Legislative Council

Thursday, 3 November 2011

THE PRESIDENT (Hon Barry House) took the chair at 10.00 am, and read prayers.

REX BELLOTTI JUNIOR— PUBLIC INQUIRY

Petition

HON GIZ WATSON (North Metropolitan) [10.02 am]: I present a petition containing 325 signatures couched in the following terms —

> To the President and Members of the Legislative Council of Western Australia in Parliament assembled.
>
> We, the undersigned residents of Western Australia, believe that morally and legally there must be a public inquiry into the events that led to the near death of Rex Bellotti Junior, on March 6, 2009. The extent of Rex Junior's injuries, the subsequent insufficient police investigation which was heavily criticized by the Corruption and Crime Commission (CCC) and the lack of compensation awarded to the family necessitate a public inquiry.
>
> Your petitioners, therefore, respectfully request the Legislative Council recommends and empowers the Department of Public Prosecutions to call for a public inquiry
>
> And your petitioners as in duty bound, will ever pray.

[See paper 4034.]

BUSINESS OF THE HOUSE

Statement by Leader of the House

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [10.02 am]: I inform the house that questions without notice will be at 2.30 pm today.

PAPERS TABLED

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

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Forty-fifth Report — "Shire of Kellerberrin Dogs Local Law" — Tabling

Hon Sally Talbot presented the forty-fifth report of the Joint Standing Committee on Delegated Legislation, entitled "Shire of Kellerberrin Dogs Local Law", and on her motion it was resolved —

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

[See paper 4035.]

Statement by Deputy Chairman

HON SALLY TALBOT (South West) [10.03 am]: — by leave: The Shire of Kellerberrin gazetted a new local law in July 2011 called the "Shire of Kellerberrin Dogs Local Law". The committee raised its concerns, which were not subsequently addressed by the shire, that the local law had not followed the procedure prescribed in the Local Government Act 1995, resulting in the local law being invalid and of no legal effect. An administrative error unfortunately resulted in the committee losing the opportunity to recommend disallowance to the Parliament in this case, but the Governor still has the power to repeal this invalid local law under section 3.17 of the act. The committee has therefore resolved to recommend that the Governor, with the advice and consent of the Executive Council, invoke his power under section 3.17 of the Local Government Act 1995 to repeal the Shire of Kellerberrin Dogs Local Law.

EAST PERTH REDEVELOPMENT AMENDMENT REGULATIONS 2011 — DISALLOWANCE

Notice of Motion

Notice of motion given by **Hon Sally Talbot**.

PROPERTY LAW (MORTGAGEE'S POWER OF SALE) AMENDMENT BILL 2009

Second Reading

Resumed from 22 September.

HON ADELE FARINA (South West) [10.06 am]: When I commenced speaking on the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009 on 22 September, I outlined what I had learnt from financial advisors and counsellors in the south west about how the financial crisis and the massive increases in household costs over recent years had placed many families in serious financial distress, and that these same families face the situations dealt with in this bill. I outlined how the lax lending practices of banks and financial institutions, prior to the global financial crisis, had resulted in people taking out mortgages that they could not reasonably financially manage, and how, as a result of the global financial crisis and the massive increases in household costs, they had found themselves in the position of having maxed-out their credit cards trying to meet mortgage repayments, often taking out additional loans to pay their mortgage repayments, and borrowing from family and friends. Then, having exhausted all of these options, they have had to face the fact that they will lose their homes because of their continuing inability to meet mortgage repayments. I also explained how in many instances, having lost their homes, these people then found that their homes had been sold for less than the market value and less than the value of the mortgage, so they were often in a position of still owing the banks money on the mortgage, as well as needing to pay off credit cards and needing to pay back family and friends. Further, they struggle to find rental accommodation in the current tight rental market, and often cannot afford to pay the rents that are being asked. The people this bill tries to assist are really at the last end of the tether; they are broken. Often, they are also facing the breakdown of their marriages and their families.

These people have found themselves in this position largely because banks and financial institutions were prepared to lend them huge amounts of money—money they could not reasonably repay in good financial times, much less in difficult financial times. The poor lending practices of the banks and financial institutions have created these problems—it is their greed, and yet at law they have all the power. The mortgagee has no bargaining power and no protection. This bill seeks to redress this imbalance of power—to provide some protection for mortgagees and to provide at least some with the capacity to pick themselves up and re-engage in the market sooner than would otherwise be the case. In fact, without the protections offered in this bill many would never be able to re-engage in the market, so financially broken are they as a result of the repossession process.

This bill sends a very clear and loud message to banks and financial institutions to lift their game and that they will no longer be able to look after only their own interests and sell properties at a lower value to facilitate a quick sale. Members, we were elected to Parliament to represent the people and to pass good laws that protect the interests of the people of Western Australia. This bill does that. I note that some members have reservations about whether the bill will make a difference. If that is the case, I encourage them to propose amendments to improve the bill, not lift up their hands and shake their heads, and say it is all too hard. The people who elected us to Parliament expect more from us than that; they expect us to act in their best interests.

Mr President, I urge members to take a stand for the people they represent and the people who are depending on them to support this bill. I commend the bill to the house.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [10.11 am]: I have listened with great interest to the arguments presented in favour of the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009, and it must be said that although a great deal has been canvassed in the course of a debate that stretches back a couple of years now, not much has been said about the bill itself, and Hon Adele Farina's remarks, just concluded, are an example of that. It comes down to the fact that people have overextended themselves financially and, with a recession and an unstable financial market, indeed, a global financial crisis, have found that they are struggling to meet their mortgage payments. No doubt a contribution from the increased costs of commodities, including utilities, has contributed to that financial stress, and somehow this bill is going to help alleviate the problem. And we have heard a great deal about mortgage stress generally.

I should say, before I am accused of arrogance yet again, that I know what I am talking about when I speak of mortgage stress and that I have actually undergone what is being described as mortgage stress and faced the prospect of selling a home in a depleted and unstable market that is not likely to improve in the near future. I am not speaking in a vacuum as are many of the members who seem to advocate this bill as a cure-all for the legitimate problems regrettably faced by a great many people in our community at a time of economic downturn.

We have heard all sorts of things about rising utility costs. We have heard about the cost of going to the movies increasing. We have heard about trouble in the Middle East and in Libya. We have heard about government debt and infrastructure spending. We have heard about first home buyer schemes. We have heard about the global financial crisis generally. But we have not heard much about the bill or how it will actually work.

Hon Linda Savage promised to explain how and why this bill would work, but it came down to this proposition: the law is not being changed. That is, the essentials covered by this bill are already a matter of law in this state, but those low-income earners who have to go to community legal centres will now have this section of the act read out to them to be able to understand what mortgagees are obliged to do as a matter of law already. She read out a number of passages from interstate law firms saying that this simply codifies the law, in which case one wonders what on earth we are wasting our time for. She spent a lot of time talking about the stresses of mortgages on single parents, and on women in particular. I accept all of that. But at the end of the day, this bill is not going to help. It is a matter of logic, because the problems faced by people encountering mortgage stress, the problems that will allegedly be solved by this bill—namely, that it will require the sale of a property, which has already been foreclosed upon, at a reasonable market rate—are already addressed by the law and are at the wrong end of the equation. If the problem is one of people being encouraged to get into mortgages because of low-document home loans and the like and without the appropriate vetting of their capacity to meet their obligations, that is the area that ought to be addressed. And that is an area that is primarily, in fact almost exclusively now, within the ambit of the commonwealth government, not the state government. However, this bill does nothing to address those issues.

Hon Ed Dermer's contribution was to tell us about the elegance and simplicity of the bill, as if it were a poem in a couple of syllables. He managed to descend into the mechanics of the bill and how it will operate as far as reading it out to us, but not much else.

Hon Helen Bullock looked forward to hearing "a sound, good, valid argument" for why the government will not support the bill. With respect, that is not the way it works. If trying to persuade people to a course of action, the obligation is to persuade; that is, to provide arguments in favour of a proposition and not say, "Hey, this looks like a good idea, tell us why we shouldn't do it." Perhaps that is indicative of the approach taken by the Labor opposition when it happened to be in power for some eight years. The burden is on Hon Sally Talbot and those proposing the bill and that the law should be changed; it rests on her and those of her colleagues who support this bill to show that there is some merit in it and that it will make a difference.

I allude now to the question of sending out messages; namely, that this will send out a message that Parliament and the government care about people who are struggling. With respect, this is a Parliament, which has the solemn responsibility of passing laws for the peace, good order and good government of the state; it is not some native bearer carrying a forked stick with a piece of parchment in it, sending out messages to the community. That is what press releases are for. It seems to have been a mistake that the previous Carpenter government had fallen into; that is, too many messages and not enough substance.

Hon Jon Ford related a number of interesting anecdotes. He said that he was able to accept that this is the wrong way to go if someone comes up with an alternative. Well, as I pointed out, the alternative, if one is trying to address the ease with which people commit themselves to substantial financial burdens that they are not able to meet, rests with the commonwealth government and its regulation of financial institutions. There is very little that the state government can do about that given the exclusive powers the commonwealth has assumed on those issues. He did come down to suggesting that it is worth giving it a go to see if it works. Well, if that is the principle that is to be adopted, we ought to have a review clause in this bill. How one ascertains whether properties have in fact been sold at market value may be difficult. However, I will get to that in due course.

The way to approach a piece of legislation, in case it has not occurred to the Labor opposition after all its experience in government, is to set out and explain the mischief that is to be corrected; explain what the law is at present, why it is unsatisfactory and how it can be improved; and, finally, explain how the proposal will remedy the position. For all the exacting standards that they have set for other pieces of legislation brought to this house by ministers, Hon Sally Talbot and her colleagues have not attempted to address those fundamental principals or issues in any significant way.

Turning to Hon Sally Talbot's second reading speech, which of course sets out the policy behind the bill and presumably sets out the length, breadth, height and depth of how it is supposed to operate in practice and how it is actually supposed to contribute to the peace, order and good government of this state, the best that she could do was to tell us that it was to prevent fire sales. No evidence has been presented that there are what are colloquially known as "fire sales"—that any properties are being sold at less than market value upon a foreclosure of a mortgage.

Hon Sally Talbot did not even trouble to tell us what the law is at present. That is a remarkable omission, one would have thought, if one is proposing a bill to change the law. She has not told us why the law at present does not address the problem. Again, that is a remarkable omission if one is putting forward a change to the law that may have ramifications well beyond the simplicity and elegance of its text. Hon Sally Talbot mentioned a number of figures regarding applications for possession. I have to stress that those applications are when foreclosure has already occurred, once people have gone through the stress of trying to meet their mortgage and other obligations, have failed to do so and have attempted, presumably, to sell their property at an advantage to

them and at the market value, have been unsuccessful in doing so and have had no alternative other than to submit to the bank or other financial institution to foreclose upon that mortgage and force a sale. The mortgage stress has already taken place.

For someone faced with a property for which they cannot service the payments and which they cannot sell at an advantage to themselves because the market value is considerably lower than what they paid for it and what would cover their obligations, it would be of little comfort to then say, "Well, this is going to be a comfort to me. The bank will be able to sell it for more." It does not work that way.

Hon Jon Ford's example of people he had encountered in, I think, Karratha, is a case in point. These people had quite a number of assets and enormous obligations. They tried to sell the properties but were unsuccessful because the market is low. Yet somehow it is going to be a comfort to them that the bank is going to do better than they did. That comfort apparently is going to come from this legislation. I will get to the mechanics of whether that is possible in due course.

Hon Sally Talbot addressed some figures regarding applications for possession and the like. Typically, she got some of the figures wrong, and she was selective in the figures that she cited. I happen to have figures for what are classified as civil property possession applications that have been obtained from the Supreme Court. It is interesting to see the cycles of ups and downs. There is no denying that over the last couple of years there has been an enormous increase. If we go back to the 2000–01 financial year, there were 609 such applications. In 2001–02 it went down to 605. In 2002–03, it was 489. A sharp rise of 100 occurred in 2003–04, which no doubt alarmed Hon Sally Talbot, knowing her interest in this area, and prompted her to suggest a way of addressing this problem of foreclosures. I am not aware whether there was one, but I would be surprised, given her interest in the subject, that she did not put something forward at the time while she was part of the government. But it went up in 2003–04 to 575, in 2004–05 to 577 and in 2005–06 to 530; and in 2006–07 it dropped to 453, as Hon Sally Talbot correctly pointed out. In 2007–08 the figure was 686, not 696, and then there was a marked increased in 2008–09 to 1 342. Of course, as we all know, the state and everyone in the world was dealing with a global financial crisis at that time. In 2009–10, it dropped to 966; a marked reduction. Since then, in 2010–11 it has increased again.

Those are civil property possession applications. I cannot say the number that are actually granted. I cannot say the number that actually involved domestic residences as opposed to investment properties and commercial properties generally, but let us assume for a moment that a vast number of those, a major proportion, are in fact people's homes. Whatever the circumstances, it is still a very sad situation and puts people through an enormous amount of stress; we do not deny that at all. But if we are going to do something in this Parliament, let us do something constructive rather than send out feelgood messages that are not going to make any difference at all.

The opposition has not even provided any anecdotal evidence of mortgagees holding fire sales that do not realise market value. In fact, we have not even had explained to us what a "fire sale" means. The most generous meaning of "fire sale" from the point of view of proponents of the bill is an occasion when something is sold for a very low price. It is generally a phrase that is used in association with goods damaged by fire, when someone is trying to get rid of stuff that is damaged. It is soiled property; stuff that cannot achieve market value because it is less than what it ought to be. The idea that a "fire sale" is somehow self-explanatory is not the case at all, and we have not had it explained.

I presume it means that a financial institution has been put in the position—I will leave aside for the moment Hon Jon Ford's views that it is all part of the nastiness and greed of banks—of having advanced money under a contract, and has had to achieve a return under that contract by whatever mortgage payments were agreed upon because the financial institution would have an obligation to its shareholders and other borrowers to continue to advance money to others. It would have to show a return, but had been put in a position of having to sell the property, but decided to dispose of it at considerably less than what due diligence could have required in the circumstances. We have not had any indication that that is the case. What we have, I suspect, is an awful lot of people who have purchased properties have found that in a depressed market they are not getting back for their properties what they would have hoped for and what they would have reasonably expected if the market had stayed the same or continued to improve when they first committed to that mortgage transaction. That is very different from saying that they are getting less than market value. Someone might buy something for $1 million, but if no-one else wants to buy it at that price, then it is not worth $1 million. To say that the bank has forced them to sell, and all the bank could get was $800 000, is not to say that the bank has sold it for less than market value. Certainly, as in many of these cases, there is an auction and what the seller gets is the market value. The market value is what they can sell it for.

I have not discussed the issue with Hon Max Trenorden, but I suspect that was at least partly what he was driving at when he was talking about how market valuations are unreliable, because we can assess the value of property based on past performance and the like, but when we are looking at a depressed market, the situation is very different and the ground rules change.

