with them.

A section 45 report under the Mines Safety and Inspection Act is a coercive report provided to the State Mining Engineer, who has a very significant role to play in respect of the mining industry and safety within the mining industry. He is the person who decides whether a company should make a report based on section 45 of the act. That comes about if a company is engaging in unsafe practices that he believes requires a particular response from those companies. It is not a report that happens on a regular basis.

As a result of the three fatalities last year at BHP—ahead of my time, I might add—the State Mining Engineer, of his own volition, based upon his requirements under the act, required BHP to submit a section 45 report explaining itself in respect of those safety issues. That report is provided by BHP, or whatever the company happens to be, to the State Mining Engineer. It is his report. This has happened before. The most recent one that I am aware of related to a fatality at Boodarie. In that case the State Mining Engineer required a report under section 45. When that report was provided to the State Mining Engineer, he sought advice from the State Solicitor's Office about what he could do with that report. The advice that came back related to the contents of the report. As it is a report provided under coercive legislation, it may in fact contain material that could lead to a prosecution. The previous issue also related to matters that could be referred to the coroner. The State Solicitor's advice to Mr Logan, my predecessor, was that if there is any prospect that by tabling the report a prosecution may be jeopardised, or indeed a matter is referred to that will have to go to the coroner, the report should not be tabled. That is the advice that was provided, and that is the advice I explained to the member.

The current report, which has been provided to the State Mining Engineer, is in his hands. I understand it comprises 1 000 pages. He got it last week. He will go through that and he will see what it contains. I have asked him to seek legal advice as to what can and cannot be tabled. I go along with the recommendation made by the State Solicitor's Office to my predecessor: if the tabling of all or part of that report might jeopardise some future prosecution, or in fact might involve the Coroner's Court, I will not table it. However, I make the point that I would like it to be tabled. I would like everybody to know what BHP is doing in respect of its safety issues. The only reason it would not be tabled in whole or in part is if the act of doing so would suggest, based on legal advice, that it might jeopardise the state's case with respect to a future prosecution. I am not saying that there will be a future prosecution because I do not know. I have not seen the report; I do not know what is in it. I will get that advice from the State Mining Engineer, and I will take the appropriate action when we have the legal advice in relation to that report.

DEPARTMENT OF ENVIRONMENT AND CONSERVATION — ACTING POSITIONS

449. Hon SALLY TALBOT to the Minister for Environment:

Has the Minister for Environment received a question, of which some notice has been given, about senior positions in the Department of Environment and Conservation? It has a typo in it. It should have the word "acting" and not "action".

Hon Donna Faragher: Yes.

Hon SALLY TALBOT: My question is —

(1) How many senior positions in the Department of Environment and Conservation are filled by a staff member in an acting role?

(2) Which positions are they?

Hon DONNA FARAGHER replied:

I thank the member for her question. I did take it as "acting" even though all members of my department are all action.

(1) Seven.

(2) These are the deputy director general environment; director environmental regulation; director sustainable forest management; director strategic policy; director sustainability; director environmental enforcement unit; and regional manager, Swan region.

DEPARTMENT OF AGRICULTURE AND FOOD — DISTRICT OFFICE STAFFING

450. Hon ED DERMER to the minister representing the Minister for Agriculture and Food:

I ask the question on behalf of Hon Carolyn Burton, who is delayed by parliamentary business. Can the minister advise the house how many full-time equivalent and contract staff are based in the following district offices for the Department of Agriculture and Food —

(a) Karratha;

(b) Broome;

(c) Derby;

(d) Kununurra;

(e) Carnarvon;

(f) Meekatharra; and

(g) Kalgoorlie?

Hon DONNA FARAGHER replied:

I respond on behalf of the Minister for Child Protection. I thank the member for some notice of the question.

(a) Karratha—11 FTEs, of which two are contract staff;

(b) Broome—10 FTEs, of which five are contract staff;

(c) Derby—eight FTEs, of which three are contract staff;

(d) Kununurra—14 FTEs, of which one is contract staff;

(e) Carnarvon—19.09 FTEs, of which 6.59 are contract staff;

(f) Meekatharra—zero FTEs; and

(g) Kalgoorlie—8.4 FTEs, of which zero are contract staff.

QUESTION WITHOUT NOTICE 435

Supplementary Information

HON DONNA FARAGHER (East Metropolitan — Minister for Environment) [4.38 pm]: In respect of an earlier question that was asked of me by Hon Sally Talbot regarding the public meeting in Esperance which has been cancelled and the final report by Golder Associates, I wish to confirm my answer. The advice that I have received from the Department of Environment and Conservation is that as the report addresses matters relating to the alleged source of lead and nickel emissions, the State Solicitor's Office has advised the department that whilst the prosecution case against the port of Esperance is continuing, the report should not be made public in the interests of ensuring a fair trial. The department obviously apologises for this cancellation but I am advised the cancellation is for those reasons.

SELECT COMMITTEE INTO THE POLICE RAID ON *THE SUNDAY TIMES* — RECOMMENDATION 6

Motion

Resumed from an earlier stage of the sitting.

HON GEORGE CASH (North Metropolitan) [4.40 pm]: Prior to question time I was indicating some of the issues that are contained within the report of the Select Committee into the Police Raid on *The Sunday Times*. I also indicated that although I am providing a commentary on the report, it is obvious that if members want the definitive word, so to speak, there is a need for them to read the report because the report in fact contains a number of transcripts from various witnesses, which I clearly have not read in full, but which certainly form part of the report and, indeed, make up the reasons for the committee's recommendations.

I was dealing with some of the committee's observations. I earlier mentioned the difficulties posed by the current wording of section 81 of the Criminal Code. The report has a lengthy comment on whether the disclosure of unauthorised confidential government information should in fact be a criminal offence. The Corruption and Crime Commissioner, Hon Len Roberts-Smith, gave considerable evidence to the committee on this particular question that is contained in chapter 12 of the report, particularly paragraph 12.53. The commissioner stated —

> *If the committee sees the need to make a possible recommendation for future investigations into unauthorised disclosure of confidential government information, the commission —*

Meaning the Corruption and Crime Commission —

> *would suggest the real issue is whether or not that should be a criminal offence at all.*

This view was expressed in some written evidence that the commissioner provided to the committee. He continued —

> *The problems with securing a charge (and subsequently a conviction) under section 81 of the Criminal Code were canvassed in previous reports of the Commission. In the Report on an Investigation into the Department of Treasury and Finance (June 2005) ("Treasury Leaks") the Commission concluded, at Part 1.4 under the heading Criminal Liability, that:* [Its] *investigation has identified a possible criminal offence pursuant to s.81 and s.83 of 'The Criminal Code 1913".*

The commissioner then sets out at length his views on the current wording of section 81. Because it comprises about seven pages of the report, I will leave that for members to read. However, the commissioner sets out his reasons that section 81 requires some attention. Paragraph 12.55 states —

> The Commissioner of the CCC suggested that s 81 of *The Criminal Code* may be strengthened by an amendment to give statutory effect to the construction adopted of the former regulation 40 of the *Public Service Regulations* by Burt CJ in *Cortis v R* …

That case is referred to in previous pages of chapter 12 of the report.

The Commissioner of Police was also invited to make some comment on the problems faced in investigating a major offence under section 81 of the Criminal Code. As part of this evidence, Commissioner O'Callaghan said —

> *One of the things about section 81 is that it is, historically, very difficult for police to get a good result with the investigative techniques they possess. I think the reason the investigators went to the CCC was that, if the coercive powers and private hearing powers were used, it could have been done in a way that would have meant a more reduced commitment of resources to the investigation and a less public investigation than actually occurred at the end of the process. This is not an isolated case; there are a number of other cases, and you have mentioned a couple already, in relation to section 81 of the Criminal Code that are notoriously difficult for police to resolve within the scope of what they can do. That is one of the reasons I think, in this instance, the investigative officers approached the CCC and asked them to use their special powers—not just their coercive powers, but the ability to have private hearings …*

That was part of the transcript dated 30 June 2008.

The committee considered a number of other issues associated with the problems of obtaining a conviction under section 81 of the Criminal Code and as a consequence of our deliberations, recommendation one in the report states —

> **The Committee recommends that the Attorney General conduct a review of s 81 of *The Criminal Code*.**

Earlier I also discussed some of the issues identified with the conduct of the raid. I will briefly comment on some of the issues that were touched on by the committee. Although I will speak to them briefly, it took the committee a very long time to attempt to get to the bottom of these issues.

In respect to the decision to issue a search warrant, we as a committee believe that it would have been prudent for the Western Australia Police to have explored other investigative options more fully before proceeding with a search warrant, given the low probability of a successful prosecution in the matter, due, in part, to the large number of people who had access to the various versions of the document and, therefore, the potentially large number of suspects; the passage of time—I indicated earlier two and a half months had elapsed between the reporting of the alleged offence and the commencement of the investigations; the probability that as a journalist Mr Lampathakis was unlikely to reveal the source of his information; that previous attempts to prosecute similar disclosures had failed; and that previous failures to prosecute had been reported on negatively and recommendations from those reports had not been acted on. It is not hard to work through what might have occurred had other options been explored and in fact decided upon.

The committee also raised a number of concerns about the conduct of the raid generally. One concern was the question of why the officer in charge of the search was only called in to take part in the investigation on the morning of the raid. I am referring to Detective Sergeant Jane, whom I earlier stated to be, in the view of the committee, a very professional officer who discharged his duties in a very disciplined and professional manner. The committee is well aware of why he was chosen because he clearly is a very competent police officer in the execution of search warrants. However, the committee raised the question of why he was brought in at such a late stage of the investigation, so to speak, and in our view was not given a lot of time to contemplate whether the raid should have taken place. He was basically instructed that a search warrant had been issued and that he was to lead the police party in the execution of that warrant. However, the committee thought it would have been a lot better if he had been involved much earlier prior to the raid taking place.

The committee also asked why the raid was not conducted out of office hours, when fewer staff would have been present in the building. Members will be aware that a considerable number of persons are employed at *The Sunday Times*. It is a very large commercial building in Stirling Street, Perth. The raid commenced at 2.06 pm on the day it took place. I think a fair and reasonable-minded person would argue that 2.06 pm would be a peak period for people being present in the building. The committee believes that it would have been possible to execute the warrant outside business hours without contravening the provisions of the warrant, recognising that there are certain hours within which a warrant is expected to be executed; however, there is provision to execute outside those hours.

The committee asked why the additional 22 police officers were deployed, in part, to secure the exits of the building an hour after the police had arrived to execute the search warrant, and why a number of those 22 additional police officers departed an hour prior to the completion of the raid. The committee asked why a second search warrant was not executed on the residential address of *The Sunday Times* journalist Mr Paul Lampathakis at the same time as the raid on *The Sunday Times*. Why did the police believe that information that may have given rise to the identity of the person who leaked the information would be found only at the office of *The Sunday Times*? That question was not answered. It could have been at the journalist's home or it could have been in his car. The police determined to conduct a raid only on the offices of *The Sunday Times*.

I said earlier that 27 police officers were deployed for the execution of the warrant at *The Sunday Times* building. Given that 27 police were involved, the committee asked why, despite the presence of 27 police officers, the entire building was not searched during the execution of the search warrant, noting that a number of the internal passageways and stairs were not monitored during the raid. In addition to questions surrounding the use of the additional 27 police officers, the committee asked why the additional 22 police officers were sent home at 5.00 pm, even though the execution of the search warrant did not conclude until 6.10 pm.

Earlier, Hon Brian Ellis asked me by way of interjection whether firearms were worn by police officers during the raid. I indicated that some police wore firearms. The committee made an observation at paragraph 12.68 of the report in the following terms —

> The Committee considers that the wearing of firearms during the execution of the search warrant, although clearly within WAPOL procedure, heightened the perception that the operation was heavy handed and intimidatory. The Committee considers that greater consideration should have been given to the impact of the wearing of firearms in attending a standard search of an office building in which the likelihood of physical harm would have been very low.

That matter was raised with the police, but I hasten to add that the wearing of firearms falls within Western Australia Police procedures.

Hon Bruce Donaldson: I couldn't imagine journos putting their pens down and reaching for a pistol!

Hon GEORGE CASH: All I can say to Hon Bruce Donaldson is: just remember that the pen is mightier than the sword! Some would argue that a pen is more dangerous than a firearm, but I understand what he is saying. The committee raised that issue as part of its findings.

I would like to run through some of the findings of the committee. Although the motion I moved earlier deals with excusing the journalist Paul Lampathakis from further action in respect of his failure to answer certain questions, the committee's recommendation on this matter is framed in the following terms —

> **The Committee recommends that, in accordance with s 7 of the *Parliamentary Privileges Act 1891*, the Legislative Council excuse the answering of the question asked of Mr Paul Lampathakis by the Committee as set out in paragraph 14.9 of this report.**

I indicate that I will not be able to deal with that recommendation today, but I want to continue running through this report because it took the committee more than 12 months to conduct its investigations. As I said earlier, although there was certainly no government, ministerial or parliamentary interference in the way in which the police conducted inquiries into this matter, a number of other issues were raised and I want to run through some of them. I hope that next week, if the Leader of the House provides time, I will be able to deal with the specific matter that the recommendation is focused on. I say that because it is important for the house to make a decision; at the moment there is a senior journalist with a potential threat hanging over his head, and the matter needs to be discharged by the Legislative Council as soon as is practicable.

With regard to the way in which the Corruption and Crime Commission conducted its part of the investigation into the complaint, finding 3 of the report states —

> **The Committee finds that it would have been prudent for the Corruption and Crime Commission of Western Australia to have obtained from the Department of the Premier and Cabinet a copy of the alleged leaked Cabinet document, so that it would have been in a better position to form an opinion as to whether an investigation should be conducted.**

In respect of that finding, I indicate that at no time did the CCC seek to obtain a true copy of the alleged leaked document. It believed that there was a foundation to the allegation that was made because it had been referred to the police, and because the CCC believed that, the police were investigating it. Of course, it could have been the case that had the CCC obtained a copy of the document and found that the leaking of the information did not constitute an offence under section 81 of the Criminal Code, any further action would have fallen away. Technically, that was not done by the CCC, and it relied upon the police investigations.

Finding 4 states —

> **The Committee finds that the Department of the Premier and Cabinet, inadvertently or otherwise, hampered the Western Australia Police investigation by not informing the Western Australia Police of all relevant information concerning the unauthorised disclosure including that there were five separate versions of the document containing information that was disclosed and the distribution of each version.**

Finding 5 states —

> **The Committee finds that the Corruption and Crime Commission of Western Australia did not assess the complaint received from the Department of the Premier and Cabinet with appropriate rigour, and simply passed the responsibility for the investigation on to the Western Australia Police despite the Corruption and Crime Commission's own previously published misgivings about the value of investigations of offences under s 81 of *The Criminal Code*.**

Finding 6 continues —

> **The Committee finds that the role of the Department of Treasury and Finance and its internal processes for managing confidential information has not been adequately addressed. The Committee is of the view that the Corruption and Crime Commission of Western Australia should have also referred the complaint to the Department of Treasury and Finance, as it did to the Department of the Premier and Cabinet, for investigation under s 33 of the *Corruption and Crime Commission Act 2003*.**

Finding 7 indicates —

> **The Committee finds that the Corruption and Crime Commission of Western Australia expressed to the Western Australia Police a narrow interpretation of Part 4 of the *Corruption and Crime Commission Act 2003* (that is, those sections dealing with organised crime and the conferral of exceptional powers on police officers), and did not take into account the type of joint Corruption and Crime Commission-Western Australia Police investigations using the Corruption and Crime Commission's general powers as envisaged by s 33(1)(b) of that Act.**

Finding 8 states —

> **The Committee finds that the Corruption and Crime Commission of Western Australia failed to acknowledge that, in most circumstances, a notice to produce documents under the *Corruption***

> ***and Crime Commission Act 2003*** **can be as effective as a search warrant due to the available penalties for failure to produce the document.**

Finding 9 states —

> **Notwithstanding the Committee's concerns with the Corruption and Crime Commission of Western Australia's referral of the matter to the Western Australia Police in this instance, the Committee finds that it was proper for the Western Australia Police to investigate the allegation of a Cabinet leak, given that it was an offence under s 81 of *The Criminal Code*. The Committee believes, however, that alternative methods of investigation should have been employed before resorting to a search warrant, having regard to resource requirements and other Western Australia Police priorities.**

Debate adjourned, pursuant to standing orders.

PARLIAMENTARY COMMISSIONER AMENDMENT BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

Second Reading

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.00 pm]: I move —

> That the bill be now read a second time.