Hon Sue Ellery suggested at one point that it would seem that it is in the best interests of the banks to, as I understand it, sell the property for whatever they can get. That may be right because the banks have to get something for it. A quick sale, I should say, does not necessarily mean that it is a bad sale. In a market that is unstable and likely to go down over time, getting rid of a property quickly rather than allowing it to go stale on the market and people realising it is unsaleable and taking advantage of it does not help anyone. It is better to get what we can as soon as we can get it rather than hang on to a property for perhaps six months and find that it is worth even less than it was to start with. None of her argument is logical and none of it makes sense.

Hon Sue Ellery: God, you're arrogant. You just can't help yourself.

Hon MICHAEL MISCHIN: The idea that financial institutions do not try to maximise their return on things to simply have a go at mortgagees is just absurd. If people cannot pay their debts they are of no value to any financial institution. I would have thought that anyone who has been in small business knows that it is better for their customers to pay their debts rather than owe them money. Hon Jon Ford went so far at one point as to suggest there should be an agreed rate of sale. That is fascinating! We would be working in an environment, presumably, where we would ignore what the market wants; in which the bank would somehow agree on a rate of sale with the mortgagor. I do not know how that would work. Presumably under the socialist utopia that the other side of the house lives in, it would be achieved by some kind of regulation, but certainly not through this bill whereby people agree what price things will be sold for in a free market.

Somehow this bill is supposed to be a tool for addressing the financial stress that people find themselves in. I have not had explained to me how. As I pointed out, the financial stress is in trying to service a mortgage that people cannot pay and trying to unload a property that has become a burden but cannot be sold, to the point where, finally, there is foreclosure, and foreclosure is not the first, it is the last option. Once again, "The measure proposed in this bill is one way the state government can demonstrate to people that it is taking account of the need to use whatever levers necessary." "It is a signal to industry that government is watching; that the state government cares." Press releases do that sort of thing. This will achieve nothing of the sort. It certainly will not achieve the objectives purported for it.

I have to say that I was particularly interested in Hon Ed Dermer's contribution to the debate, which seemed to be an extensive and entertaining hagiography of Hon Sally Talbot. I cannot wait for his retirement from Parliament so that he can devote his remaining years to writing the definitive Talbot biography.

Hon Sue Ellery: Uproarious laughter across the chamber!

Hon MICHAEL MISCHIN: He spoke at length about her professional skills, how ably prepared she was in putting this bill together, the clear elegance of the bill and the like and how she had again demonstrated the power of her forensic ability and professional attention to detail. He congratulated her on the work she did to bring this bill to Parliament and the quality of this bill in contrast to the bills presented by the government, as if this was original drafting. I had this vision of Hon Sally Talbot sitting in a darkened study —

Hon Kate Doust: Do you have many visions of Hon Sally Talbot?

Hon MICHAEL MISCHIN: Not as many as journalist Ben Harvey seems to have of some of the members of this side of the chamber. No; not those sorts of fantasies at all, I have to say.

One has a vision of Hon Sally Talbot sitting in her darkened study, her face lit by the soft light of a computer screen, while she toils late into the night and into the small hours of the morning! She has wrestled for weeks and weeks with the computer mouse and the web to find the New South Wales legislation! Having mastered the copy function, after more weeks of trial and error, she has worked out how to right click on the mouse and press "paste" and stick it into a blank document—and that is the bill!

Hon Sue Ellery: Is it possible for you to be more condescending? Why don't you try a bit harder?

Hon MICHAEL MISCHIN: I am doing my best to match the standard set by members on the other side of the house. We have an image, finally, of a piece of paper with a copy of the New South Wales bill on it. Then comes the difficult bit where these exacting forensic skills and the original drafting are brought into play! Where do we put it? Should it be section 58A of the Property Law Act, or should it be section 60A? "But no, after no doubt consultation with the legal geniuses in the caucus room, we have decided it will be section 59A of the Property Law Act." That is the level of originality, of quality control, that has been exercised on this bill. It is a straight copy of the New South Wales legislation, but without any of the supporting information that may have been provided to the New South Wales Parliament, to persuade it that there was any merit in the bill or how it would actually achieve the job it was meant to achieve.

The urgency of the bill has been stressed. "This is an important bill; we need to do this because people are suffering out there." Well, it is edifying. I will take a little bit of time on that because it reflects on the merits of the bill, even as the opposition sees it. This bill was introduced on 20 August 2009—2009—a year after the Labor government lost power. Then nothing happened for 19 months. Temporary orders in this house took effect

on 25 March 2010 reserving every Thursday for non-government business. I will not look back into the history before that, but let us start from 25 March 2010. From just that date onwards there were 22 non-government sitting days of which four were used by the Greens and, of the remaining 18, two days were used up by Hon Ljiljanna Ravlich, three by Hon Kate Doust, one of them although to her credit with —

Hon Kate Doust: I have not spoken on this bill.

Hon MICHAEL MISCHIN: I was not talking about this bill.

Hon Simon O'Brien: Pay attention!

Hon MICHAEL MISCHIN: One of those days, I have to say, was used for some meritorious amendments to, I think, the Associations Incorporation Act, which the government agreed to because they did have merit and it was a useful contribution from the Labor opposition. But three of those remaining 18 days were used up by Hon Kate Doust, four by Hon Ken Travers, four by Hon Jon Ford, one by Hon Matt Benson-Lidholm, one by Hon Linda Savage, two by Hon Helen Bullock and one by Hon Sally Talbot. But did she address this very important bill that she introduced back in August while grabbing a headline about how it would help reduce mortgage stress for those on struggle street? No; she put forward a plastic bags bill. We know how far that has gone. It has moved at about the same pace as this one. Another headline grabber!

This bill was brought on for debate on 17 March 2011. Hon Sue Ellery, Hon Ljiljanna Ravlich and Hon Matt Benson-Lidholm contributed to the debate then. Then it came back on for debate on 24 March, and it looked as though there was some momentum towards getting this very urgent and important bill dealt with, after the opposition had been sitting on its thumb for 19 months. Since then to when the debate resumed on 22 September this year, we had 10 days of non-government business of which four were used by the Greens and the remainder by the ALP. Hon Ljiljanna Ravlich occupied one, Hon Ken Travers three, Hon Jon Ford one, and Hon Helen Bullock, one. The debate resumed on 22 September and since then we have had two days of non-government business, one used by the Greens and the other was the occupational safety and health motion the Minister for Commerce had to deal with, which was essentially a chain-yanking exercise by Senator Conroy, as I understand it, to try to achieve through the Labor opposition here what he could not do in government federally.

Over the two years, indeed some 26 months since this bill was introduced, it has taken more than six months to resume the debate at the beginning of this year after a 19-month hiatus during which absolutely nothing happened to this really important bill that was going to help people and send all these wonderful messages about how Parliament cares. A couple of things emerge from that. At least two inferences spring to mind—there are possibly more—neither of which is mutually exclusive. The first inference is that the purpose of the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009 is not to achieve any worthwhile aim for the peace, order and good government of Western Australia or to really assist people. It is just a vehicle to have a go at the government about the increases in utility prices, and we have heard an awful lot about that. The second inference is that Hon Sally Talbot does not have much sway in the caucus room about deciding what is a priority. One would have thought that if this bill had any substance, was as important as was suggested and was not just a headline-grabbing opportunity, the opposition would have had some interest in pursuing it, but it has not. It is more than two years down the track since it was introduced and it is now winding its way to a conclusion at the fag end of the parliamentary sitting year. It is interesting to see—I will leave it to the political pundits to work out—where the real influence in caucus lies by judging how much business has been occupied by other more trivial matters such as motions condemning the government rather than by this bill, which is supposed to meet some kind of worthwhile objective.

To the extent that it was touted at the time that the bill would introduce worthwhile reform and help relieve mortgage stress in the community, it is a pretty cruel trick. I urge Hon Sally Talbot to not do this sort of thing in the future because it does not bring much repute to Parliament; it damages the opposition to put out stuff like this with just a headline and to not then do anything with it after having built up people's hopes and expectations by saying that the Labor Party would introduce a bill that would fix people's problems. To just go through the motions but not pursue it because it is not important and will not do anything is just nasty, and I suggest that the member should do better than that.

I will now turn to the bill rather than the lack of merit of the arguments that have been put forward. I am sure Hon Sally Talbot will have a lot to say about how this bill will work, although it would have been nice to have heard her tell us that during the second reading speech rather than wait until the end. The bill proposes to introduce new section 59A into the Property Law Act 1969, which, in essence, imposes a requirement that a mortgagee take reasonable care to ensure that if the land has an ascertainable market value at the time of sale—that is a big if—the land is sold for not less than its market value or, in any other case, the best price that may be reasonable to be obtained in the circumstances. The bill specifically states, contrary to the idea put forward by Hon Jon Ford about agreed market values, that neither party can agree to contract out of this requirement. Currently there is no specific similar requirement in statute except insofar as there is an equitable duty upon a mortgagee to ensure that the sale is conducted in good faith in such a way that it fairly balances the interests of

mortgagees and mortgagors. This is essentially limited to circumstances akin to prohibiting fraud. Of course, the mortgage contract can include some additional obligations. There may be an argument about the extent to which this bill will change or codify the law, but that is the current legal position. The proposals in the bill, quite legitimately, may be seen to fill a need to ensure that a mortgagee exercising the power of sale acts reasonably. There is no question that people who find themselves unable to meet their mortgage payments are in a very invidious position. It is one of the saddest and most difficult situations people can find themselves in, particularly for families.

In the wake of the global financial crisis, several jurisdictions rushed to introduce legislation similar to this. As has been pointed out, very similar provisions—in fact, almost identical provisions—have been introduced in New South Wales, which formed the model for this bill, and also in Queensland. It may be uncharitable to observe this, but the introduction of this legislation arguably may be seen to be driven more by a desire to be seen to be doing something rather than actually delivering any meaningful change. As I pointed out, this bill looks at the end point of mortgage stress, which is a very painful process. As it happens, this legislation would be impossible to properly enforce because what sounds like an attractive idea is of doubtful utility or practicability. We have not yet heard how it is meant to work. I gave ample opportunity for that to be raised by way of interjection and asked on numerous occasions, to the point that it got some members particularly aggravated and upset, about how it would work.

The practical difficulty with these provisions, of course, is that the people they are meant to protect—ordinary families undergoing extreme financial hardship—are usually entirely incapable of funding any sort of legal challenge to contest whether a financial institution has sold the property at an ascertainable market value. They would need to get valuations, and as Hon Max Trenorden pointed out, in his experience valuations can be, and often are, unreliable. Hon Linda Savage has named certain categories of people who are faced with the prospect of having their property foreclosed upon and who may seek advice from community legal centres if, after having bought their place for X number of dollars, they are told by their bank that the house will be sold for whatever the bank can get for it. The homeowners might have been trying to sell it for the previous six months without success before finally being unable to avoid the bank foreclosing the mortgage. They would ask the community legal centre for advice about what they could do if they received less for the sale of the house than they paid for it, which advice from the legal centre would be that the matter could be contested because a wonderful new law had been passed. The homeowner would need to get three valuations from independent valuers and hire a lawyer because the litigation can be quite complex and lengthy. The homeowner would be looking at spending in the order of tens of thousands of dollars just to get adequate advice and get the case prepared, let alone going to trial on the matter. It is farcical to suggest that those people would be able to afford that or would want to throw good money after bad on an exercise that would have only a theoretical benefit to them. I asked repeatedly how this is meant to work and no-one could tell me. It is more likely that if anyone were to benefit from this, it would be through complex commercial litigation conducted by corporations that have that sort of money to spend and it would be for properties that are far more valuable than the average domestic residence.

Other features make this bill a problem. Property law is a complicated species of law, and longstanding law applies to the sale of land by a mortgagee. I will outline—seeing as it has not been done—some of the principles involved. I refer to the case of the Commonwealth Bank of Australia v Hardie and Anor [2004] WASC 186, which reads —

> 1. The power of sale is given to the mortgagee for its own benefit, and is not held by the mortgagee in a fiduciary capacity.
>
> 2. Moreover, the fact that the mortgagee's sale is for a price disadvantageous to the mortgagor is itself no ground for judicial intervention: …

Authorities are cited and then the judgement continues —

> 3. Nevertheless, in exercising the power of sale, the mortgagee is subject to an equitable duty to act in good faith: …

That is the legal position. It is also explained in that case that if a mortgagee acts with wilful or reckless disregard for the interests of a mortgagor, it will have breached that duty. Very importantly, in the case of Forsyth v Blundell, (1973) CLR 477 at page 481, it was said that to take reasonable precautions to obtain a proper price is but part of the duty to act in good faith, which again reflects in substance what is hoped to be achieved by this legislation, so there is no material change, we would suggest. There is real uncertainty about the extent to which provisions of the nature of this one in this bill seeks to merely codify existing common law principles or alter them. Reference has already been made to the position in New South Wales but in commentary on similar provisions in New South Wales a senior lawyer by the name of Peter McMahon, with over 25 years' experience in property law, observed in an article entitled "Mortgagees: New duties and obligations", which related to the parallel provision in New South Wales —

> While section 111A —

That is of the New South Wales equivalent legislation —

> has not altered the position at common law concerning a mortgagee's duty when exercising its power of sale, the duty is now enshrined in legislation.

That seems to be the only objective of what is being attempted by this bill.

In Queensland, a more expansive approach was taken, specifically listing acts that a mortgagee must undertake in the course of exercising the power of sale. It is not clear from the second reading speech of this bill what Hon Sally Talbot's intention was. She did not identify whether she is seeking to alter the existing common law principles or equitable law principles in some way or whether she was merely codifying them. I would have thought it would be incumbent on someone putting forward some legislation to tell us what the law is and how it is meant to change, if that is what is intended by the legislation.

Hon Sally Talbot also did not provide any example of why those common law principles were held to be defective or provide any evidence in support of how these provisions will enhance the position of borrowers. For someone who is persistently critical of any government legislative initiative on the basis that it is insufficiently supported by detail or evidence or clarity as to how it is meant to work, the paucity of detail in her second reading speech regarding these things is surprising. It tends to militate against Hon Ed Dermer's assessment of considerable forensic skill and preparation in this matter.

Hon Sally Talbot spoke at some length about the effects of the global financial downturn, concerns about so-called "low doc loans" and her concerns about rising rates of repossession. This bill is, of course, entirely irrelevant to those issues. It does not require responsible lending practices or alter the circumstances in which foreclosure can occur.