The purpose of the Parliamentary Commissioner Amendment Bill 2009 is to enable the Ombudsman to review and investigate certain child deaths, in part by the transfer to the Ombudsman of the child death review functions currently carried out by the Child Death Review Committee appointed by the Minister for Child Protection. The valuable work of the committee since its inception is acknowledged. The Ombudsman, however, is an independent parliamentary officer with wide powers of investigation—powers that are not available to the committee. The Ombudsman can examine a wide range of government departments, consider across-agency solutions for the prevention of child deaths, and recommend changes to strengthen cooperation and interdepartmental approaches to child safety and wellbeing. This will significantly enhance the child death review process, its role and impact. Most importantly, it may decrease the incidence of child deaths in Western Australia.

The bill implements the recommendations arising from a review by Prudence Ford of the former Department for Community Development, the Ford report. The Ford report recommended, firstly, that the committee, together with its current resources, be relocated to the Ombudsman and, secondly, that a small specialist investigative unit be established in the Ombudsman's office to facilitate the independent investigation of complaints and enable the further examination, at the discretion of the Ombudsman, of child death review cases when the child was known to a number of agencies.

The bill will amend existing provisions in the Parliamentary Commissioner Act 1972 that relate to investigations so that they will apply to child death reviews. The Ombudsman will be able to monitor and review investigable deaths, exercise his existing powers to investigate administrative actions that relate to investigable deaths, and make recommendations to the department and other public authorities within the Ombudsman's jurisdiction relating to policies, practices and systems for the prevention or reduction of deaths of children and to advance good administrative practice.

Clause 7 of the bill inserts a new division 3A into the act and provides a definition of those children who have died whose deaths may be reviewed or investigated by the Ombudsman. These are termed "investigable deaths", and are those cases where a child under 18 years of age dies suddenly and, in the two years before the date of the child's death, the department had received information that raised concerns about the wellbeing of the child or a child relative of the child, or had determined that action needed to be taken to promote the wellbeing of the child or a child relative. Further, it includes those children who have died when protection proceedings are pending in respect of the child or a child relative of the child, or when a child or a child relative of the child is in the care of the chief executive officer of the department.

Clause 10 of the bill is a consequential amendment to the Children and Community Services Act 2004, which will require the department to notify the Ombudsman of all investigable deaths within 14 days of the department being notified of the death of the child by the coroner. Two other operational amendments are proposed in the bill. Clause 6 will enable the Ombudsman to engage persons under contracts for services to provide technical, professional and other assistance required in exercising his functions under the act. Clause 9 allows the correction of the order of the items listed in schedule 1 of the act.

The death of any child is a tragedy. When that child had had recent involvement with the Department of Child Protection and/or other public authorities, it is essential that the death is investigated by an independent statutory body and any necessary changes to policies and practice are made to help prevent the death of any other child. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

MAJOR EVENTS (AERIAL ADVERTISING) BILL 2009

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Norman Moore (Leader of the House)**, read a first time.

Second Reading

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.05 pm]: I move —

That the bill be now read a second time.

Over recent times, the increased commerciality of major sporting and entertainment events has seen an amplified incidence of ambush or parasite marketing through the use of aerial advertising. Aerial advertising is utilised by innovative marketers seeking new and high-profile avenues to showcase their particular product to high-volume audiences. These marketing techniques are most often unofficial or non-sanctioned by the event owner and are often in direct competition with an official sponsor of an event. They can include skywriting and aircraft such as blimps, planes, hang-gliders and hot-air balloons carrying advertising slogans other than their normal markings.

The impact of ambush marketing via non-sanctioned aerial advertising practices on event organisers is potentially significant. The sponsorship arrangements at high-profile events are reliant on their exclusivity and contribute to the operational success or otherwise of events. No current legislative or regulatory mechanisms are available to provide protection to event organisers and their sponsors.

Major sporting code bodies, in particular Cricket Australia, have proactively sought legislative protection against aerial advertising across Australia. The state, as an organiser itself of events such as the Red Bull Air Race, is also open to abuse of the commercial sponsorship arrangements it enters into due to the current lack of protection.

There are examples across Australia in which legislation has previously been enacted to protect singular events. This includes the 2000 Sydney Olympic Games and the 2006 Melbourne Commonwealth Games. Since that time, various jurisdictions have further strengthened existing legislation or introduced new protection to assist in combating this practice.

This bill will provide for the regulation, management and control of aerial advertising at major events in Western Australia. This bill will ensure that the rights and privileges of the sponsors of major events in Western Australia will be protected at law, and provide a further incentive to a sponsor to continue to invest in major events and associated activities in this state.

Matters that are covered in the bill include an application process to have an event or series of events covered by the legislation approved by the Minister for Sport and Recreation; the criteria upon which an event can be declared, including size, media coverage and economic benefit; and remedies available to event organisers and government before, during and after significant events for breaches of the act, including financial penalties and civil remedies.

This bill will enable Western Australia to maintain and add to its existing suite of major sporting, arts and other entertainment events. It will remove the potential barrier that event organisers may have considered in locating and conducting an event in Western Australia. I commend the bill to the house.

Debate adjourned, pursuant to standing orders.

ADJOURNMENT OF THE HOUSE

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.08 pm]: I move —

That the house do now adjourn.

Business of the House — Legislative Council Membership — Adjournment Debate

Hon NORMAN MOORE: I will take a moment or two before the house adjourns to outline the business of the house over the next couple of weeks. Next Thursday, of course, the budget speech will be given, and it will be delivered in this chamber on Thursday afternoon. Next Thursday I hope also to deal with the very significant report of the Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts of Parliament that was tabled in the house today. I would like to see that report dealt

with while as least three of the members who are on that committee continue to be members of this house; namely, the President, the Chairman of Committees and Hon Kim Chance, who are all retiring. I would like to see that report debated before those three members retire.

The following week is the last sitting week during which the retiring members will be in the chamber. I propose to allocate enough time during that week for all members who wish to make a valedictory address to do so. I propose to move a motion of appreciation and then members can speak to that motion. The indications to me are that with the 13 members who are retiring, which is a significant number in one hit—there is a certain sadness attached to that, as well as the decimation of a lot of talent in this place—it will probably take about eight or nine hours of debating time to allow every member who wishes to speak to have 45 minutes or thereabouts in which to speak. It follows, then, that most of the government time in the following week, from 19 to 21 May, will be taken up with valedictory speeches. I will also need to request that the house forgo motions on notice and consideration of committee reports during that week to enable every member who wishes to make a speech to do so. I anticipate that most of the next week that we sit, which is 2 to 4 June, will be taken up with the budget debate. Fortuitously, or otherwise, there will be an opportunity for new members, who will be sworn in on 22 May, to make their speeches during the budget debate if they so desire. For the information of members, that is what I propose we may do for the next couple of weeks.

Genetically Modified Canola Crop Trials — Adjournment Debate

HON PAUL LLEWELLYN (South West) [5.10 pm]: I want to make a very brief statement about my line of questioning about the Genetically Modified Crops Free Areas Act and the GM canola trials in the south west. I note that the Minister for Agriculture and Food started out in a very conciliatory way by saying that he was intent on being open and transparent in the way in which he is dealing with the GM canola trials. As I have asked these questions over the past three weeks, it has become very clear that he has no intention whatsoever of being either transparent or open in the way in which he is dealing with the trials. In a media release today he was openly critical of some information that I had put on my website. I encourage the minister, instead of being critical about what I have on my website, to load up the contracts and the names and addresses of the farmers who are involved in these trials and put them on his website. In fact, I made an error on my website and I apologise for that. I think I said that the Shire of Plantagenet had declared itself GM free. In fact, the minister talked it into saying that it was okay to do trials. The Greens (WA) have made a case in this house that there is no such thing as a GM canola trial. Once the organisms are released, it is all over red rover; we are on the slippery slope to a GM state.

I am particularly concerned that there is an inadequate system of contractual arrangements between farmers and the Department of Agriculture and Food. Also, although the minister has said that he would release any contractual arrangements, I do not believe that they even exist; they barely exist. Before the minister had signed off on the contracts with farmers, I asked whether he could name the farmers who had said that they were interested and please table any contracts. The minister said that yes, indeed, he would table them in the name of transparency. It turns out that he is not prepared to table them because he has said that they are private and confidential, but he did table a form of the contract. It is headed "Genetically Modified Crops Free Areas Exemption Order 2009: Application for Approval of a Trial Cultivation of Roundup Ready® Canola in the 2009 Growing Season". The names and postal addresses of the people who are applying to the Department of Agriculture and Food to be part of the trial are given in the contract. A number of undertakings must also be agreed to, including that the person signing the contract has gained certain accreditation, has completed certain crop-management plans and, more importantly, has notified his neighbours of his intention to plant GM canola. The reason I think this is important is that we have been told consistently in this house that, in the absence of strict liability, any remedy for a person who is impacted on by GM canola will have to be undertaken under common law. For a farmer to know that his crops will be contaminated or know that he should be concerned that it may happen, he would have to be notified. Which farmers are involved in the trials should be on the public record. The minister said that he has released the locations of those farms, but he has not released names and addresses. We have asked whether there is any monitoring of compliance and how the minister will find out whether farmers have complied with contractual obligations to notify neighbours of their intention to plant GM canola. I asked specifically a couple of days ago —

> I note that the standard contract includes a requirement for participating farmers to notify their neighbours of the intention to plant GM canola.
>
> (1) Does the government have any suggested form of words for that notification to be used by participating farmers?
>
> (2) If no to (1), why not?
>
> (3) If yes to (1), will the minister table those suggested words?
>
> (4) Does the government have or intend to introduce any system to check compliance with farmers' undertakings in this regard?

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

(6) If yes to (4), what are the consequences, if any, of a failure to notify some or all of the relevant neighbours?

The answer, interestingly, was no. The government does not have a form of words. In answer to whether there is compliance, the minister replied —

> Farmers regularly discuss their farm systems and management operations with their neighbours.

This is how a non-GM farmer who lives next to a farmer who will plant GM canola will be told. He continued —

> This can include a range of issues from stocking and cropping plans to water management and weed and pest control. The government does not seek to intervene in these processes.

For contractual obligation and notification under the Genetically Modified Crops Free Areas Act 2003 and the agreement, the government is relying on the belief that neighbours will lean over a fence and say that they are planting GM canola the following week and that they are obliged to tell their neighbours. The government has no formal mechanism for monitoring compliance or formal notification for farmers. It has no mechanism to find out who are the farmers and what are their names and addresses so that if a remedy at law needed to be executed somebody could at least have some sense about who these people were. This is neither transparent nor open. It is gravely concerning that at the front end of these trials we are relying on farmers to speak over a fence to their neighbours. We do not have any formal monitoring or compliance. What will happen at the back end of these trials? What will happen with the monitoring of other important issues? I suggest that given the standards set by the Minister for Agriculture and Food, with lax controls, lax openness, lax transparency and lax arrangements, we can expect no rigorous, formal, scientific application of mind and process at the end of these trials. Western Australia's GM-free status will be infected through GM technologies, which will be a completely inadequate and unsatisfactory outcome.

I will make one other point, which is that on Saturday, 25 April, Grain Corp, which is an east coast company that is the equivalent of Co-operative Bulk Handling Ltd, announced that from now on it would be mixing GM canola with non-GM canola. It was one year into the GM trial arrangements. Grain Corp said that if people wanted to maintain the status of having non-GM canola, they could pay for testing to ensure that their crops were non-GM. That is that burden of proof going in completely the wrong direction. It is what we can expect in Western Australia as a result of these farcical trials. This is commercialisation by stealth. There is no intention to have rigorous scientific inquiries, and monitoring and compliance. This is simply Monsanto and the Department of Agriculture and Food getting their way and growing GM canola in this state without regard to the impact on other people.

Mandurah Bushland Protection Strategy — Adjournment Debate

HON SALLY TALBOT (South West) [5.21 pm]: In Mandurah recently we celebrated the acquisition of a second parcel of land under the Mandurah city council's bushland protection strategy. I rise tonight to pay tribute to the people who have been the movers and shakers in pushing this program along and to inform honourable members about some of the details of this really magnificent program. The bushland protection strategy was put in place in 2003, after the city council looked at what was happening to Mandurah, which, as honourable members know, has been one of the fastest growing regional cities in Australia. Even now, with growth slowing significantly in the past couple of years, we are still looking at a current five-year growth average of 4.4 per cent a year. The council looked at what happens to communities like Mandurah when they grow so rapidly, and one of the conclusions was that it is a major problem when large parcels of privately owned land are cleared for development. That is clearly not what the community in Mandurah wants, so the City of Mandurah went on the front foot to give a concrete response to the community's concerns about disappearing bushland, and formulated its bushland protection strategy.

The first parcel of land acquired was very significant. In January 2006 the City of Mandurah announced the purchase of a 24-hectare bushland parcel, which turned out to be adjacent to the 25-hectare Marlee Reserve Parklands. This was a very much celebrated event in Mandurah, heralding the historic commencement of this very bold plan to create a natural bushland network that would be in perpetual community care. The ultimate objective of the council is to move to a goal of protecting 150 hectares of privately owned bushland that would otherwise be developed. A couple of weeks ago we got together to celebrate the acquisition of the second parcel of bushland. Like the 24 hectares next to the Marlee reserve, this second area is also a habitat of the threatened Carnaby's black cockatoo. It is in Gumnut Avenue, Dawesville. If honourable members happen to be passing, it is just off the Old Mandurah Road, and is well worth having a look at. The city managed to negotiate for the existing bushland public open space of Gumnut Avenue to be increased from 1.5 hectares to 2.3 hectares. It sounds like only a small amount in the context of the ultimate objective of 150 hectares under this program, but it is nevertheless a very significant development.

I pay tribute to the city for having worked in such a cooperative fashion with the state government, developers and local environment groups. A significant aspect of the city being able to acquire the second parcel of bushland was its negotiations with the Public Transport Authority as part of the mitigation for the southern suburbs railway. The city was successful in getting funding that would match its contribution for the site in Gumnut Avenue. The city also successfully negotiated with the developer, Heath Development Company, that ceded land to establish the greenbelt corridor on the adjacent reserve that backs onto Peel Inlet-Harvey Estuary. It is a very special piece of bushland. Not only will the local community value having that as part of their immediate environment, but also it will attract people from all over the area. The bushland is on top of a hill from which there is a magnificent view, and it is a natural habitat for several endangered species, including Carnaby's black cockatoo.

I pay tribute to the City of Mandurah for embarking on the program and effectively putting two significant concrete projects into the program at its launch. I want to particularly mention the efforts of the mayor, Paddi Creevey, who has been an absolutely single-minded protector of the environmental values in the entire Peel region, not only since she has been mayor or on council, but also in all the time she has spent in the Peel region. It is one of the many magnificent contributions that Paddi has made to the local community.

I also pay tribute to the members of the Peel Preservation Group. Its activities are well known to members of both houses of this Parliament. Every member of Parliament who represents that area has spent time in their respective chambers singing the praises of that group. It is one of the most effective community groups in the state.

Of the many members of the group who have put effort into the program, I single out Shirley Joiner and Judy Trembath. I thank them for their efforts in preserving significant areas of the Peel region and for the part they played in negotiating the inclusion of the second area in the protected bushland estate. I mentioned Judy Trembath and Shirley Joiner because they were the two members of the Peel Preservation Group who were invited to join the environmental community consultative committee, which was attached to the project to extend the rail line to Mandurah.

At the event to launch the second protected area Shirley Joiner gave a magnificent speech that was very moving as well as informative. She admitted that when she and Judy took on the job on the committee, they did not really know what they were letting themselves in for. It turned out to be an enterprise that went on over many years. She gave us a very colourful account of what it was like to go out with this large number of people. There were between 10 or 12 people in the group. They literally fought for every tree they managed to save. A list of that committee's achievements has been put together in a document titled "ECCC—Significant Outcomes". Shirley pointed out at the launch of the bushland project that those achievements included the realignment through Pickle Swamp; locating CALM tracks within the rail reserve; redesigning Warnbro Station to retain the threatened species area; the reduction of clearing—saving tuart trees, grass trees and giant spider orchards; salvaging and replanting thousands of grass trees; reorganising the fire hydrants at Warnbro Station; promoting local seed collection and species adjustments; and acquiring a significant amount of money, $300 000, for the Mandurah mitigation—that is, money to match the city council's contribution towards the acquisition of the second bush site. In addition, they acquired templetonia plants and protect them at Mandurah station.

I will close my remarks by telling the house how Shirley summed up her pleasure about the acquisition of the second bush site. My notes indicate that she said —

> … when the extra parcel of bushland was added to Marlee Reserve …
>
> PPG members are happy; everyone who appreciates nature is happy; visitors will be happy to visit this reserve; our grandchildren and great-grandchildren will appreciate what has been done here today.
>
> And, perhaps most important of all, the black cockatoos will have some trees to call home. The flora and fauna of the area has an assured future in an area which we will (and must) guard with our lives.