A number of other questions spring to mind, and no doubt Hon Sally Talbot will address those in her reply. Has she obtained any legal advice regarding the current legal position? Has legal advice been obtained as to the legal consequences and ramifications of any change, and from whom and what was that advice? Has any advice been obtained as to the implications of introducing, in effect, a new condition into mortgage contracts, and effectively by legislation renegotiating them by legislative action? Is it her intention to state the current law, write a new duty to replace the current duty, supplement the current duty, or codify the law relating to the obligations of a mortgagee to a mortgagor? Has there been any consultation with either the industry or consumer groups? The question of consultation is always raised with government legislation. I do not know whether Hon Sally Talbot has consulted any of these groups, but I would be interested to hear what that consultation was, which stakeholders were consulted and what the effect of that consultation was; or is it simply one of those cases where something is just copied from another jurisdiction and slipped into our law? What is her evidence that mortgagees are selling properties under the market value? I do not want to hear about constituents' complaints that they thought the property they bought in an inflated market but sold in a depressed market could have or should have been sold for more, but actual evidence. How does Hon Sally Talbot envisage that it be proved that a property sold in a depressed market has or has not been sold under its market value, especially when the market is declining or is unstable or no-one is buying so that we cannot judge the value against other properties being sold in the area, which is generally the basis for a valuation? How does the member envisage establishing whether or not reasonable care has been taken, especially in a depressed market when confidence is low and any delay in sale may well result in a reduction in price? How does she suggest that there be an ascertainable market value when a property is sold, other than the sale price, particularly in a depressed and depleted market?

How has analogous legislation in Queensland and New South Wales, upon which this legislation is based, worked? If Hon Jon Ford's suggestion is that we should just give it a go—suck it and see—how about a review clause in the bill and how is that meant to work? Upon which criteria will a review be conducted and how will the performance, benefits and the effects of this particular clause be ascertained over time, and over what period?

In the absence of any clear articulation of the way in which this bill seeks to alter existing legal principles or any evidence of how those principles are defective in the Western Australian context, the government simply cannot identify any reason to support this bill. On the contrary, to tamper in this area of the law without the groundwork being laid may well result in the creation of problems. As I have said, the area of property law is of some complexity. We have not heard of any advice having been obtained by the proponents of this bill as to what those ramifications might be in the event that this change is made. I note that the New South Wales provisions, which this legislation is based on, came into effect on 13 May 2009. More than two years have passed. The most prudent course of action for Hon Sally Talbot might be to monitor the operation of that legislation to see how it has gone and whether there is any feedback on how it has operated. We have not been favoured with any of that. We should consider the outcomes that that legislation has produced and then consider whether those outcomes justify the introduction of similar legislation in this jurisdiction.

In summary, the government does not support the bill—indeed, it feels it cannot support this bill—because, firstly, there is no evidence that there is a need for such a provision; secondly, it seems axiomatic that a

mortgagee would, in the event of a foreclosure, attempt to achieve the best price available in the circumstances so as to minimise or mitigate their loss; thirdly, it may be difficult, if not impossible, to establish that reasonable care has not been taken or that the best price has not been obtained; and, fourthly, it may encourage pointless, futile and expensive litigation. As to the question of establishing whether reasonable care has been taken to ascertain that the best price has been obtained, if the price obtained on a sale is so low as to suggest that reasonable care has not been taken, it would, on balance, be prima facie evidence of a breach of the equitable duty that currently exists or be suggestive of fraud anyway. Otherwise, in the case of a depressed market, such as it has been for the past couple of years and at present, it would likely be impossible to prove that a property should have realised more on a sale. As I have said, the whole bill just attacks the wrong end of the problem. It is not as though the government is not sympathetic to and recognises that there are difficulties in this area. If, as Hon Jon Ford and other speakers have pointed out, the problem is that too many people have overextended themselves because of the ease with which finance has been available over the preceding several years and have obtained finance when, on a strict analysis, they have not been able to service their mortgages, that is the area that should be addressed by legislative amendment or some other approach rather than this one, which will achieve nothing of the sort. The government will not be supporting the bill.

HON LYNN MacLAREN (South Metropolitan) [10.59 am]: The Greens (WA) are incredibly concerned about the sorts of practices that are targeted by the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009. Banks taking advantage of people in financial distress and quickly selling mortgaged properties for less than they are worth is a deep concern for us, and it is clearly reprehensible conduct. I have listened with care and interest to the speakers we have heard thus far on both sides of the debate. The comments I am about to make will somewhat echo the government's response to this bill. I want to note in particular that we are aware that the Western Australian Council of Social Service supports this legislation and that that is reason enough for the Greens (WA) to look very favourably on it. However, like the government, we have a range of questions for Hon Sally Talbot, essentially trying to work out whether the bill has the potential to generate the unintended consequences that the government has shone some light on while pursuing its very worthy goal.

I note that Hon Michael Mischin has very carefully expressed that he is concerned about fire sales and that property law is a complex area of law. I was concerned that over the long time that this bill has been on the notice paper, the government did not put forward its own solution to this problem, which has been attempted to be addressed by other state legislatures. Rather than the intellectual grunt that the government has put into pulling apart this bill, I would like to have seen from it at this time the careful legislation that we could have had to protect mortgagors. Some of the questions that I have identified are, as I said, repetitive of what the government has said. Has anyone estimated how many questionable below-market fire sales there have been in recent months or years, because, of course, home repossessions do not equal inappropriate fire sales? This is something that we need some more data on. I looked at this issue in March 2011, when I thought I would get an opportunity to speak to this bill, and I had a look at some of the figures coming out of New South Wales. I know that by now we will potentially have some figures for Western Australia, but I did not have the foresight to look for those figures to put them before members today because I was not aware that this bill would be debated today. However, those figures should be there, and we should be informed by them if we are to make some good legislation to protect people who are affected by fire sales. Only this morning I was on the phone to my mother in Oregon, and she talked to me about a house that was on sale for $375 000. It was a mansion that would normally go for maybe $1 million or, as my mother estimated, $700 000.

Hon Simon O'Brien: Where was that?

Hon LYNN MacLAREN: That was in Medford, Oregon. It costs $375 000 for a four-bedroom house. Each bedroom had its own bathroom; it was pretty fancy. Members are all looking at me wondering what the address is because they want to make a bid! But my mother moved to that area six years ago, and she indicated that her house is now worth less than half what she paid for it. Because of the global financial crisis, we have seen housing markets in economies such as Australia's, and I point to America in this instance, just crashing; the housing markets are crashing. We are in a bit of a bubble here in Western Australia; we have talked about it before. But it still raises the question: what is the data? How many fire sales are occurring? How many bargains have we seen on the market? Let us look at it; let us see whether the banks are behaving irresponsibly.

Hon Michael Mischin: Just because it is a bargain does not mean it is disposed of at less than market value. Leaving aside fire sales for a moment, it's the market value we are focusing on.

Hon LYNN MacLAREN: Thank you very much, Hon Michael Mischin. That is why I have said that home repossessions, or even low-priced homes, do not necessarily mean inappropriate fire sales. Therefore, we have to have a mechanism to measure that. That is something that I think we need to know before we pass this bill.

My other point is that I have acknowledged that WACOSS was consulted about this bill, but I, too, would like to know which other stakeholders were consulted and what their feedback was. It has been pointed out that very similar legislation has been in place in New South Wales for a long time. How is it going there? What has

happened since the bill was passed? Which parties, if any, oppose similar amendments that were passed through the Queensland Parliament in 2008? Which parties are concerned about this legislation and why? I think one advantage of taking our time and reviewing it from a distance is that we can find the correct solution and not just act off the cuff in an urgent reaction to the global financial crisis. I would like to know whether Hon Sally Talbot has sought the views of banks and mortgage institutions and/or lawyers or other professionals with experience on the mortgagee side of these transactions. I know there are consumer protection advocacy groups in New South Wales, for instance, that we do not have here, but perhaps those consumer advocacy groups would be able to guide us in developing our legislation.

We have a few questions so far that would be more appropriately addressed by Hon Sally Talbot as part of the Committee of the Whole, should we get to that stage. I wanted to flag them in case she wanted to address them; she can address them separately with me. Would it be worth defining "reasonable care" in proposed section 59A(1) or are any definitional ambiguities foreseen in that term? That might be a question on which we might also get the view of Hon Michael Mischin. Is it possible for Hon Sally Talbot to clarify with us in what circumstances proposed section 59A(1)(b) might apply? That is when we are talking about an ascertainable market value. What if there is not an ascertainable market value? When does that proposed section apply? How realistic a remedy does proposed section 59A(4) provide, given that the victim of a submarket value sale is likely to be quite cash-poor and therefore, by definition, unlikely to be able to sue the mortgagee? Finally, just what are the consequences if the parties contract out of their obligations under the bill, if it becomes an act, contrary to proposed section 59A(5)? I am trying to be constructive; I recognise the problem. I see that it is an area that Western Australia should be legislating on to protect these homeowners. I am trying to be constructive in looking at how we can get a better bill and how we can get a bill that will protect those people. I also ask for a bit more data on this matter. Therefore, in view of the significant questions above, and because of our desire to see this bill progressed, I will move a motion for referral.

Discharge of Order and Referral to Standing Committee on Legislation — Motion

Hon LYNN MacLAREN: I move without notice —

> That the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009 be discharged from the notice paper and referred to the Standing Committee on Legislation, for report no later than 28 March 2012.

I think that date would give us a good chance to look at all the other legislation that has attempted to address this issue and try to put in place some good laws that will protect people from fire sales. I totally support the principle of the bill, but I really feel that we should look at it more carefully, as this house is empowered to do, and I suggest we refer it to the standing committee.

HON SALLY TALBOT (South West) [11.09 am]: In response to the motion now before us, I indicate that the Labor Party will support the discharge and referral to the Standing Committee on Legislation, and I will briefly outline the reasons for this and then perhaps provide just a bit of commentary on how things might go from here. In most circumstances it is a constructive move to encourage debate, argument and discussion around these sorts of problems. Some of the data that has emerged—indeed during the course of this debate in this place over the past month, now stretching out to years—shows what a growing and serious problem the whole question of unaffordability of housing is for the entire Australian community. Any move that encourages that debate, that moves the debate into a place we can call witnesses and we can indeed plumb a lot of the issues that Hon Lynn McLaren made in moving this motion, would be a very good thing. I am happy to support it. I have one hesitation. My support was not absolutely unequivocal from the start for the referral, otherwise I, or somebody from my party, would have moved it. My hesitation is that I do not think we need this delay. I would be pleased if we can arrive at a better mechanism or a better way to address the situation in which people are subjected to the misfortune of having their major asset sold out from under them for less than market value. If there is a better way to address that, I would be interested to hear it, but, as many speakers have noted, this bill has been around for some time and nobody has come back to me with a better suggestion. My preference would be that we go for it now. It is not beyond our wit to get these things right. There has been a lot of thought, and a lot of cross-comparisons have been done with other jurisdictions about this. I have never suggested, and nobody on this side of the house has ever suggested, that this is a magic-bullet solution, least of all to the broader question about mortgage stress and the unaffordability of housing. It is one small, distinct measure that will make a concrete difference to people.

On that basis, I think we should not unduly delay getting this legislation in place. Having said that, I am happy to test the numbers in this place. I suspect the government will simply give it the flick. I note we had an occasion recently when a member brought a private member's bill to this place and the government supported its referral to the legislation committee. I would hope that the government will consider this motion in the same light. Going to committee allows the chance to call witnesses and provides the committee with the chance to put together a lot more data to substantiate the arguments that have gone into devising and formulating the policy of the bill. Given

the time lines that Hon Lynn MacLaren has put on this, if we were able to report back in the first quarter of next year to this place, that delay would not be unconscionable. Somehow I detected, by paying very close attention to the government's response to this bill, that it might not be inclined to support a referral to committee. My view is let us test it and see whether the government is prepared to make this gesture to give the bill the substance that it seems to think it needs.

HON MICHAEL MISCHIN (North Metropolitan — Parliamentary Secretary) [11.13 am]: The government will not support the motion to refer the bill to the legislation committee. The Property Law (Mortgagee's Power of Sale) Amendment Bill has lain on the table for over two years now. It was put up as a bill that would fix a particular problem. We are not looking at the question of affordability of homes generally. The bill is very narrow in its scope in attempting to introduce a specific duty. We would have thought that if the opposition was serious about this, the idea of referring it to a committee could have been raised on numerous occasions in the past, and before we got to this stage of Hon Sally Talbot trying to rescue a flawed piece of legislation and one that plainly involved insufficient attention to detail being devoted to it right from the beginning. It has meandered along through this house —

Hon Sally Talbot: How am I trying to rescue it?

Hon MICHAEL MISCHIN: I understand Hon Sally Talbot supports the motion to refer it to a committee.

Hon Sally Talbot: Yes; but it was moved by the Greens.

Hon MICHAEL MISCHIN: True. But the honourable member is supporting the motion to refer it to a committee; correct?

Hon Sally Talbot: I hope you will support it, too.

Hon MICHAEL MISCHIN: No, I am not supporting the motion. I am speaking against the motion. The government will not support the referral of the bill to inquiry and will not delay this matter any longer.

Question put and a division taken, the Deputy President (Hon Matt Benson-Lidholm) casting his vote with the ayes, with the following result —

Ayes (14)

Hon Matt Benson-Lidholm	Hon Adele Farina	Hon Linda Savage	Hon Alison Xamon
Hon Helen Bullock	Hon Jon Ford	Hon Sally Talbot	Hon Ed Dermer *(Teller)*
Hon Kate Doust	Hon Lynn MacLaren	Hon Ken Travers	
Hon Sue Ellery	Hon Ljiljanna Ravlich	Hon Giz Watson	

Noes (19)

Hon Liz Behjat	Hon Brian Ellis	Hon Alyssa Hayden	Hon Helen Morton
Hon Jim Chown	Hon Donna Faragher	Hon Col Holt	Hon Simon O'Brien
Hon Peter Collier	Hon Philip Gardiner	Hon Robyn McSweeney	Hon Max Trenorden
Hon Mia Davies	Hon Nick Goiran	Hon Michael Mischin	Hon Ken Baston *(Teller)*
Hon Wendy Duncan	Hon Nigel Hallett	Hon Norman Moore	

Pair

Hon Robin Chapple	Hon Phil Edman

Question thus negatived.

Second Reading Resumed

HON SALLY TALBOT (South West) [11.20 am]: — in reply: I want to start by thanking my colleagues on this side of the house for their contribution to this debate; almost everyone has spoken, I think, and those who have not have had the chance to make their support very well known both to me and in their electorates. I think it has been a mark of deep understanding on this side of the house of these kinds of problems. I notice that people on the other side are very quick to say, "We're not listening to our constituents on this sort of thing; we want the expert opinion." The people on this side of the house do listen to their constituents. They listen to the stories that pour through their doors and to the people who ring their offices every day with stories about real hardship that affects families, children and older people, and they respond to those cries for help. We on this side of the house believe very firmly that if a measure of the kind encapsulated in the Property Law (Mortgagee's Power of Sale) Amendment Bill 2009 were put in place, it would be a very small step towards helping people who find themselves losing their homes because of the unaffordability of mortgages they have taken on. I thought that the tenor of the debate on this side of the house was a reflection of true Labor values, and I was very proud to be part of that.