These are the sorts of sentiments that people such as Judy Trembath, Shirley Joiner and our mayor Paddi Creevey bring to their activities every day in this slog to make sure that some of these unique areas in Mandurah are protected, and that the lifestyle that everybody in the Peel region values so highly is there for our children, our grandchildren and their children to appreciate. I pay tribute to all of them.

BHP Billiton — Section 45 Report — Adjournment Debate

HON JON FORD (Mining and Pastoral) [5.30 pm]: I want to raise a couple of matters in the house tonight arising from the short debate we had on the section 45 report by the mines inspector into BHP Billiton's safety record. I do not have any problem with the answers that the Minister for Mines and Petroleum has given me today, because I got the same information from the department when I was occupying the same role; that is, there are a number of legal impediments to tabling the report. It highlights a problem with these sorts of reports.

When we consider the Varanus Island explosion and then the BHP Billiton safety issues over the past 12 months, we see two distinct indicators of a major failure somewhere in the system to protect the assets of both those companies. In BHP's case, the assets are human assets—its employees, nine of whom in recent times have been involved in fatal accidents. Varanus had a major breakdown of capital equipment, and it was very lucky there was not a much greater impact from that explosion. Had there been a failure in the fire and gas system, along with the failure in the structure of the pipeline, many lives would have been lost in that explosion.

When we compare the two indications of massive failure, firstly, Varanus, the government of the day—the Labor Party—was subject to intense scrutiny by the opposition, and rightly so, in regard to what the government's role should have been from a regulatory perspective in preventing that explosion. The problem was that there were a number of regulatory bodies. The responsibility map showed different regulatory bodies for different parts of the pipeline and the plant. There was always a chance that something would fall through the cracks.

The government of the day could not release the results of any report or inquiry for the same reasons that we are hearing today in regard to the section 45 report: there are legal impediments and future litigation might be put at risk.

The problem I see with this—there is obviously some legal impediment—is how we can hold the regulatory bodies accountable. I cannot believe for one instant that the regulatory body did not fail in its duty in regard to the Varanus Island explosion, and it appears that Apache Energy failed to look after its plant. How do we ensure that those regulatory bodies do not fail? I am not interested in a witch-hunt because the trouble with witch-hunts and blaming people is that they affect future reporting, and we would have to wait for an incident to occur and the resultant investigation to find out what had happened. We are trying to stop these incidents from occurring over and over again.

When I talk to workers in the mines about their experiences, especially of late as the BHP issues have become prominent—I have spoken to safety reps, mine workers, supervisors within contractors and managers—they tell a disturbing story about the inspectorate's ability to carry out its work. It is almost an arbitrary process. People are saying to me that they make a verbal report to the inspectorate and the next time they see an inspector who asks how they are going, the inspector says, "You never formally raised the matter so we could not go ahead." That seems to be an absolute nonsense. I would like to find out if that is the case.

When I was the Minister for Employment Protection, the department told me that whilst the number of inspectors was down, it could do the job adequately. I was in there for a short period so we would have to expect that. I am sure that the current minister has been told the same thing. However, the director of resources safety told me recently in a public hearing that the number of inspectors in Western Australia is down significantly on a per capita basis compared with benchmarks in the eastern states. There is roughly one inspector for every 800 people in the eastern states. In Western Australia, there is one inspector for 1 500 people in the mines. We need to address that. We know that we have a skills problem and the state will never be able to afford the expertise that is currently required, especially as we move to more advanced mining methods and technology. We have to talk about cost recovery and get those miners to contribute to the inspectorate.

If seems to me that there is something very, very wrong with the way we manage our regulatory authorities. We need to find a way to address that. I have spoken to the minister and he understands that. He is a lot more experienced in this than I am from a ministerial perspective. The opposition will be happy to work with the government to find that route. In the short term while we are finding those solutions, the minister needs to look very hard at what the inspectorate is saying to him. He needs to ask some pretty probing questions. I would go as far as to suggest that he should have an independent inquiry into the inspectorate and perhaps look at the results of the section 45 technical reporting of BHP safety as a way of working out in his own mind what is going wrong with the inspectorate. At least then he will own the report and there will be an opportunity for that report to be tabled so that the people of Western Australia can have some faith that their concerns about workers' safety in Western Australia are being addressed.

Freedom of Information Act — Adjournment Debate

HON LJILJANNA RAVLICH (East Metropolitan) [5.39 pm]: I rise to speak about the Freedom of Information Act. It is my melancholy duty to report to the house that ministers are still not treating the legal requirements of this act with the seriousness that they should be treated. I specifically refer to Hon Donna Faragher. I want to put on record the sorts of experiences that we have had with the minister's office when dealing with freedom of information applications. If the Premier was aware of the sorts of responses we have encountered and the lack of regard by this minister to the legislative requirements of this act, he would not make the sorts of comments that he has made publicly about the Freedom of Information Act. Quite clearly, his ministers think this is a bit of a joke. I had not realised that I have only 29 seconds left.

Hon Simon O'Brien: With you on your feet, it will be the longest 29 seconds of the day.

Hon LJILJANNA RAVLICH: Hon Simon O'Brien should not worry about it. It has come about very quickly and he is freed.

Question put and passed.

House adjourned at 5.40 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

BRIAN BURKE AND JULIAN GRILL — PORTMAN MINING COMPANY REPRESENTATION

417. Hon Giz Watson to the Minister for Environment

With regard to question on notice No. 5918, answered in the Legislative Council on 18 March 2008, I ask —

(1) In what capacity did Mr Brian Burke and Mr Julian Grill represent Portman during the period in question?

(2) Did Mr Brian Burke or Mr Julian Grill have any dialogue or correspondence with any member of the Department of Environmental Protection during the period in question?

(3) Did Mr Brian Burke or Mr Julian Grill have any dialogue or correspondence with any member of the Environmental Protection Authority during the period in question?

(4) Did Mr Brian Burke or Mr Julian Grill have any dialogue or correspondence with any member of the Minister's staff during the period in question?

(5) Did Mr Brian Burke or Mr Julian Grill have any dialogue or correspondence with the former Minister during the period in question?

(6) If yes to any of (1) to (5) above, will the Minister advise the nature and dates of that dialogue or correspondence?

Hon DONNA FARAGHER replied:

(1) The Minister for Environment is not responsible for business arrangements made between Mr Burke, Mr Grill and Portman. This question should be directed to the relevant parties.

(2)-(6) Question on notice No. 5918 was answered by the Minister for Environment in the previous Labor government. The Minister for Environment is not responsible for, and is not privy to, actions undertaken by the previous Government or the previous Minister's ministerial staff in this matter and is therefore unable to answer the questions.

FIONA STANLEY HOSPITAL SITE — ENVIRONMENTAL ASSESSMENT

419. Hon Giz Watson to the Minister for Transport representing the Minister for Health

I refer to the site for the new Fiona Stanley Hospital, and ask —

(1) Did the flora and vegetation assessment for the site indicate that development will or may have a negative impact on any critically endangered species?

(2) If yes to (1) —

  (a) which species;

  (b) what is the nature of the risk; and

  (c) how will the risk to each species be managed?

(3) Did the fauna assessment for the site indicate that development of the site will, or may have a negative impact on any fauna species, whether specifically on site or in the metropolitan area generally?

(4) If yes to (3) —

  (a) which species;

  (b) what is the nature of the risk; and

  (c) how will the risk to each species be managed?

(5) Have any previously cleared sites been considered as an alternative site for the development?

(6) If yes to (5), for each alternative site, —

  (a) what is the location of the site?

  (b) what are the reasons it was rejected?

Hon SIMON O'BRIEN replied:

(1) No.

(2) Not applicable.

(3) Yes.

(4) (a)-(c) The fauna assessment found that the vegetated areas of the site are currently used by a range of fauna species. Specifically on site, the extent of habitat for these species will be decreased and there is a possibility of fauna being injured during construction works. To mitigate these risks, the project has implemented the following initiatives:

- Reptile, frog, and Southern Brown Bandicoot (Quenda) trapping and relocation programs in cooperation with the Department of Environment and Conservation (DEC) prior to clearing activities;
- Developing the land in stages over two years to ensure that not all habitat is removed at one time;
- Clearing along a 'front' to provide the opportunity for fauna to move away from the clearing line into adjacent vegetated areas;
- Procedures have been developed addressing actions for personnel should fauna be encountered during construction and a training program for Contractors implemented;
- Funding has been provided to the Wildcare Helpline that personnel and the local community are advised to contact should injured fauna be encountered;
- Retaining two areas of vegetation on site for conservation purposes;
- Using local plant species in hospital landscaping and creating habitat niches in open space across the precinct; and
- Creating constructed wetland habitats in areas of open space of the hospital.

Only one fauna species, the Carnaby's Black Cockatoo, which was found to use the site for foraging, is potentially affected at the metropolitan region scale. Clearing may have an impact on the extent of foraging habitat available to the species on the Swan Coastal Plain. Due to this perceived risk, the project was referred to the Australian Government's Department of Environment, Water, Heritage and the Arts.

The Federal Minister for the Environment, Heritage and the Arts, The Hon Peter Garrett MP, granted approval for the project under Part 9 (section 133) of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) on 7 July 2008. The project was approved subject to the conditions set out in the approval decision. The conditions require the implementation of a range of conservation initiatives, which were proposed by the project to mitigate the potential impact to Carnaby's Black Cockatoo with the intention for there to be a long term benefit to the species as a result of this project. These initiatives incorporate both on-site and off-site measures and include:

- Retention of two areas of high quality foraging habitat within the site as conservation areas. These areas have been fenced and are actively managed and monitored;
- Use of native tree species suitable for Cockatoo foraging in hospital landscaping, such as areas of open space, streetscapes, and plazas. In consultation with the Australian Government's Department of Environment, Water, Heritage and the Arts, the project is also examining the potential to plant suitable foraging plant species in roof gardens of the hospital. The project has been collecting seed from the site for the past two years and has just completed its 2008-09 harvesting. This seed will be used to propagate seedlings for planting in the hospital precinct;
- Rehabilitation of foraging habitat in Beeliar Regional Park, incorporating the reuse of vegetative material and the topsoil seedbank removed from the hospital site as part of clearing. This work commenced in September 2008 and to date, approximately 10 hectares has been subject to rehabilitation works;
- Commitment to develop a Conservation Agreement under the EPBC Act for the remaining foraging habitat in the surrounding Murdoch Activity Centre. The Fiona Stanley Hospital Project is currently progressing this agreement;
- Acquisition of freehold land to the south of the project site, which supports foraging habitat in excellent condition, for the purpose of conservation. This land will be managed by DEC for conservation purposes;
- Acquisition of freehold land at Clackline that supports important breeding and foraging habitat for the Carnaby's Black Cockatoo in the Wheatbelt. This land has now been

purchased by Department of Environment and Conservation which has also commenced the process to include the land in the Clackline Nature Reserve;

- Funding of a research program focusing on obtaining further regional information about:

  (i) the food resource base for the species on the Swan Coastal Plain and its capacity to support the existing Cockatoo population, and the implications of expected or potential changes; and

  (ii) how Carnaby's Black Cockatoo uses other resources, such as roosting and watering points, and the influence of connectivity between bushland areas on its movements around the Swan Coastal Plain.

- Funding to support the direct involvement of the community and other stakeholders in a number of environmental initiatives, particularly in the rehabilitation of Beeliar Regional Park, and in the provision of care and rehabilitation facilities for injured Carnaby's Black Cockatoos. The first round of community grants through this funding was awarded in late 2008 and two fauna care facilities have already been distributed funds for cockatoo rehabilitation facilities; and
- Funding of research into critical factors affecting the success of rehabilitating Banksia woodland on the Swan Coastal Plain, an important foraging habitat for Carnaby's Black Cockatoo.

This comprehensive package goes well beyond the expectation of impact and demonstrates a strong commitment to environmental sustainability.

(5) Yes.

(6) (a)-(b) The proposed development of the Fiona Stanley Hospital at Murdoch, Western Australia is a key initiative in the state-wide reform of the Western Australian health system, as detailed by the Health Reform Committee's report in 2004 entitled "A Healthy Future for Western Australians". Recommendation 27 of the report stated that,

A new tertiary hospital should be constructed to service the south of Perth. The preferred location for this hospital is at Murdoch and planning should commence immediately.

Fiona Stanley Hospital will be at the centre of an integrated health, education and research precinct at Murdoch, with links to existing private hospital, local education and training providers, and a state-of-the-art medical research facility. These ancillary services are essential in providing a tertiary healthcare facility that works and is likely to result in improved care and increased patient and staff satisfaction.

The Murdoch site is the best site to achieve this total health precinct in conjunction with a private hospital.

The Health Reform Committee also assessed a site at Cockburn Central in 2004 and this location was subsequently discounted as it did not adequately address all of the required criteria such as:

- Available land for hospital usage;
- Sharing of core health facilities (between public and private health);
- Education and research synergies;
- Adjacent land uses;
- Accessibility;
- Population catchment; and
- Land ownership.

LEAD EXPORT THROUGH FREMANTLE PORT

422. Hon Anthony Fels to the Minister for Environment

I refer to Statement No. 783 dated 2 February 2009, by the Minister for Environment concerning the amended conditions pursuant to section 46 of the *Environmental Protection Act 1986*, to allow the export of lead carbonate by Magellan Metals Pty Ltd from the Port of Fremantle rather than from the Port of Esperance, and I ask —

(1) Outside of Cabinet discussions and prior to approving the abovementioned proposal, has the Minister held any formal consultations on this matter with any Ministers other than the Minister for Health, the Minister for Transport or the Minister for Mines and Petroleum?

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

(3) Despite the Minister's answer provided on 17 March 2009, that the Environmental Protection Authority (EPA) did not consider it relevant for her to consult the Minister for Agriculture and Food on this matter, why on her own initiative did she not consult the Minister for Agriculture and Food given the volume and value of agriculture and food product that is shipped in and out of the Port of Fremantle and that will be contaminated in any repeat of the Esperance lead carbonate poisonings?

(4) Given the EPA and DEC have been 'missing in action' on this matter, will the Minister for Environment now enter into consultations with and seek the advice of the Minister for Agriculture and Food on this matter?

(5) Did the Minister for Environment receive formal advice supporting the proposal from, —

  (a) any of the Ministers mentioned in question (1); and

  (b) if any, which Minister or Ministers mentioned in (2), gave formal written advice supporting the proposal?

(6) Has the Minister for Environment given any approval or amendment/extension of an existing approval for the export or movement, on or after 1 January 2009, of any type of lead product from the Port of Esperance?

(7) If yes to (6), —

  (a) why;

  (b) what is the date, statement number. or other reference detail of each approval, amendment or extension;

  (c) who is the proponent that can use each approval, amendment or extension;

  (d) on what date will each such approval, amendment or extension terminate; and

  (e) will the Minister table in this House all approvals, amendments, extensions or policies whether issued by her, by the previous Ministers or by the respective Departments, Authorities and Agencies, and that in any way touch on the matter of lead product transport or lead product export to or from the Ports of Esperance or Fremantle?

(8) Regarding the remaining lead carbonate (Magellan) material held at the Port of Esperance, —

  (a) under what approval, monitoring and/or controls will the poisonous Magellan lead material be reloaded and then moved or exported from the Port of Esperance;

  (b) will the poisonous lead material have to be reloaded into and moved only in bulk bags that are locked in air sealed shipping containers;

  (c) if yes to (b), will any such bags and containers be sealed in accordance with the safety requirements for poisonous or highly hazardous products;

  (d) whether or not containerised bulk bags are to be used to move the poisonous material at Esperance, is it true that such containers as is proposed for use in the Fremantle proposal have openings in the top and bottom allowing venting of the internal air and contents mix during storage and/or transport;

  (e) will such bulk bags, containers, as may be used for this poisonous lead material at either the mine site, the Port of Fremantle or the Port of Esperance be sealed so as to be both airtight and water-tight;

  (f) can the poisonous Magellan lead material be moved only to the Port of Fremantle;

  (g) is there still about 9 000 tonnes or more of such powdered lead material held for reloading at the Port of Esperance; and

  (h) by what modes of transport (road, rail or sea ship) can the poisonous Magellan lead material be moved from the Port of Esperance?

(9) Has the Minister for Environment ordered that export of all and any type of lead product from the Port of Esperance is to cease?

(10) If no to (9), why not?

(11) When does the Minister propose to ensure that export from the Port of Esperance of lead product (whether or not in accordance with Statement No. 559 of 28 November 2000) will cease?

Hon DONNA FARAGHER replied:

To clarify the Hon Member's question, my decision of 2 February 2009 was to approve a change to the conditions applying to the proposal to transport lead carbonate through the Port of Fremantle. As the Hon Member correctly notes, this decision was made pursuant to section 46 of the Environmental Protection Act 1986, which relates to changing the conditions of a proposal, not the proposal itself. Accordingly, the reference to "proposal" in the question shall be taken to be a reference to "conditions".