The contribution from the other side of the house was, sadly, a very different matter. It seems that every time Hon Michael Mischin takes to his feet, he thinks he is engaged in some sort of job interview—I suppose he

probably is. He is part of a very long queue to try to get his feet under the cabinet table. I suppose it must be a source of some frustration to him to see the calibre of some of the people who are keeping him out of that position. I have to say that every now and again he sort of loses his cool a bit, and I thought it might be helpful if I just gave him a couple of ideas that he might try to run with in an attempt to sort of calm down and make a bit more of a genuine contribution to debate in this place instead of coming in with these long soliloquies that drip in sarcasm. I was somewhat amused actually; he began his speech by saying, "Before I am accused of being arrogant again", and then went on to make some amazing statements.

Hon Ken Travers: I don't think we've ever accused him of being arrogant. It must be his own colleagues who have done that!

Hon SALLY TALBOT: I do not think it is us; I think it is the little voice inside!

Hon Ken Travers: Or his own colleagues have been accusing him!

Hon SALLY TALBOT: So that, I thought, was quite an amusing start.

But let us look at some of the substance of what he was saying in response. He was supposed to be giving the government's response to a move on our part to provide some redress for people whose homes are sold for less than market value. If he saw this as an opportunity to put in a little performance and get some marks from the Premier's office to bump him up the queue a little into a job in cabinet, I suppose what first came to my mind were those things we had drummed into us as young people as being the key points of a good job interview. I remember that one of my mentors said to me that one of the three things was to dress to not be noticed—I must say that Hon Michael Mischin gets 10 out of 10 for that because he has the corporate look perfectly, so full marks on that one. Another was to research as much as possible about the subject that was going to be talked about. When Hon Michael Mischin got about nine-tenths of the way through his speech, I thought, "Well, I have had more interesting discussions about this bill with my son"—who is a second-year commercial law student—"than I have with Hon Michael Mischin." It is a very sad thing that he obviously comes from a place where he has never had to actually get his head around some of these issues, and he obviously finds it so much of a challenge that he does not even realise what he does not know. I have often heard it said that the mark of somebody who is able to get their head around complex issues is that they understand how complex they are. Hon Michael Mischin is so intent on slagging off what the Labor Party is trying to do that he does not even realise that there might have been a constructive part he could have played in the debate if only he had taken the trouble to do the research to inform what he was going to come into this place to say. That was a dismal failure on the research question.

I suppose there is one sense in which Hon Michael Mischin will never have any problem applying for a job, because, of course, the number one rule about going into a job interview is that the person has to believe in themselves. I think if there is one thing that no-one in this house is any doubt about, it is that Hon Michael Mischin believes in himself. He is his own number one fan. He has no problems with self-confidence or being assertive; he has obviously got a very healthy ego sitting inside him.

Hon Ed Dermer: Are you sure he is not misleading himself?

Hon SALLY TALBOT: I am afraid he is, Hon Ed Dermer. I am afraid it is all froth and no beer, as they say!

Anyway, I will leave most of what he said aside. It has provided an hour or so of terrific tweets this morning, which I know he will log onto now and which will upset him all over again. But he need have no fear; we will circulate his comments far and wide, and the people in the North Metropolitan Region will have every chance to make their feelings known about his attitude to them.

The reason I thought Hon Michael Mischin might have responded in a rather different tone was that the basic principle behind what I have tried to do with this bill has its origins in a very well thought through and a very well-established philosophical principle that originates in the social contract. The social contract, as Hon Michael Mischin would know, is supposed to have formed the heart of liberalism, and I would have thought that that was something he would have been interested in finding out about, if he did not know about it already, and then coming into this place and sharing his thoughts about how the social contract might be applied to modern day Western Australia.

The particular point I wanted to make about the social contract is that it was given one of its most interesting modern formulations by somebody I am sure Hon Michael Mischin and probably several others on the other side of the house have read, an American philosopher called John Rawls, who wrote a book called *A Theory of Justice*. The basic proposition in *A Theory of Justice* is quite simple because, like much really good creative, imaginative philosophy, it is done by drawing a word picture. The word picture that Rawls draws is about something that he calls the "veil of ignorance". That is not what it sounds like; if I was scoring cheap shots I would say that the veil of ignorance is something behind which the Barnett government spends most of its life. But in philosophical terms the veil of ignorance is supposed to be that protection between the original position of

people who are strong inevitably triumphing over people who are weak, and the civilised society in which we are supposed to live. So Rawls' idea was to draw, in front of the people who are devising the social contract, what he calls the veil of ignorance. What that means is that those people are supposed to assume that they know nothing about what their status or capacity, or even their proclivities, were going to be when they existed in this world for which they were designing the principle.

Debate interrupted, pursuant to temporary orders.

[Continued below.]

TEMPORARY ORDERS — SUSPENSION

Motion

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [11.28 am]: I intend to move without notice that so much of temporary orders be suspended as would enable non-government business 2 to be taken until 12.30 pm.

By way of explanation, the bill we have been discussing has consumed all of non-government business today. There is some interest in the other motion that Hon Ljiljanna Ravlich wants to move, and in view of the fact that we are not overwhelmed with business to deal with on the *Daily Notice Paper*, I will move that we spend the next hour dealing with the motion to be moved by Hon Ljiljanna Ravlich. I will move to suspend temporary orders to provide for that to occur.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [11.29 am]: I would have done this behind the Chair but I ran out of time. That bill was about to come to a vote; we would like that vote to occur.

Hon Norman Moore: If that is the case, I will amend the motion. Mr Deputy President, please ignore what I just said—although I am not sure that it works like that!

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): I am sure they will find a formal way of getting it on paper.

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [11.30 am] — without notice: I move —

> That so much of temporary orders be suspended as would enable non-government business to be taken until 12.30 pm.

Question put and passed with an absolute majority.

PROPERTY LAW (MORTGAGEE'S POWER OF SALE) AMENDMENT BILL 2009

Second Reading

Resumed from an earlier stage of the sitting.

HON SALLY TALBOT (South West) [11.30 am] — in reply: As I was just saying, the basic principle of the veil of ignorance is that the people making the decisions do not know the place they will end up in society. The obvious reason that works as a device is that those people will, presumably, design laws and systems that would not disadvantage them if they end up as the weaker people in society. As I say, that is the basic principle of liberalism. I would have thought that Hon Michael Mischin and the Barnett government in general would have been able to get themselves in an imaginative position whereby they could wholeheartedly support a move that will simply give people one form of redress when they find themselves in a position of weakness.

Hon Michael Mischin claimed not to know how the bill was going to work. I fail to understand how he can have missed the point. I did not think that I could have made it more clear in my second reading speech, and certainly every single one of my colleagues on this side of the house made crystal clear the purpose of the bill. This is what I said —

> The purpose of these amendments to the Property Law Act is to introduce a requirement for a mortgagee or chargee, in exercising a power of sale in respect of mortgaged or charged land, to take reasonable care to ensure that the land is sold for not less than its market value.

That is not rocket science. It was not supposed to be rocket science. It was not supposed to delve into any obscure, complex legal concepts. It was supposed to give somebody who finds their major asset has been sold for less than its market value, simply in order for the bank or the lender to recoup their part of the investment in that property, one small form of redress at law. That is all the bill does; that is all the bill ever claimed to do. It is not that complicated. I noticed that every time Hon Michael Mischin spoke—it is a shame that *Hansard* cannot capture lip curling—about "mortgage fire sales" he curled his lip with some sort of distaste; however, in my second reading speech I went on to say —

> Translating that purpose into more common parlance, the amendments will stop banks and other financial institutions from holding "fire sales" related to defaulted mortgages.

This is about a conflict of two interests in society. We have the interests of the homeowner, for whom the home is almost always the major financial asset; part of which they will own, but the majority of which they will not, because it is owned by the bank or the lender who has provided the money. That is one interest. The other interest is the lender of that money. The interest of the lender of the money is simply to get back the amount it is owed. I made the point, other members on this side of the house made the point, and the point has been made over and over again in commentary on this bill and others like it in other jurisdictions, that if the bank or lender needs to recoup only part of the total value of a house in order to satisfy its own interest, that is what is likely to happen. Hon Michael Mischin asked for examples of that. All I can say is that he needs to get out more. He needs to go and talk to real people, instead of closeting himself away with his blogs in his office, shutting the door and only going out when he knows he is going to be wined and dined, and feted as the honourable member. He needs to get out more and talk to the real people who make up his electorate. If he did that, he would hear what I have heard and what every single member sitting on the Labor benches has heard; namely, that this happens constantly.

Several members interjected.

Hon SALLY TALBOT: Of course, we hear the way the government is responding; even by way of the interjections that I have would have thought anybody could see I am not going to take because I know that we want to move to the next motion.

I have received numerous calls, letters and emails in the past couple of years—since we began talking about this subject—from people in the industry who have said, "This happens all the time."

Several members interjected.

Hon SALLY TALBOT: That is why Labor moved this bill. That is why Labor supports the bill. And that is why we have put in some considerable effort to take the debate through this house.

As members have noted, I used some figures during my second reading speech, which are of course now outdated. I note that Hon Michael Mischin pulled me up for getting a number wrong in the "Civil Property Possession Applications". I really hate to use the word "cute" in relation to Hon Michael Mischin, but he rather glibly did not quote the note under the table. I assume that I am reading from the same document that he read from, which is the "Civil Property Possession Applications" listing over about 10 financial years. The document states —

> **Note: As a result of a recent data clean-up, these figures vary from previous published statistics.**

So the figures have been tweaked; nonetheless the substance is as valid as it was when I made my second reading speech. However, let me refer very briefly to two recent reports. The first is a University of Canberra report that was written up in *The West Australian* on 25 October, just over a week ago. The article states —

> WA's economy is outperforming the rest of the nation but the State has the highest proportion of homeowners under mortgage stress.
>
> A University of Canberra report commissioned by the group Australians for Affordable Housing says 13 per cent of WA homeowners, or 90,000, had mortgage stress.

In the rest of the country the number is somewhat less than that, but in Western Australia it is very much a problem and a problem that has grown over the past two years. Perhaps this is the moment to remind honourable members exactly what mortgage stress is. Mortgage stress is not what Hon Michael Mischin described. Mortgage stress is not trying to sell a property in a depressed or depleted market. That is not mortgage stress.

Hon Michael Mischin: That is not what I said. I talked about mortgage stress as trying to service mortgages. Do not misrepresent me!

Hon SALLY TALBOT: Mortgage stress is when a person is spending more than 35 per cent—there is a bit of a variation in that percentage, but the standard figure used is more than 35 per cent—of their income on home loan repayments. That is what this is about. A recent Reserve Bank report puts the figure of Australians facing poverty due to unaffordable housing as one in 10. That is one in 10, Australia-wide. That is not just mortgage stress. Mortgage stress is the technical term for the position of committing more than 35 per cent of income to home loan repayments. This is, in the words of the Reserve Bank, facing poverty. That is what mortgage stress is. It has nothing to do with the falling value of property.

The second report that I want to refer to was mentioned in *The Australian* last Thursday, 27 October. The article states —

> A SECOND wave of land in receivership is hitting the market, with at least $1 billion worth of distressed property currently for sale …

> A total of 519 receivership and mortgagee-in-possession commercial properties have been listed … this year …

And it goes on to talk about residential properties.

The report in *The West Australian* of 25 October and the report in *The Australian* of 27 October both refer to the two-speed economy. This is the fundamental point that this Liberal government is simply unable to grasp: we currently have a two-speed economy in Western Australia.

I return to my description of the veil of ignorance and the device that is used to help people in exactly our position as legislators understand what it is like to be someone whose income is failing, whose household expenditure has moved way beyond their control and who therefore finds themselves in the position of losing their house. Members should lift the veil of ignorance and imagine what that might be like and then try to devise the remedy that they themselves would benefit from if they were ever in that position. There are Western Australians in all our electorates who are living in the slow lane of the two-speed economy. Those are the people Labor cares about. That is why this bill needs to be passed. I ask the Barnett government to support this bill and not to ignore the cries for help from people who are suffering from the two-speed economy.

Question put and a division taken with the following result —

Ayes (10)

Hon Matt Benson-Lidholm	Hon Adele Farina	Hon Linda Savage	Hon Ed Dermer *(Teller)*
Hon Helen Bullock	Hon Jon Ford	Hon Sally Talbot	
Hon Sue Ellery	Hon Ljiljanna Ravlich	Hon Ken Travers	

Noes (18)

Hon Liz Behjat	Hon Brian Ellis	Hon Col Holt	Hon Simon O'Brien
Hon Jim Chown	Hon Donna Faragher	Hon Robyn McSweeney	Hon Max Trenorden
Hon Peter Collier	Hon Philip Gardiner	Hon Michael Mischin	Hon Ken Baston *(Teller)*
Hon Mia Davies	Hon Nigel Hallett	Hon Norman Moore	
Hon Wendy Duncan	Hon Alyssa Hayden	Hon Helen Morton	

Pairs

Hon Kate Doust	Hon Phil Edman
Hon Robin Chapple	Hon Nick Goiran

Question thus negatived.

Bill defeated.

PARLIAMENT HOUSE — MEMBERS' INTERNET CONNECTION

Statement

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Members, prior to resuming non-government business, I have a message from the Executive Manager, Parliamentary Services. It simply reads —

> Hayes Cafe internet disruption
>
> FYI currently members can't access internet via the wireless or hard wired connection—DPC are attempting to resolve
>
> The unsecured "McDonalds" wireless system is still working

I will leave that with members.

SECURE MENTAL HEALTH FACILITIES — SMOKING BANS

Motion

HON LJILJANNA RAVLICH (East Metropolitan) [11.45 am] — without notice: I move —

> That this house expresses its concern about the adverse impact of smoking bans in secure mental health facilities on the occupational health and safety of mental health workers and patients and calls on the Barnett government to lift the smoking bans in secure mental health facilities and introduce instead designated smoking areas.

Mr Deputy President, you may well be aware that I have asked a number of questions and spoken in adjournment debates about the lifting of the smoking bans. Today I have moved a motion in this place once again calling on the government to lift the smoking bans. We have the case of a woman who was in the A ward mental health unit at Kalgoorlie Hospital, and at the very extreme we can see the impact of smoking bans as they currently apply. The circumstances surround the case of Frances Cooper who, on Sunday, 30 October, was let out for a cigarette. It is believed that a security officer was to escort her off the hospital grounds for a smoke, as

it was the policy that smoking was not allowed on the grounds. At some point, the security officer disappeared, or there was certainly a period where Frances was not supervised. Frances Cooper was subsequently found after having been hit by a train, which caused her death. That occurred 500 metres from the hospital. I am advised that the train driver probably did not realise that a woman had been killed. I am advised that it was a subsequent train driver some hours later who noticed the body of the late Frances Cooper.

There are many questions surrounding the death of Frances Cooper that need to be answered, but I think the case of Frances Cooper highlights the very high risks associated with not having a designated smoking area in secure mental health facilities. Had there been a designated place in that secure facility, Frances Cooper would not have been allowed out. She would not have wandered off unsupervised, and Frances Cooper would still be alive today. There is much more to be explored in relation to the death of Frances Cooper, but she is a case in point and it is a very strong case for the lifting of the smoking ban in secure mental health facilities.

Unfortunately, the Council of Official Visitors has not tabled its 2010–11 annual report. I am advised that, once again, it has addressed the issue of smoking and the smoking bans as they apply to involuntary patients. The council has been a strong advocate for lifting the ban in secure mental health facilities. In last year's 2009–10 Council of Official Visitors' annual report it makes it very clear that the council has consistently lobbied against the ban for involuntary patients and continues to argue for designated smoking areas. Like me and any other reasonable person, the council would hold the view that there is no doubt that quitting smoking would be to the benefit of mental health consumers. Sure; everyone would be better off if they did not smoke. However, the council's argument is that it is cruel to make people who are already so unwell that they have become involuntary patients give up such a difficult addiction on admission to a health facility. It is fair to say that this is not an easy addiction to give up. Some people who need treatment hate going into involuntary care, even though they may realise that it would be the best option for them, simply because they do not want to be denied the right to smoke cigarettes.

We heard from the Council of Official Visitors when it released its annual report last year about the extreme lengths people will go to when in involuntary care to get access to cigarettes and to light a cigarette. We heard about the soaking of the nicotine patches in tea to try to get as much of the nicotine out as possible. We also heard about desperate measures such as patients poking straightened paper clips into electricity outlets to light a cigarette because lighters were usually confiscated. Compare that with what goes on in Western Australian prisons. I understand that in some prisons prisoners are allowed to smoke. I also understand a ban on selling cigarette lighters to Western Australian prisoners will be lifted because they are poking wires into electricity sockets to light up.

It seems to me that we have two sets of rules here. The people who are in secure mental health facilities are not prisoners; they have committed no crime; they are people who are ill, yet a very different set of rules applies to them from people within the prison system.

Mr deputy principal —

Several members interjected.

Hon LJILJANNA RAVLICH: Mr Deputy President (Hon Matt Benson-Lidholm), I am sorry.

The DEPUTY PRESIDENT: I was once.

Hon LJILJANNA RAVLICH: It is back to school for me!

We have heard about the horrific impact on the staff who have to work in secure facilities that the current ban on smoking is having. Enforcing the smoking ban is extremely difficult for staff, and making a patient stop smoking impacts on all sorts of relationships and causes all sorts of tensions. There is no doubt that it leads to the destruction of relationships between the people who really need to rely on each other to get the best patient outcomes. How can we have good relationships when, for example, patients are abusing staff on a daily basis because they see them as the ones who are denying them access to cigarettes? There is no doubt that apart from the occupational health and safety issues, the fact that the staff are charged with trying to enforce this rule means they are often working in a way that discourages good relationships with the patients. It is not in anyone's interest for these bans to continue.

I will also quickly mention the issues that have been raised in response to a survey that was done of its members by United Voice. It clearly highlights just how big a problem this smoking ban is. The majority of the 85 per cent of respondents at Graylands, the majority of whom were non-smokers, said the current smoke-free policy does not balance all the occupational health and safety needs of patients and staff at the hospital. In fact, the majority of the respondents had concerns about the policy, which included inconsistent direction and lack of direction about enforcement, increased aggressive behaviour by patients when the policy was enforced, negative effects on patients' clinical plans and patients causing risk by smoking in inappropriate places such as toilets and bedrooms and generally causing serious occ health and safety issues. This has been going on for quite some time. I

recognise and sympathise with the employees who work in this area of mental health service delivery. It is not an easy area to work in, and I do not think it is acceptable that aggressive behaviour is part of the daily work life of these employees.

It is quite clear in some of the responses to the survey that aggression is almost a normal part of work life for United Voice members. It is not unusual for patients to throw chairs and to cause injury. Sometimes workers are injured when they try to restrain a patient; other comments include punching staff, punching walls, threatening violence, certainly being verbally abusive and so on. It is not surprising that employees of United Voice have written to the Office of WorkSafe highlighting some of the issues that impact on them and their employees. It is interesting to go through and read some of the issues that they raise. I understand that when staff are assaulted, as is the case in Graylands and I assume in all other secure facilities, staff members fill out incident management system reports that provide information about when an incident happened and how it happened and so forth. The report is then sent to the Director General of the Department of Health. I would be interested to know the number of incident reports that have been received by the Department of Health in the last three financial years. It is concerning that apparently the staff are actually filling in these Australian incident management reports, but when we look at the response from the health department, it appears that, in fact, the department may not be taking them seriously. I have to say that that is very, very concerning. This is an area that needs to be investigated. I am advised that it does not appear that any action follows once these incident reports are sent to the Department of Health; it is almost like nothing happens. Therefore, over time staff have been asking themselves what the point is of filling in the incident reports when nothing improves at the end of the day. The Department of Health is a very big bureaucratic agency and is not being responsive to the needs of its workers. We need to have a very close look at how the department responds to what is happening to staff who work with mental health patients in secure facilities.

There is no doubt that this policy needs to change across the board for all secure facilities. Although Graylands has the greatest number of secure mental health beds, there are secure beds also at Albany, Armadale, the Bentley Child and Adolescent Mental Health Service, Bunbury, Fremantle, the Frankland Centre, Joondalup, Kalgoorlie, King Edward Memorial Hospital, Mercy Hospital, Selby and Swan District Hospital Campus. This is a much broader issue than just Graylands. I guess that Graylands has come under the spotlight because it is the largest facility, but this is an issue right across the board.

I will quickly comment on the parents and families of people with a mental health illness whose family members are in secure facilities and who have to deal with that family member being unable to have a cigarette. I will read into the record a letter that the Minister for Mental Health received from Debra Sobott, who wrote to the minister on 12 October 2010 and 25 April 2010 about the smoking ban in Western Australian campuses. She says —

> … I have witnessed first hand the trading of cigarettes by fair means or foul. Patients are either subjected to harassment or are the perpetrators of harassment all in the name of securing a cigarette—a pursuit we are freely able to partake of in the community should we choose. The banning of cigarette consumption is an attack on the right of the patient to choose and is a reflection of an ill-informed service where those for whom the service is intended receive what others decide is 'good for them'.
>
> The Government have no right to dictate the 'lifestyle' aspect of a consumer in a closed institution by forcing withdrawal and then supplying nicotine replacement that can have a dangerous outcome for a consumer on psychotropic medication. It is a dangerous practice, a breach of ethics and does not achieve its stated intention. Steve Kisely from the Griffith University Medical School states that BANS DO NOT WORK, and that the motivation to change theory emphasises that meaningful change will only occur when the patient has moved through the pre-contemplative, contemplative and planning stages through to the action stage.
>
> The problems, inter alia, resulting from the smoking ban are highlighted in the Sunday Times article and I urge you to instigate an independent and immediate investigation in order that the findings can be reported upon and the right decision adopted to amend legislation immediately.

The minister has indicated that a working group was looking at the possibility of lifting those bans. The Minister for Health gave me quite a different —

Hon Helen Morton: They are different tasks.

Hon LJILJANNA RAVLICH: It seemed to me that they were poles apart. Either the Minister for Health gave me the wrong answer, and the minister might, in her reply —

Hon Helen Morton: You got the answer when I was in Sydney so I did not get to see it before you got it.

Hon LJILJANNA RAVLICH: So I got something that did not reflect what was going on. The minister might clarify that for me because she would be aware that there is some concern in the community that the Department of Health and the Mental Health Commission do not work effectively and that there are problems.

Hon Helen Morton: That is not so.

Hon LJILJANNA RAVLICH: When either the Minister for Mental Health or the Minister for Health provides the wrong answer —

Hon Helen Morton: I did not provide it.

Hon LJILJANNA RAVLICH: The Minister for Health provided it, but it led us to believe that there are two separate committees going on.

Hon Helen Morton: There are two separate committees doing different tasks.

Hon LJILJANNA RAVLICH: The minister might like to clarify that. Clearly there is a strong case for these bans to be lifted and I ask the minister to act in haste to ensure that they are lifted as a matter of priority.

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [12.05 pm]: Members would suggest that it is not often that I support a motion moved by Hon Ljiljanna Ravlich, but I do support this motion. However, if I were able to amend it, I would ask the opposition to wholeheartedly support the moves taken by me as the Minister for Mental Health to undertake the work that has been suggested. I will go through what we are doing in that respect. I am pleased to announce that I am in the process of finalising a cabinet submission that will allow involuntary mental health patients to smoke cigarettes in designated outdoor areas. I have been pursuing this matter ever since Hon Jim McGinty brought in the regulation in 2007. I am very keen to know whether the motion moved by Hon Ljiljanna Ravlich and on which Hon Sue Ellery's name appears on the letterhead has the support of the Labor Party. Is it the Labor Party's position?

Hon Sue Ellery: Why would it not be?

Hon HELEN MORTON: I am just asking the question because I have information that the Leader of the Opposition provided to me when she was the parliamentary secretary to Hon Jim McGinty. At that time Hon Sue Ellery did not support the issues that I raised about lifting the ban when we were in opposition. I am absolutely thrilled to hear that it is now the Labor Party's position to lift the ban because it makes my job that much easier. I have been pursuing this matter since the issues were raised in 2007. My objective is to amend the by-laws to allow involuntary patients to smoke five metres from doorways and 10 metres from air conditioning vents, consistent with our policy on tobacco product control. We have also intensified the Quit campaign and the work being done on quitting smoking that is specifically targeted at people with a mental illness, we have increased the follow-up programs for people when they leave a hospital, and we have invested $200 000 in programs to help people who live in psychiatric hostels to quit smoking. Like Hon Ljiljanna Ravlich, and I imagine every other member, I would prefer it if no-one smoked, but these bans are not the way to go about it. I have monitored the work of the Council of Official Visitors since 2007 when it brought out its first position on this, and I have read every annual report since then in which the agency has consistently indicated that it does not support the smoking ban. Equally, the Health Consumers' Council made a very clear statement that it did not support the bans either. Over the years, I have gathered enormous amounts of information from patients, families and workers about how the regulations are not being adhered to and how the situation is much worse than previously.

Hon Ljiljanna Ravlich: Will you take an interjection?

Hon HELEN MORTON: Not just yet. I have only a short time and a lot to get through.

I am aware of the issues of bargaining for cigarettes, particularly one matter that the member did not mention. I will not go into the trading of cigarettes for sexual favours and purchasing cigarettes at enormous prices, but a real issue of concern to me was that voluntary patients are being told that if they do not adhere to certain regimes, they will be made involuntary patients and therefore will not be able to smoke. That level of blackmail was a major issue.

Now we have bipartisan support. I thank Hon Ljiljanna Ravlich for bringing that about. I am keen to have a much broader level of support than probably even Hon Ljiljanna Ravlich is aware of. I will refer to some of that support in the time that I have left. In August 2007, whilst in opposition, I raised this issue when Minister McGinty first introduced the regulations. The information that Hon Sue Ellery provided me with at the time indicated that she supported the bans. The regulations were rolled out in December 2007. At that stage I had heard of patients absconding as a result of the issues around smoking. Patients preferred to stay in prison rather than go to the Franklin Unit because they did not want to deal with the issues of not smoking. In December 2007 I tabled a petition and was involved in an adjournment debate relating to the impact that these regulations were having on people. Right up until November 2008, I continued to raise this issue. In April 2009 I was finally convinced that the clinicians were coming on board when I got a very clear indication from the Clinical Directors Forum about the adverse impact that this smoking ban was having on patients that they were responsible for. I am not unhappy to tell members that I took this to the party room, and made it clear that everybody in the government was aware of the issues. That was my role as parliamentary secretary. I continued

to gather information from the evidence for these bans to be overturned. A number of observations were brought to my attention.

Since I became the minister I was particularly keen to get this matter up and running. I had to do some preliminary work to make it happen. I asked the Council of Official Visitors to carry out a quiet review, not a big flashy review, of what currently happens in every single mental health facility in Western Australia. The review came back with some very clear indications. The council provided me with a full report on how that regulation was being played out in every single locked and unlocked ward. The regulations were put in place in only three of the 32 wards. The thing that probably sparked me on to do more work on this was some of the comments that were picked up. For instance, a nurse in an open ward talked about it, non-smokers talked about it and some of the other staff working in some of the facilities talked about the impact on them, their work, the patients and their families.

Hon Ljiljanna Ravlich: Can you table that, minister?

Hon HELEN MORTON: No, I do not want to table it at the moment.

Point of Order

Hon LJILJANNA RAVLICH: Can I ask the minister to identify the document?

Hon Helen Morton: I have identified it. I said it was a Council of Official Visitors report.

Hon LJILJANNA RAVLICH: The minister was holding the document. I ask the minister to table it.

The DEPUTY PRESIDENT (Hon Col Holt): According to standing order 47 —

> A document relating to public affairs quoted from by a Minister, unless stated to be of a confidential nature, or such as should more properly be obtained by Address, may be called for and made a public document.

Hon Helen Morton: Do I have a choice?

The DEPUTY PRESIDENT: Therefore, minister, are you alleging that the document is confidential and cannot be tabled?

Hon HELEN MORTON: Across the top of the document it states "Confidential report", so it is confidential. I do not wish to table it.

The DEPUTY PRESIDENT: Therefore, the document will not be tabled.

Debate Resumed

Hon HELEN MORTON: I have already indicated that this work was done for me by the Council of Official Visitors. It is a confidential report and I do not intend to make it public. It will be presented in addition to the submission that goes through cabinet. There is no reason why members should not see it, but the timing is such that members will not see it right now.

The other matters that I wanted to raise in this debate relate to the working group that Hon Ljiljanna Ravlich mentioned. I had asked four people to get together—that is, Debora Colvin, Mike Daube, whom most members are aware of, Eddie Bartnik, the Mental Health Commissioner, and a representative of the director general—and see if they could come to an agreed position on what I wanted to pursue. Everybody knows that Debora Colvin, the head of the Council of Official Visitors, has made her position really clear. I believe that the Mental Health Commissioner will go through the views that I have on this. I am very pleased to say that Mike Daube, the president of the Australian Council on Smoking and Health, has indicated that in no way will he be critical of this as long as it remains restricted to this clearly defined group. The issue of smoking by involuntary patients is the most difficult area when it comes to tobacco and he is willing to work with the government on this initiative. His focus, and mine, will remain on helping people to quit smoking. He recognises that the smoking ban on involuntary mental health patients is a difficult area and he will be assisting me to get the Australian Medical Association to support this position. For many reasons I think Hon Ljiljanna Ravlich has just slightly brought to a head issues and matters that were already progressing, and progressing quite well. I am not unhappy about that; I am actually quite pleased about it.