(1) I have formally consulted with the Minister for Mines and Petroleum, the Minister for Emergency Services, the Minister for Transport, the Minister for Health, the Minister for Commerce and the Minister for Water.

(2) Not applicable.

(3) The protection of human health, whether through contamination at the port or elsewhere along the route, was a key consideration in the development of the conditions. Comments were therefore sought from the Minister for Health on the content of the conditions.

(4) The conditions have been finalised and as a result, there is no further consultation or agreement anticipated.

(5a) Yes

(5b) Formal agreement to the conditions was obtained from relevant decision making Ministers, being the Minister for Mines and Petroleum, the Minister for Transport, the Minister for Emergency Services and the Minister for Water.

(6) No

(7a-d) Not applicable

(7e) Yes. [See paper 727.] Ministerial Statement No. 559; Letter dated 29 December 2004 approving changes to the proposal under section 45C of the Environmental Protection Act 1986; Prevention Notice issued by DEC dated 27 November 2008; Letter dated 27 January 2009 approving changes to the proposal under section 45C of the Environmental Protection Act 1986; and Ministerial Statement No. 783.

(8a) See Prevention Notice tabled in answer to Question 7(e).

(8b) The lead carbonate at Esperance was sealed in double-walled sieve-proof and water-proof bags and loaded into steel shipping containers that were locked.

(8c) The lead carbonate concentrate was transported in accordance with dangerous goods requirements.

(8d) The holes, which are extremely small, are located at the top of the sides of the container and significant upward airflow would be required to transport any product through those holes. As the product is within sealed bags and the containers have a solid steel floor, there is no significant upward airflow that would result in this occurring. The product also has the consistency of damp sand so I am advised that the possibility of it being released through the holes is extremely unlikely.

(8e) The bulka bags used at Esperance and for transport from the mine to the Port of Fremantle are double walled and water resistant. Standard steel shipping containers are used at Esperance and for transport from the mine to the Port of Fremantle. The Department of Environment and Conservation, Department of Health and Department of Mines and Petroleum have approved the use of these containers and bags.

(8f) The lead carbonate at the Esperance port was not exported out of the Port of Fremantle. It was shipped directly out of Esperance.

(8g) No. Magellan Metals has completed the export of lead carbonate that is stockpiled at the port through the Port of Esperance.

(8h) The lead carbonate at Esperance was permitted to be moved from the Port of Esperance by sea ship in approved sealed bags inside steel shipping containers.

(9) No

(10) Magellan Metals undertook the export the lead carbonate stockpiled at the port through the Port of Esperance under the requirements of a Pollution Prevention Notice issued by DEC. This Notice prohibits any other movement of lead ore concentrates into or out of the Port of Esperance. Any future proposals to export through the Port of Esperance would be subject to the requirements of the Environmental Protection Act 1986.

(11) See the response to (8)

GOVERNMENT AGENCIES – SUSPENSION OF CAPITAL PROJECTS

452. Hon Ljiljanna Ravlich to the Minister for Child Protection

I refer to the circular sent to all Agencies by the Department of Treasury and Finance on 24 November 2008, which states in part 'Agencies are requested to suspend work on any new capital project with a pre-tender estimate greater in value than $20 million that is at, or in the process of going to tender', and I ask, for each of the Agencies within your portfolio areas, -

(1) What capital projects have been suspended?

(2) What is the estimated cost of each of these suspended projects?

(3) For which suspended projects has the Agency submitted budget requests?

Hon ROBYN McSWEENEY replied:

Full details of the outcome of the Capital Works Audit will be provided as part of the 2009-2010 State Budget.

GOVERNMENT AGENCIES — SUSPENSION OF CAPITAL PROJECTS

457. Hon Ljiljanna Ravlich to the Minister for Transport representing the Minister for Health

I refer to the circular sent to all Agencies by the Department of Treasury and Finance on, 24 November 2008, which states in part 'Agencies are requested to suspend work on any new capital project with a pre-tender estimate greater in value than $20 million that is at, or in the process of going to tender', and I ask, for each of the Agencies within your portfolio areas, —

(1) What capital projects have been suspended?

(2) What is the estimated cost of each of these suspended projects?

(3) For which suspended projects has the Agency submitted budget requests?

Hon SIMON O'BRIEN replied:

(1)-(3) Full details of the outcome of the Capital Works Audit will be provided as part of the 2009-2010 State Budget.

GOVERNMENT DEPARTMENTS AND AGENCIES — CREDITORS OUTSTANDING

532. Hon Ljiljanna Ravlich to the Minister for Transport representing the Deputy Premier

For each Department and Agency within the Deputy Premier's portfolios, as at 24 March 2009, —

(a) what was the amount and number of creditors outstanding for less than or equal to 30 days;

(b) what was the amount and number of creditors outstanding for less than or equal to 60 days;

(c) what was the amount and number of creditors outstanding for less than or equal to 90 days;

(d) what was the amount and number of creditors outstanding for less than or equal to 120 days; and

(e) what was the amount and number of creditors outstanding more than 120 days?

Hon SIMON O'BRIEN replied:

This answer is provided for the Deputy Premier; Minister for Health; Minister for Indigenous Affairs;

Department of Health (excluding Drug & Alcohol Office)

(a) Amount — $62,654,376 and 3,352

(b) Amount — $2,947,729 and 577

(c) Amount — $1,084,823 and 158

(d) Amount — $314,886 and 84

(e) Amount — $613,570 and 174

Department of Indigenous Affairs

(a) Amount — $5,652,388 and 51

(b) Amount — $1,275,041 and 6

(c) Amount — $12,770 and 3

(d) Amount — $1,195 and 2

(e) Amount — $168 and 3

Nurses and Midwives Board of Western Australia

(a) $37,382.66 and 10

(b)-(e) Nil

Office of Health Review

(a)-(e) Nil

DEPUTY PREMIER'S PORTFOLIOS — REVIEWS COMMITTEES INQUIRIES AND TASKFORCES

578. Hon Ljiljanna Ravlich to the Minister for Transport representing the Deputy Premier

For all portfolios, Departments and Agencies, for which the Deputy Premier holds responsibility, —

(1) How many reviews, committees, inquiries and taskforces have been established since 23 September 2008?

(2) Will the Deputy Premier list all the reviews, committees, inquiries and taskforces that have been established in that period?

(3) What is the name and qualification of each person who heads each review, committee, inquiry and taskforce that has been established?

(4) Will the Deputy Premier list the commencement date and completion date for all reviews, committees, inquiries and taskforces that have been established?

(5) Will the Deputy Premier list the total cost of sitting fees and the total cost for each of the reviews, committees, inquiries and taskforces that have been established?

(6) Will the Deputy Premier list the cost of sitting fees to date and estimated total final cost of each review, committee, inquiry and taskforce that is still current?

Hon SIMON O'BRIEN replied:

This answer is provided for the Deputy Premier; Minister for Health; Minister for Indigenous Affairs:

Department of Health

[See paper 728.]

Nurses and Midwives Board of Western Australia

(1) Nil

(2)-(6) Not applicable

Office of Health Review

(1) Nil

(2)-(6) Not applicable

Department of Indigenous Affairs

(1) One.

(2) The Indigenous Implementation Board (Board).

(3) The Board is chaired by Lt General (Rtd) John Sanderson AC. He is employed by way of a Ministerial Contract for Services to consult to the Minister and to Chair the Indigenous Implementation Board.

(4) The Board was established and publicly announced on 8 January 2009. The State Government intends that the Board will operate for an initial period of two years.

(5) $427,600 budget has been allocated for the Board, including $96,000 fees for the remuneration of members for this financial year.

(6) No sitting fees have been paid as at 31 March 2009. The final total cost is estimated at $855,200 over a period of two years from commencement.

GOVERNMENT DEPARTMENTS AND AGENCIES — REVIEWS COMMITTEES INQUIRIES AND TASKFORCES

579. Hon Ljiljanna Ravlich to the Minister for Transport representing the Minister for Health

For all portfolios, Departments and Agencies, for which the Minister holds responsibility, —

(1) How many reviews, committees, inquiries and taskforces have been established since 23 September 2008?

(2) Will the Minister list all the reviews, committees, inquiries and taskforces that have been established in that period?

(3) What is the name and qualification of each person who heads each review, committee, inquiry and taskforce that has been established?