As I indicated before, this issue is not about somehow or other not supporting people to give up smoking. I would prefer that no-one smoked. It is not about people smoking inside buildings either. It is about enabling people to smoke within a certain distance of an outlet or an entrance, the same as any other person is allowed to smoke within a public place. Voluntary patients in mental health units are free to walk off the premises at any time of the day or night to have a cigarette. It is illegal to restrain them from doing so. This ban applies to involuntary patients. No other people in Western Australia or, to the best of my knowledge, Australia who have access to outdoor areas are being forced to give up smoking. As Hon Ljiljanna Ravlich said, even maximum-security prisoners have access to designated outdoor areas. In fact, special regulations have been made to allow

them to smoke indoors at certain times because they are not allowed to go outside without all the security that is required.

We amended a bill to enable 50 per cent of the outdoor areas of pubs to cater for smoking patrons. We negotiated this to appease the powerful Australian Hotels Association and to get the bill passed. The group of people that I am representing, that Hon Ljiljanna Ravlich is representing, and I believe all of us are representing, is not that powerful. Sometimes these families have felt completely helpless and powerless, until recently anyway. I was very pleased to get Hon Jim McGinty to overturn his original position on smoking in community-supported residential units. We need to be really clear that the vast majority of patients who are in involuntary care for only a small time smoke before they are admitted and they are likely to smoke after they are released, yet these patients are inappropriately expected to abruptly cease smoking at a time when they are experiencing their most acute mental health symptoms. As I have indicated, the Council of Official Visitors and the Health Consumer Council have indicated their support.

I want to say something about the clinical issues relating to patient risks that were put forward by the management team. Over the three and a half years that I have been pursuing this matter, I have been contacted by a constant stream of clinicians seeking to have this matter reconsidered. Registered mental health nurses argue that the regulations are policy based on ideology and are not in the best interests of patients. A clinical directors' forum made up of psychiatrists argued that the introduction of an abrupt smoking cessation program for people taking medicine is a potentially dangerous intervention with this group of patients. This intervention comes at a time when psychiatrists are trying to stabilise a person who is experiencing erratic psychotic symptoms, and the abrupt cessation of nicotine destabilises the patient's metabolism and thus adversely effects medications being used in this stabilising process. Therefore, we have the psychiatrists basically saying that this is making their work more difficult as well, and it is having an adverse effect on some patients.

A particular lady on the management team at Graylands Hospital who was a community member and had a son in Graylands Hospital for a long time impressed upon me the difficulties that the regulations were having on her. At the time that these regulations were first brought in, she was being frisked when she went to visit her son; that is unbelievable. Another lady who also has a son in the mental health facility at Graylands came to see me about this particular matter, and she told me that she smuggled cigarettes in to her son. I asked her how she did it and she brought in for me a book; it was the old story about the book with a bit cut out in the middle that she would put the cigarettes in! I asked myself why families had to go through this kind of routine to get in to see their family members in hospital. They also said that from the moment they hit the facility, those sons and daughters would be asking their parents for cigarettes. They would be asking their parents to take them out so they could have a cigarette. The relationship between the family members changed immeasurably as a result of these regulations.

Hon Ljiljanna Ravlich made the observation that all facilities are the same. It does not matter whether we go to Alma Street, Albany, Graylands, Armadale or Bentley, or wherever it is; they are all the same.

HON ALISON XAMON (East Metropolitan) [12.22 pm]: I also rise on behalf of the Greens (WA) to indicate support for this motion. That means we are looking at tripartite support for this motion. I thank Hon Ljiljanna Ravlich for moving this motion because it addresses an important issue that needs to be discussed. It is an issue that has come to my attention quite often since I have taken my seat in Parliament and been the Greens spokesperson on mental health. It has been brought to my attention primarily by carers of people who are currently being detained in facilities, in particular Graylands Hospital, but it has also been brought to my attention by employees within these mental health centres as well. In no uncertain terms, people who are part of these places are very clear that the ban on smoking has simply not had the outcome I think was intended when it was first introduced.

I want to say that at the time Hon Jim McGinty brought these regulations into Parliament, the Greens were reluctantly supportive of them. My understanding is that at that point, my colleague Hon Giz Watson had received extensive briefings, and she has indicated to me that she also shared many of the concerns that have been articulated by Hon Helen Morton. At that point Hon Giz Watson was apparently given quite extensive undertakings about how the regulations would be rolled out and how they were intended to work. I think two problems have emerged. Firstly, it would appear that the regulations do not operate in practice in the way that it had been relayed that they would. Also, I think there have been a series of unforeseen consequences. Perhaps the seriousness of the withdrawal from smoking for quite a few of the patients in this situation was just not understood as comprehensively at the time as now.

It is true that the Council of Official Visitors has been consistent in voicing its concerns about the outcomes of these regulations, as has the Health Consumers' Council. The Council of Official Visitors has repeatedly called for a reassessment of these regulations in its reports. The Health Consumers' Council has had contact with me to talk about its concerns and the impact that the regulations are having on the involuntary consumers of mental health services in these facilities. Some of the issues that have arisen have already been touched on, but I think it

is worth pointing out the extent. We know that there have been reports within the media that are not reflected in the official reports from the Council of Official Visitors. There have been allegations of the exchange of sex for cigarettes, which are deeply concerning, and I imagine everyone in this place would be concerned about those allegations. We also know about concerns about nicotine patches in tea and the impact that they are having. There are concerns about more desperate measures that some people are resorting to to try to light cigarettes, such as using quite dangerous mechanisms on electricity outlets or the removal of wall heaters in order to be able to gain a spark. I share the Minister for Mental Health's concerns about suggestions that smoking is being used as a method to keep people involuntary; that is deeply concerning, as is consumers being denied ground access.

Ground access is often one of the main mechanisms that patients need in order to cope in these environments. I am also very concerned about the lack of support received by these people once they leave hospital. Patients have basically been put into this regime of trying to force them from the smoking habit but that is not being upheld once they leave the mental health facility. I am also very concerned about the impact that these regulations are having on the staff in mental health facilities. Staff talk about violence that is emerging and the pressure that that is placing on them. Clearly, I do not think any of these outcomes were seriously contemplated or anticipated at the time that the regulations were agreed on and supported. It seems to me quite apparent that we need to urgently reassess them.

It was not a surprise to hear the minister say that she supported this motion. This is an issue I verbally raised with her quite some time ago, and quite a long time ago it was clearly indicated to me that this was an issue that the minister had at that point commenced reviewing, and she was looking at how the regulations would be able to be reversed. I note the minister's comments that a cabinet submission to discuss reversal is ready to go. I was really pleased to hear that; it sounds like the groundwork has been done. Therefore, I urge those people in cabinet, who are capable of making that decision, to support the minister, because this has cross-party support and support within some of the peak groups and from people who deal with these issues. I was pleased to hear that Mike Daube has taken the position he has. Also, importantly, it has the support of people who have to work in these conditions as well as involuntary patients and their families. This should be one of those no-brainer issues. I really hope that people recognise that there were good intentions in implementing these regulations. Nicotine is obviously a very addictive and dangerous substance. It would be nice if nobody smoked and it would be nice if we could reverse smoking. I am sure that all of us are concerned that people with mental illness have dramatically reduced life expectancy and smoking actually contributes to that, and I am sure all of us would like to see strategies to reverse that. However, simply making people go cold turkey, particularly when they are in a very vulnerable situation and have been made involuntary, is not the way to do it. I am also very concerned about the issues that have been raised with me about the potential impact that nicotine patches can have, particularly on people who are on psychotropic drugs. That is a very serious issue that we need to be aware of.

I am supportive of all the measures that the federal government is taking to try to stop people from taking up smoking in the first place. I am supportive of Nicola Roxon's attempts to introduce plain packaging for cigarettes. I hope that members opposite would also be supportive of that, because it is important that we try to stop people from smoking.

But we need to remember that although the people I am talking about are involuntary patients, they are people who have rights. Often cigarettes are the least of their concerns in terms of drug use. If we are allowing people who have been convicted of offences and are in prison to smoke, I do not think we have any reason to deny these people the opportunity to cope as best they can. If smoking is part of the mechanism by which they can cope with the situation they find themselves in, we really do not have the right to decide that they are not entitled to do that. We certainly do not have the right to put them through the pain of having to quit cold turkey.

Debate adjourned, pursuant to temporary orders.

TEMPORARY ORDERS — SUSPENSION

Motion

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [12.31 pm] — without notice: I move —

> That so much of temporary orders be suspended in order for questions without notice to be taken at 2.30 pm today.

I actually did announce this earlier. But I discovered that I need to move to suspend temporary orders to enable that to happen. I think that is something we might need to look at in the standing orders, because if every time we want to change the procedures in a day we need to get an absolute majority, that would seem to be a bit over the top. But I do wish to have questions without notice at 2.30 pm today, and I have therefore moved that temporary orders be suspended so as to enable that to happen.

Question put and passed with an absolute majority.

MISUSE OF DRUGS AMENDMENT BILL 2011

Third Reading

HON PETER COLLIER (North Metropolitan — Minister for Energy) [12.32 pm]: I move —

That the bill be now read a third time.

HON GIZ WATSON (North Metropolitan) [12.32 pm]: Given that we have now considered this Misuse of Drugs Amendment Bill in Committee of the Whole, and given that only one of the number of amendments moved has been passed by this chamber, the Greens (WA) will not be supporting this bill. The primary reason is that this bill contains mandatory sentencing provisions, and we do not support mandatory sentencing. We are concerned about the impact on children of clandestine drug laboratories. If the government had brought in a bill that provided that the impact on children must be added to what the court must consider as an aggravating factor in these circumstances, we would have supported that wholeheartedly. Indeed, we believe that is the approach that should be taken when imposing penalties for people who cause children to be impacted upon by illicit drug manufacture.

It is very clear, as I stated in my second reading contribution, that our policy is to support strict penalties for the selling and supply of illicit drugs, with the exception of needle exchange programs. However, as I have said also, we believe that a mandatory sentencing approach is wrong. I will briefly reiterate our reasons for that belief. We believe that mandatory sentencing is highly likely to impact heavily on people with mental health issues. It is well established from prison statistics that people who commit crimes are highly likely to have mental health problems. Therefore, mandatory sentencing is highly likely to impact on these people. We believe also that mandatory sentencing provisions that may punish the offender and take that person out of circulation temporarily are unlikely to be effective as a deterrent. I will not go into the full evidence that I presented on that matter.

Further, the government has not presented any evidence that the courts are not sentencing appropriately in these cases when all the circumstances are taken into account. No evidence was provided to the chamber that there was a problem there. If the intention is to match public expectations, as I have said, I believe the public is much less punitive in its approach once it is given the full information. That is why we have a court system that can take into consideration all factors in determining a sentence. Therefore, the removal of that discretion is something that we can never support.

Although the Drug Court process is still technically available, as I understand it, under this legislation, surely much of the carrot part of the government's stick-and-carrot approach would be lost, because the best sentencing outcome an offender could hope for would be a suspended prison sentence for a first offence, regardless of how well the offender does under supervision programs and requirements.

In respect of subsequent offences, I understand the intention is that this refers to an offence committed after the person has been sentenced for a first offence. That is, first, the person commits one of these offences; second, the person is sentenced for that offence to a suspended imprisonment, conditional suspended imprisonment or actual imprisonment; and, third, if the person then commits a further one of these offences, the person is sentenced for that offence to mandatory imprisonment for six months, not suspended. Thus a more severe penalty will apply to recidivists.

I want to put on the record that as much as we support heavier penalties for a circumstance in which a child is endangered or injured in relation to the manufacture of illicit drugs, we cannot support the bill in its current form, and we cannot support the mandatory prison provisions within the bill. This is another example of a bill that was conceived in the heat of an election campaign, when a promise was made to the public to do something about clandestine drug laboratories. We do not disagree that something needs to be done about this. But we certainly cannot support that in the form in which this bill has been presented to the Parliament.

Question put and a division taken, the Deputy Chairman (Hon Col Holt) casting his vote with the ayes, with the following result —

Ayes (29)

Hon Liz Behjat	Hon Sue Ellery	Hon Alyssa Hayden	Hon Linda Savage
Hon Matt Benson-Lidholm	Hon Brian Ellis	Hon Col Holt	Hon Sally Talbot
Hon Helen Bullock	Hon Donna Faragher	Hon Robyn McSweeney	Hon Ken Travers
Hon Jim Chown	Hon Adele Farina	Hon Michael Mischin	Hon Max Trenorden
Hon Peter Collier	Hon Jon Ford	Hon Norman Moore	Hon Ken Baston *(Teller)*
Hon Mia Davies	Hon Philip Gardiner	Hon Helen Morton	
Hon Ed Dermer	Hon Nick Goiran	Hon Simon O'Brien	
Hon Wendy Duncan	Hon Nigel Hallett	Hon Ljiljanna Ravlich	

Noes (3)

Hon Lynn MacLaren	Hon Alison Xamon	Hon Giz Watson *(Teller)*

Pair

Hon Phil Edman	Hon Robin Chapple

Question thus passed.

Bill read a third time and returned to the Assembly with an amendment.

COMMITTEE REPORTS — CONSIDERATION

Committee

The Deputy Chairman of Committees (Hon Col Holt) in the chair.

Standing Committee on Uniform Legislation and Statutes Review — Sixty-third Report — "Information Report: Scrutiny of Uniform Legislation"

Resumed from 30 June.

Motion

Hon LIZ BEHJAT: I move —

That the report be noted.

I am very pleased to be able to speak on any of the work that the Standing Committee on Uniform Legislation and Statutes Review does because, as members know, I am a passionate member of that committee and thoroughly enjoy the work.

This information report, which was tabled in June, came about for a number of reasons. It does not actually deal with any bills, unlike most of our reports, and therefore no recommendations are attached to the report; it is merely to be noted. I think all members should take the time to read it. However, I preface my remarks by saying that in future we will be looking at changes to standing orders, and there will, no doubt, be a great impact on uniform legislation if the changes mooted in that report are adopted. I will probably make some reference to that today.

One of the issues that we have is how bills are determined to be uniform, and what constitutes a uniform bill. In relation to the Council of Australian Governments meetings, I think at the last count there were something like 44 ministerial councils that convene across Australia between the various jurisdictions that can trigger some sort of uniform scheme, so it is very hard to keep up with not only the number of meetings but also the communiqués that result from those meetings that define what a uniform scheme is. As members know, I personally think that a lot more work should be done by way of mutual recognition rather than with national schemes; however, that is the way it is at the moment, and until we can move forward on making some changes to the federation to strengthen it back to what it originally was, we have to live with what we have. At the moment, ministers go off to ministerial meetings and things happen behind closed doors; sometimes communiqués are issued from those meetings, sometimes they are not. Sometimes it is merely, as the President wrote in a paper he delivered to a conference in Darwin, that a nod and a wink amount to an intergovernmental agreement. I think those are issues ministers are faced with in determining whether bills are uniform and need to be referred to the uniform legislation committee. I will not talk so much about the referral process because there are changes in the wind on that, and that will be a lengthy—I hope—discussion for another day.

Paragraph 2.7 of the report states —

> The provision of a government response to recommendations in Committee reports is a useful tool for the House during debate on the bill.

That relates to one of the mooted changes to standing orders in that it is proposed not only that the government's time to respond be decreased from four to two months, but also that if the report tabled by a committee deals with a bill, the government will no longer be required to table a response; the government will provide its response at the time of further debate on the bill. That is all well and good, and I think it is a good way of handling it, but sometimes with bills of a complex nature it helps if not only the committee members who have been involved in the construct of the report, but also members on both sides of the chamber have the opportunity to see the government response. For instance, we recently talked about the occupational licensing national laws. A very good committee report was tabled on that legislation, one of the recommendations of which was that the legislation was too skeletal in nature and that the Parliament should not be dealing with it yet because it left way too much for the bureaucrats to deal with, rather than us as the legislators, which is what we should always be mindful of. The government response was that it would take that on board because it understood what the committee was saying. The government said it thought the committee was right, and the legislation was withdrawn from Parliament until such time as it is in a better form for this chamber's consideration. I again put on the record my thanks and the committee's thanks to the responsible minister, Hon Simon O'Brien, for taking

that lead. Unless that provision is retained in the standing orders, I think the process of having those responses provided might go by the wayside. I ask members to think about that again when we are considering the changes to standing orders.

Paragraph 2.10 states that —

> Practical benefits, such as the removal of duplication of administration and compliance costs, increased efficiency and economies of scale also result from uniform laws.

But they can also have the reverse effect in that sometimes we find that the adoption of these uniform schemes adds an extra layer of bureaucracy, a classic example of which is the national health practitioners' regulation legislation. The first annual report of that national scheme was tabled only yesterday. In a very quick summary of that, I note that members of the medical profession have told me anecdotally that the national scheme has not only doubled doctors' registration fees, but also tripled the registration time, when we compare the scheme in place with the state board process. We need to think about these uniform legislation schemes and talk more about mutual recognition between the states and not so much about national schemes and uniformity of the whole.

The report goes through the actions taken to identify various structures. It is quite difficult with some of the quite nefarious COAG communiqués and agreements made to identify exactly what is a uniform scheme, what is meant by it and what has to be put in place. There are various structures.

Quite often they try to do things by way of adopting the unicameral Queensland model of legislation and ramming it through the state houses. Obviously, we as fiercely proud Western Australians will never adopt that way of doing things. We never adopt the template legislation, but create the mirror legislation because, as always, there should be recognition for territorial differences in any uniform scheme. The report goes into the various structures used when we consider what we will do.

The committee, chaired by Hon Adele Farina, has four members, including Hon Linda Savage, Hon Nigel Hallett, Deputy Chair, and me. It is a bipartisan committee and reaches decisions by way of consensus. The committee does not look at the policy of the bill because it is not allowed to do so. Although we rarely go down that route, we would love to. In recent discussions in other forums, people are amazed that committees in Western Australia are sometimes not allowed to look at policy. But that might be a discussion for another day. If we were able to look at policy, we may see quite different reports. However, I think all members agree that the uniform legislation committee reports are very good and very useful tools that enhance the debate in this place.

I recommend the sixty-third report of the Standing Committee on Uniform Legislation and Statutes Review to all members, who should have a copy at their bedside. Not that it will send them to sleep, Hon Norman Moore! I can see the look on the member's face from here!

Hon Norman Moore: I have committed it to memory.

Hon LIZ BEHJAT: It should be definite reading for all members of this house—both those who have been here for a very long time and those of us who are the newer members. With those words, I commend the report to the house.

Hon NORMAN MOORE: I understood that other members were going to speak on this, and I just want to make sure that they do not miss out on the opportunity because they were not paying attention at the time. I want to say a few words about the comments made by the previous speaker who, when she referred to people who had been here a long time, was looking at me, so I presume she was referring to me.

In the past couple of years, I have spent a fair bit of time looking at standing orders, at how our committee system works and, at the same time, seeking to assist the Standing Committee on Uniform Legislation and Statutes Review with the additional workload it receives. There is no doubt that with the Council of Australian Governments' process, far more legislation about uniform schemes comes through. At the present time in Australia, COAG meets to discuss a range of issues from the point of view of harmonisation or uniformity across the nation. Deep down, I do not have much enthusiasm for this process. I believe in competitive federalism—the process in which the states do their own thing and compete with each other to see who can do it best. Uniformity and harmonisation sometimes result in the lowest common denominator. However, that is not something that I can influence; it is a process that is happening within government in Australia at present. As a result of that process, more bills than ever before about uniform schemes are coming to this Parliament. As a result of that, I acceded to a request of the uniform legislation committee to find additional resources for the committee; albeit I had to beat up a couple of Treasurers along the way! Also, the house agreed to extend the time the committee has to deal with legislation. I know that one of those achievements, if I can describe them that way, was acceptable to the committee, and the other one only half acceptable—but that is the nature of the business.

Because of the circumstances in which we now find ourselves, lots of bills that come to this chamber, be they bills that originate in this house or come from the other place, automatically go to the uniform legislation committee, which means they are not dealt with for at least 45 days. Because of the increasing number of these

bills, that impacts on the way the house is managed. I have therefore exercised my mind on two fronts; one being the bills automatically referred to the uniform legislation committee. The relevant standing order provides some fairly broad parameters, such that some bills that I would never have thought of are captured by that standing order. There have been occasions when I have had a different point of view from the presiding officers about what is and what is not a uniform legislation bill.

As part of the process of looking at the standing orders, we have sought to look at that issue to clarify which bills ought to go to the Standing Committee on Uniform Legislation and Statutes Review and which bills ought not. When we come to debate those new standing orders, we will see that there has been some slight change to the current process. At the moment, as I understand the process, when a bill is introduced, a determination is made by the chair that this is or is not a standing order 230A bill. If it is determined that it is, the bill automatically goes to the committee without the house being involved in that decision. The problem for government—it will happen to both sides of politics—is that there may be an occasion when the government does not agree with that proposal or, for reasons best known to itself, does not want it to go to a uniform legislation committee for a particular reason. However, because it is an automatic process the opportunity to prevent that happening is limited, other than perhaps to move a subsequent motion that the time to report is reduced, or something of that nature. I think that is slightly unsatisfactory; albeit I have no problems with the uniform legislation committee dealing with bills that relate to uniform legislation.

The committee's terms of reference and what it does when a bill is referred to it are the other issues that are important to me. I was here when this issue first arose. My vague recollection is that one year, between Christmas and new year, the, I think, Burke government brought in legislation about a uniform scheme that had to be passed. The Parliament was recalled. We did not even have a copy of the bill, and yet it was passed. That provoked a number of members to question whether that was a satisfactory process. Out of that came a standing order for this chamber that required any bill putting into place a uniform scheme to sit on the table for at least 180 days before it could be dealt with, giving that time for members to discover what the bill meant in reality. Over time, that has changed. We set up the Standing Committee on Uniform Legislation and Statutes Review and we now send the bills to that committee on the basis of the house wanting to know the consequences of the legislation for Western Australia. I have always understood that the consequence has to relate to the sovereignty of the state of Western Australia or the Parliament of Western Australia. It is not a process, as Hon Liz Behjat suggested, whereby the committee looks at the policy of the legislation, because if we want a committee to look at the policy of legislation, we have a legislation committee for that purpose. I understand that the uniform legislation committee was set up to make sure that if a uniform scheme being legislated for adversely affects the sovereignty of the state of Western Australia, we need to know how.

Sitting suspended from 1.00 pm to 2.00 pm

Hon NORMAN MOORE: Prior to the lunchbreak I made some comments about the Standing Committee on Uniform Legislation and Statutes Review and I indicated that the Standing Committee on Procedure and Privileges has looked at the standing orders on the way in which this committee operates. I explained a little of the history, and my understanding—whether it is a universally accepted understanding is another thing—is that the committee was basically set up to preserve the sovereignty of the state of Western Australia and the sovereignty of the Parliament of Western Australia. When bills were sent off to the uniform legislation committee, it would look at the legislation to see what effect it would have on the ability of the state to look after its own interests and it would determine whether we would give away some of our sovereign rights as a state to the commonwealth or some other body by virtue of that uniform legislation being enacted. It is not to say that the committee would come back and say, "We do not give away some of our sovereignty." It is a matter of the Parliament being made aware of the consequences of the legislation on the capacity of the state Parliament to legislate for the people of Western Australia. That was my view of the committee's purpose. Bear in mind that we began to do this when a uniform bill about giving away some sovereignty went through Parliament a long time ago and we were required to pass the legislation because, if we did not—I think we lost some money, if my memory serves me right.

This is not meant to be in any way critical, but when I read the Standing Committee on Uniform Legislation and Statutes Review's reports, many of which go into a lot more detail than simply the question of sovereignty, I begin to wonder whether the committee has been exceeding its brief. However, the standing orders do not in any way refer to the sovereignty of the state or the sovereignty of Parliament. I think that there have been lots of discussions on that committee about what it ought to do and not do. That is fair enough because, perhaps, the house has not provided the sort of guidance it may well have done if it wanted that committee to be a little more constrained in the sorts of issues it deals with. I started looking more carefully at this and discovered that attached to a number of uniform legislation committee reports is an appendix titled "Fundamental Legislative Scrutiny Principles". The first question is —

> Does the legislation have sufficient regard to the rights and liberties of individuals?

That is a legitimate question to be asked of legislation, but is it a legitimate question to be asked by the uniform legislation committee? Is that its job? The committee looks at a number of things within that fundamental question. The second main question is —

> Does the Bill have sufficient regard to the institution of Parliament?

That is getting towards the notion of sovereignty but it does not say that Parliament is a sovereign institution on behalf of the state of Western Australia. When we look at some of those scrutiny principles, we can see why the committee has come up with a number of its reports; it has been taking into account these legislative scrutiny principles. The principles include —

> 10. Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
>
> 11. Is the Bill unambiguous and drafted in a sufficiently clear and precise way?
>
> …
>
> 15. Does the Bill affect parliamentary privilege in any manner?

Those are a few of the questions that are considered by this committee when it deals with legislation. I do not have a problem with those principles, but I am not so sure that they should necessarily apply to the uniform legislation committee. Those questions seem to be the sort of questions that the Standing Committee on Legislation or a committee of that type might ask when it looks at a bill in far more detail and is concerned with the policy of the bill.

Perhaps I should indicate that the sixty-third report was delivered in time for the Standing Committee on Procedure and Privileges to be made very much aware of what the Standing Committee on Uniform Legislation and Statutes Review thought its role was. Indeed, the Standing Committee on Procedure and Privileges looked at that particular report carefully in its deliberations. Members will now be aware that we have tabled our report with some revised standing orders, not to constrain the committee, but to ensure that it is directed in a particular way and that its responsibility is made clearer.

In summary, the concern that I have had over time has been standing order 230A(1)(b), which reads —

> (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

The phrase "by reason of its subject matter" has led to some disputes about whether it is a uniform legislation bill. Although the Standing Committee on Procedure and Privileges has left that in the standing orders, I am not absolutely sure that is the best way to go in the future, because I am trying to remove any ambiguity on whether a bill is subject to standing order 230A or whatever its successor will be numbered in the new standing orders. The functions of the Standing Committee on Uniform Legislation and Statutes Review are outlined in section 8 of schedule 1 of the standing orders. I will not go through the content of the proposed orders, but they try to identify that the sovereignty of the state and the sovereignty of the Parliament are the main reasons for the committee to look at these bills.

While I am on my feet, I want to raise one other matter. The committee is called the Standing Committee on Uniform Legislation and Statutes Review. Over the lunchbreak I was thinking that most people would probably think that it is a negative that we do not have a lot of legislation to debate and that the house is not doing its work. It has crossed my mind that we pass too much legislation and we might be better off spending our time on getting rid of some. One of the reasons that this committee has statutes review as part of its terms of reference is that it should spend some time looking at legislation that it considers to be obsolete and that should be removed from the statute books.

At the moment, governments do that through omnibus bills, but they are dealing only with issues that are of no great consequence and are uncontroversial. I do not think it would do us any harm if the Standing Committee on Uniform Legislation and Statutes Review were to spend more time on statutes review, and for Parliament to give some serious thought to which legislation it considers to be obsolete or past its use-by date, so we might start to reduce the amount of legislation that burdens the community, rather than doing as we always do, which is to see whether we can create even more legislation. It is a bit of a pity, in a sense, that parliamentary performance is measured on the basis of how many bills are passed. If we could change our thinking on performance measurement, a key performance indicator could be how many acts we got rid of; that might be an interesting scenario. I just put that on the table and suggest that this committee—although it is very busy at the present time—might like to give a bit of thought to that particular part of its role.

I have had a quick look through the sixty-third report; it is a report that clearly seeks to make the house understand what the committee does, how it occupies its time and the important role it plays. Although I have had some disagreements with the committee, I have to say that I think it does an excellent job, albeit in some areas that it does not need to be involved in. As a federalist, I am vitally interested in a report of this chamber

being able to tell us what impact uniform legislation will have on our sovereignty. That has to be the fundamental reason for that committee's activities and its role, because it is vital to the chamber clearly understanding the consequences of the legislation we pass and, as I said at the beginning of my speech, there is more and more legislation. Personally—this is not the government's view, but my own—I think it is a pity there is so much legislation. We have effectively given away a lot of the authority this Parliament had by enacting uniform legislation or going down the path of harmonisation, which takes away our capacity to make our own laws.

The fundamental problem that the state faces is that the commonwealth government has all the money, and most of its reform agenda in respect of the Council of Australian Governments processes relates to how much money the state is going to get. State governments are put in a position in which they are told that they will get X amount of dollars if they go down the path of uniformity or harmonisation, but if they do not, they will lose the money. As we all know, state governments do not have enough money, so they are often almost bribed, if I can use that term, into agreeing to legislation that they might not otherwise agree to.

We need to know when sovereignty is affected, but at the same time it also would be helpful to know whether uniform legislation is the lowest common denominator and better than what we might have already had in place on a particular subject, as a sovereign Parliament dealing with our own issues.

Anyway, we will probably have a further conversation about this when we deal with the proposed new standing orders. Hon Liz Behjat has already mentioned that if that were to be adopted, it would make some difference to the way this committee operates, so I will be interested to hear the committee members' points of view, at that particular point in time, in some more detail than now. I am happy to note this particular report.