(4) Will the Minister list the commencement date and completion date for all reviews, committees, inquiries and taskforces that have been established?

(5) Will the Minister list the total cost of sitting fees and the total cost for each of the reviews, committees, inquiries and taskforces that have been established?

(6) Will the Minister list the cost of sitting fees to date and estimated total final cost of each review, committee, inquiry and taskforce that is still current?

Hon SIMON O'BRIEN replied:

Please refer to the answer provided to Parliamentary Question on Notice No. 578

GOVERNMENT DEPARTMENTS AND AGENCIES — REVIEWS COMMITTEES INQUIRIES AND TASKFORCES

580. Hon Ljiljanna Ravlich to the Minister for Transport representing the Minister for Indigenous Affairs

For all portfolios, Departments and Agencies, for which the Minister holds responsibility, —

(1) How many reviews, committees, inquiries and taskforces have been established since 23 September 2008?

(2) Will the Minister list all the reviews, committees, inquiries and taskforces that have been established in that period?

(3) What is the name and qualification of each person who heads each review, committee, inquiry and taskforce that has been established?

(4) Will the Minister list the commencement date and completion date for all reviews, committees, inquiries and taskforces that have been established?

(5) Will the Minister list the total cost of sitting fees and the total cost for each of the reviews, committees, inquiries and taskforces that have been established?

(6) Will the Minister list the cost of sitting fees to date and estimated total final cost of each review, committee, inquiry and taskforce that is still current?

Hon SIMON O'BRIEN replied:

Please refer to the answer provided to Parliamentary Question on Notice No. 578

COUNTRY LOCAL GOVERNMENT FUND ALLOCATION — AGREEMENTS

655. Hon Ljiljanna Ravlich to the Parliamentary Secretary representing the Minister for Regional Development

(1) For each of the Local Governments listed below can the Minister provide a copy of the agreement signed with each Local Government authority (LGA), outlining what they will spend their Country Local Government fund allocation 2008-2009 on?

(2) For each agreement signed with each LGA listed below, can the Minister provide all information in relation to the existing and additional Local Government reporting and auditing requirements used in each case to ensure accountability?

(3) For each agreement signed with each LGA listed below, can the Minister list those councils, which may have extraordinary reporting requirements?

(4) For each agreement signed with each LGA listed below, can the Minister list those councils which may have extraordinary funding acquittal arrangements, —

Albany;
Ashburton;
Augusta-Margaret River;
Beverley;
Boddington;
Boyup Brook;
Bridgetown-Greenbushes;
Brookton;
Broome;
Broomehill-Tambellup;

Bruce Rock;
Bunbury;
Busselton;
Capel;
Carnamah;
Carnarvon;
Chapman Valley;
Chittering;
Collie;
Coolgardie;
Coorow;
Corrigin;
Cranbrook;
Cuballing;
Cue;
Cunderdin;
Dalwallinu;
Dandaragan;
Dardanup;
Denmark;
Derby-West Kimberley;
Donnybrook-Balingup;
Dowerin;
Dumbleyung;
Dundas;
East Pilbara;
Esperance;
Exmouth;
Geraldton-Greenough;
Gingin;
Gnowangerup;
Goomalling;
Halls Creek;
Harvey;
Irwin;
Jerramungup;
Kalgoorlie-Boulder;
Katanning;
Kellerberrin;
Kent;
Kojonup;
Kondinin;
Koorda;
Kulin;
Lake Grace;
Laverton;
Leonora;
Mandurah;
Manjimup;
Meekatharra;
Menzies;
Merredin;
Mingenew;
Moora;
Morawa;
Mount Magnet;
Mount Marshall;
Mukinbudin;
Mullewa;
Murchison;
Murray;
Nannup;
Narembeen;
Narrogin(S);
Narrogin(T);
Ngaanyatjarraku;
Northam;
Northampton;
Nungarin;
Perenjori;
Pingelly;
Plantagenet;
Port Hedland;
Quairading;
Ravensthorpe;
Roebourne;
Sandstone;

Serpentine-Jarrahdale;
Shark Bay;
Tammin;
Three Springs;
Toodyay;
Trayning;
Upper Gascoyne;
Victoria Plains;
Wagin;
Wandering;
Waroona;
West Arthur;
Westonia;
Wickepin;
Williams;
Wiluna;
Wongan-Ballidu;
Woodanilling;
Wyalkatchem;
Wyndham-East Kimberley;
Yalgoo;
Yilgarn; and
York?

Hon WENDY DUNCAN replied:

(1)-(4) Local governments receiving Country Local Government Fund (CLGF) money in 2008/9 are required to sign an acceptance form providing a range of information related to the acceptance. A copy of the acceptance form is available on the Department of Local Government and Regional Development's website at url http://www.dlgrd.wa.gov.au/FinancialAssist/Docs/CLGF_AcceptanceForm2008-09.pdf . When acceptances are finalised, a report on the intentions of local government spending of CLGF monies will be posted on the website.

As part of the acceptance of funding, local governments are required to report as detailed in the guidelines of CLGF. These guidelines are available on the Department of Local Government and Regional Development's website at -

url http://www.dlgrd.wa.gov.au/FinancialAssist/Docs/CLGF_Guidelines 2008-09.pdf .

The guidelines and other information on the website provide guidance to local government on the acceptance, acquittal and reporting of money received from the CLGF. This information is available on the website url http://www.dlgrd.wa.gov.au/RegionDev/RforR/CLGF.asp and is periodically updated.

COUNTRY LOCAL GOVERNMENT FUND — FUNDING CRITERIA

669. Hon Ljiljanna Ravlich to the Parliamentary Secretary representing the Minister for Regional Development

I refer to the Country Local Government Fund, which will provide $400 million over the next four years to regional Local Governments. Given that allocations for the first year of the fund will be determined on the basis of population and needs, and require 'Local Government to provide an up-front agreement on what they will spend the money on', I ask —

(1) What was the population formula used to determine the funding allocation for each of the 110 councils?

(2) What were the needs criteria used to determine the funding allocation to the 110 councils?

(3) How was one council's need assessed against the needs of another council?

(4) Can the Minister provide the criteria used to assess funding allocations?

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

(6) Will the Minister provide me copies of the 110 Local Government agreements outlining what they will spend their money on?

(7) If no to (6), why not?

Hon WENDY DUNCAN replied:

(1) The formula used to determine the funding allocation for each of the 110 councils was as follows:

Formula

1) $Ai = k.pi + D(Gi+Ri)/(Sum(Gi)+Sum(Ri))$

where

Ai is the final funding allocation to a local government;

pi is the local government population used in the 2007 Local Government Grants Commission (LGGC) Financial Assistance Grant (FAG) assessments; and

i represents each country local government.

2) k=CG/Pop

where

CG is total allocation of funds; and

Pop is the total country local government population used in the (2007) LGGC FAG assessments.

In 2008/9, CG was $97,500,000

3) $400,000 =< kpi =< $900,000

that is

kpi is constrained to be in the range [$400k to $900k]

4) D = CG — Sum(kpi)

that is

D is the difference (residual) between the total allocation (CG) and the sum of constrained allocations to individual local governments (Sum(kpi)).

5) Gi is the local government's FAG grants amount arising from needs assessment by the LGGC.

6) Ri is the local government's Road grants amount arising from roads assessment by the LGGC.

(2) The needs criteria used to determine the Country Local Government Fund allocation to the 110 councils are included within the assessments of the WA Local Government Grants Commission, which annually assesses revenue capacity and expenditure needs using key data, and approximately 20 disability factors, to determine horizontal equalisation funding requirements. It also uses detailed road inventory data and regional costings to assess asset preservation needs for each local government as a basis for allocating local road grants. A local government's share of these allocations was considered to be a suitable indicator of funding needs.

(3) See above answer to Q 2.

(4) See above answer to Q 2. The allocations to local government and the criteria used by the WA Local Government Grants Commission to assess funding allocations can be found in their publications at

http://www.dlgrd.wa.gov.au/LocalGovt/LGGC/Publications.asp and

http://www.dlgrd.wa.gov.au/LocalGovt/LGGC/Allocations.asp.

(5) See above answer to Q 4.

(6) The agreements submitted by local government are a standard document and are available at http://www.dlgrd.wa.gov.au/FinancialAssist/Docs/CLGF_AcceptanceForm2008-09.pdf.
When acceptances are finalised, a report on the intentions of local government spending of CLGF monies will be posted on the website.

(7) See above answer to Q 6.

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