Hon SIMON O'BRIEN: I also think the report needs to be noted. I think it is a good move by the Standing Committee on Uniform Legislation and Statutes Review to provide this report; it is a proactive effort not only to share perspective with other members of the house in general, but also to provide information to members about the evolution of the committee. I think the committee does a useful job and, as the Leader of the House indicated in his remarks just now, it is an increasingly important job.

The point I want to make is that it is an evolving job, and that also leads us to focus some attention on it, not only now, but also when we review the standing orders in the time ahead. As members come and go from the membership of this committee and its successors, it is important that they note that the whole process of what they are examining is evolving. I think we have reached a critical stage in the development of the federation; I would like briefly to give some perspectives on how I see that evolution taking place, obviously with reference to consideration of this report.

The report notes the development of scrutiny of uniform legislation over a number of years, and spends some time talking about the approach that is taken these days. As I say, this has been developing over several Parliaments and it is still a work in progress. This committee does a good job; whether it is up to the standards that were achieved during the thirty-seventh Parliament, of course, is another question! Well, it gives it something to shoot for, and I encourage it to get there! However, the Leader of the House has just invited us to consider the real benefits and purpose of having this committee. It is about the sovereignty that is reserved by this Parliament for the state's own free exercise in future, or what bit of that sovereignty is to be given up, and in what form, in the interests of some uniform scheme that has been dreamed up elsewhere in the federation and to which Western Australia is a participant, regardless of the degree of enthusiasm the state might have for such participation. There are a heck of a lot of them around at this time, and it seems to be a feature of the age. As I say, this is an important time in the evolution of the federation.

We have a device whereby successive federal governments seek to contribute in matters that do not necessarily fall within the federal government's jurisdiction by sponsoring harmonised systems—all with the best of intentions, of course. Inevitably, a federal government can claim that ordinary Australians will be saved squillions of dollars if certain matters are harmonised across the country. In fact, there seems to be no limit to the number of schemes that are in the sights of the federal government—sometimes, I am sure, with the best of intentions; but sometimes also from a perspective of wanting to take control and increase its own relevance.

Successive state governments, here and elsewhere, have had to wrestle, and are still wrestling with, the same questions. For example, when contemplating ongoing involvement in the development of a national scheme, any jurisdiction is going to consider what it already has, and whether it will end up with something better. If the jurisdiction is going to end up with something better as part of a nationally harmonised scheme, it will probably decide to pursue it vigorously; whereas if it already has a scheme that is likely to be better than anything the collective could come up with, it will perhaps consider whether it will go down that path at all. Again, it might be persuaded to contribute so that it can bring other jurisdictions up to the standards that it exhibits, thereby making it of benefit to people who do business in this state to also create the benefits of higher standards across the border in other states or territories where they also do business.

These are not matters that are as simple to work through as I have just described them. As successive governments have come and gone—and I have seen a few now—I have seen the same questions being considered. Where does this leave the Parliament? The Parliament—this is reflected in the report—sometimes feels that it waits on the sidelines while executive government goes off and enters into arrangements. It signs up the state to participate in a program to harmonise a particular area of regulation or other government activity, such as trade activity. It does so, as the Leader of the House told us, sometimes under the additional encouragement that federal funding will be made freely available to those who choose to be actively involved in the process. Therefore, because agreements have already been entered into, documents have been signed and federal government money is riding on the outcome, Parliaments can feel pressured to accede to enabling legislation. A committee set up to scrutinise that sort of legislation or the agreement around it also has pressure brought to bear on it that, for example, this matter has to be finalised by a certain date or else federal government money may not be as freely available and so on. That dilemma is discussed at some length in this report. It is a very real consideration.

I am a member of an executive government. Executive governments and their ministers come and go all the time. I have seen quite a few of these intergovernmental agreements and had the management of introducing schemes on quite a number of occasions for the portfolios for which I have had charge. Indeed, we received a report from this committee just on Tuesday this week about a bill of which I have carriage and which involves some uniform arrangements. I spent two Parliaments as a member of this committee and one Parliament as its chair. What I would say to the committee and the Parliament is that I think there is an absolutely vital role for this committee to play in examining and scrutinising the questions of sovereignty that attach themselves to these intergovernmental agreements.

I am seriously concerned, as both a minister and a legislator, about some of the schemes that I see, whether they are in my portfolio area or in another area that I have had some opportunity to observe. I have also noticed just how, in the time of this government, and certainly over a few years in the Parliament, there has been an evolution in how members view this ongoing process of national harmonisation. I think there is growing disquiet. Every time there is a debate in this place I hear more and more concern vocalised about this trend of sovereignty, no matter how small an individual parcel, being taken away from this Parliament and aggregating in Canberra. A lot of little chips start to add up to a larger hole. The hole, of course, is drilled in the Western Australian Parliament's capacity to be master of its own destiny. I think the role of the committee is one that does need to continue to evolve. It needs to be targeted at working out and reporting to this house on just what are the implications, from the point of view of Western Australia's sovereignty, of the particular agreement or bill that finds its way to that committee for its consideration.

Given that we have touched on the future of this committee and we have already had reference to the redrafting of terms of reference in the context of the review of standing orders, which has been going on for some time, I just want to stray a little outside this immediate report to refer to another related matter. It relates to something else the commonwealth does and which states basically just wear as they flow on in the commonwealth's wake. I am talking about the agreements that successive federal governments enter into on behalf of the whole country that in turn impact on state governments. There have been references for some years, and I believe there is proposed to be reference in the terms of reference under the new standing orders, to this committee having some overview of treaties. I remember that in a previous Parliament this committee actually did look at how it could deliver on this particular term of reference. It conducted some inquiries, communicated with other jurisdictions and so on, and came to certain conclusions. Basically, in my view, and looking at the timetables involved, it is quite impossible for a standing committee of this type to be taking up its time in meaningful pursuit of references about treaties, particularly in view of treaties that are proposed to be entered into, because it just does not have the capacity to do that. It could maybe review them after the fact, but that would be a forlorn and pointless exercise. I would rather that the house perhaps noted the committee's previous work on treaty scrutiny and the conclusions it formed after having spoken to a whole lot of sources, and perhaps come to the view that this committee's most valuable contribution is actually to be made in the scrutinising of intergovernmental agreements from the context of how much of Western Australia's future prerogatives are proposed to be done away with. I thank the committee for its report, which I think is a very useful addition.

HON ADELE FARINA: The purpose of the committee providing the information report to the Parliament was to actually set the record straight about the evolution of the committee and what the standing orders currently provide and require the committee to do. It would seem that, sadly, at least in the instance of one member of this place, the committee has failed to achieve that. From the comments made by Hon Norman Moore, the Leader of the House, it is clear that he has not read the report, because he continues to assert the views that he holds and which are not entirely accurate on what the standing orders actually require this committee to do. However, in the same breath he is amending the standing orders to ensure that the standing orders actually do what he wants the committee to do.

Hon Norman Moore: I am not amending standing orders personally; the house does.

Hon ADELE FARINA: Hon Norman Moore did say that he just skimmed the report. Perhaps he should take the time to read the report and understand and actually consider the report before he stands in this place and makes comment on the report. He might then seek to address the issues contained in the report—rather than his view of life—that are the subject of the matter the committee is currently discussing.

Committee interrupted, pursuant to temporary and standing orders.

[Continued on page 8899.]

DISTINGUISHED VISITOR — HON TAMMY FRANKS, MLC

THE PRESIDENT (Hon Barry House): Members, according to the resolution earlier today, it is time for question time, but before that I acknowledge the presence in the President's gallery of Hon Tammy Franks, a member of the Legislative Council of South Australia. Welcome to WA.

QUESTIONS WITHOUT NOTICE

CAMILLO GREAT-GRANDFATHER — ASSAULT

963. Hon KATE DOUST to the minister representing the Minister for Police:

I ask this question on behalf of Hon Sue Ellery who, unfortunately, is absent due to parliamentary business.

I refer to the 20-year-old male arrested for the bashing on Sunday, 30 October 2011 of a great-grandfather from Camillo.

(1) Was the male known to police prior to his arrest; and, if so, why was he known to police?

(2) Was the male on bail at the time of the assault; and, if so, on what charge or charges?

(3) Was the male on parole at the time of the assault; and, if so, what was he imprisoned for?

(4) Was the male on a community supervision order at the time of the assault; and, if so, for what crime or crimes?

(5) Does the male have a previous criminal record?

Hon PETER COLLIER replied:

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

(1)–(5) The matter is currently before the courts and as such it is not appropriate for WA Police to release the details requested.

SIDNEY BRADY — ASSAULT

964. Hon KATE DOUST to the minister representing the Minister for Police:

Again I ask this question on behalf of Hon Sue Ellery.

I refer to the two males arrested for the bashing of Sidney Brady in Dianella recently.

(1) Were the males known to police prior to their arrest; and, if so, why were they known to police?

(2) Were the males on bail at the time of the assault; and, if so, on what charge or charges?

(3) Were the males on parole at the time of the assault; and, if so, what were they imprisoned for?

(4) Were the males on a community supervision order at the time of the assault; and, if so, for what crime or crimes?

(5) Do the males have criminal records?

Hon PETER COLLIER replied:

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

(1)–(5) The matter is currently before the courts and as such it is not appropriate for WA Police to release the details requested.

PERTH WATERFRONT DEVELOPMENT — INDIGENOUS ISSUES

965. Hon SALLY TALBOT to the Minister for Indigenous Affairs:

I refer to the Perth Waterfront redevelopment project.

(1) Is the minister aware of advice from the Department of Indigenous Affairs that consulting exclusively with the native title owners and claimants may fail to capture all of the people with cultural knowledge of the area and result in a failure to identify all Aboriginal heritage sites?

(2) What has the minister done to ensure that all Aboriginal people have a say in the use of land that has significance for them in accordance with traditional use?

Hon PETER COLLIER replied:

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

(1) Yes, DIA and the Aboriginal Cultural Material Committee recommend wide consultation with Aboriginal people holding cultural knowledge as a common practice.

(2) The state is currently working with the South West Aboriginal Land and Sea Council to develop a strategy for effective Aboriginal heritage procedures in the metropolitan area, and in addition DIA uses cultural information held by the department to advise on Aboriginal people with potential cultural knowledge of the region.

PERTH MAJOR SPORTS STADIUM — BURSWOOD — TRANSPORT INFRASTRUCTURE

966. Hon KEN TRAVERS to the minister representing the Minister for Transport:

I think my question has been redirected to the Minister for Transport. I originally submitted it to the minister representing the Minister for Sport and Recreation. The last question I asked on this subject was redirected to the Minister for Sport and Recreation, but I believe it is now back with the Minister for Transport.

I refer to the previous advice of the Public Transport Authority that the estimated cost for public transport infrastructure to service the new Burswood stadium is $300 million.

(1) What infrastructure is included in this estimate?

(2) Does this estimate relate only to infrastructure in the immediate vicinity of the stadium or does it include changes to the rail network north of the Swan River?

(3) If yes to (2), what changes are required?

(4) When does the government expect to make a final decision on the infrastructure that is required and its estimated cost?

Hon SIMON O'BRIEN replied:

I think this is the question that has done the rounds to sport and recreation and then back via me to transport. So, with a heavy heart, I thank the honourable member for some notice of this question and advise that this question could not be answered in the time provided and the member is requested to place it on notice.

CRIMINAL CODE, SECTION 81 — REVIEW

967. Hon GIZ WATSON to the parliamentary secretary representing the Attorney General:

I refer to the government response to recommendation 1 of the report of the Select Committee into the Police Raid on The Sunday Times. That response was tabled on 11 August 2009 and stated —

> **Recommendation 1: The Committee recommends that the Attorney General conduct a review of s 81 of *The Criminal Code*.**

The government's response was —

> The State Counsel has been asked to provide advice to the Attorney General on the need for a review of s 81 of The Criminal Code.

(1) What advice did the state counsel provide to the Attorney General on the need for a review of section 81 of the Criminal Code?

(2) Will the minister table that advice?

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

Hon MICHAEL MISCHIN replied:

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

(1)–(3) The Attorney General has sought and obtained legal advice from state counsel. That advice is privileged and confidential.

GENERAL PRACTITIONERS — KIMBERLEY AND PILBARA

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

I understand that notice of this question was given to the minister some time ago.

For the towns of Kununurra, Derby, Broome, Halls Creek, Fitzroy Crossing, Port Hedland, Newman, Pannawonica, Tom Price, Karratha, Paraburdoo, and Onslow —

(1) How many general practitioners are domiciled in each town?

(2) How many locums are currently used in the same locations?

Hon HELEN MORTON replied:

I thank the member for some notice of the question, which was originally asked on 21 June. I have had the answer updated and it was still relevant on 18 October.

(1) The following numbers of general practitioners are domiciled in the following towns: Derby, 6; Kununurra, 11; Broome, 20; Halls Creek, one; Fitzroy Crossing, two; Port Hedland, 17; Newman, one; Pannawonica, zero; Tom Price, one; Karratha, 23; Paraburdoo, zero; and Onslow, zero.

These doctors work in private practice, with the Royal Flying Doctor Service, with Aboriginal medical services, and in the WA Country Health Service facilities.

(2) General practices are private businesses that may use locums throughout the year and the minister does not have access to this information. However, the WA Country Health Service does provide some general practitioner services through the WA Country Health Service facilities. Locums are used on a regular basis to provide leave relief and to support service delivery in these towns. The following list summarises the number of locums used per month on average to support emergency care, procedural and general practitioner services within the towns listed: Derby, 4; Kununurra, 5 to 6; Broome, one to two; Halls Creek, two; Fitzroy Crossing, three; Port Hedland, two to three; Newman, two to three; Pannawonica, zero; Tom Price, two to three; Karratha, 3, with an asterisk that notes that Karratha provides back-up medical practitioners to Pannawonica and Onslow as required to support services in those towns; Paraburdoo, two to three; and Onslow, zero.

FRANCES COOPER

969. Hon LJILJANNA RAVLICH to the Minister for Mental Health:

Further to the death of Frances Cooper, an involuntary patient in Kalgoorlie Hospital, and the minister's undertaking yesterday to become fully briefed on this matter. Can the minister advise —

(1) When and why was Frances Cooper let out of the secure facility?

(2) Who escorted her out and how long did they remain with her?

(3) How long had she been missing and what attempts were made to find her?

(4) When was her family informed that she was missing?

(5) How did Frances Cooper come to be on her own 500 metres from the hospital and on a railway line?

(6) Were the police informed that an involuntary patient was missing from a secure facility; and, if so, what time were they informed?

The PRESIDENT: That question was without notice?

Hon Ljiljanna Ravlich: Yes. She said she was going to get a comprehensive briefing.

Hon HELEN MORTON replied:

(1)–(6) It would have been preferable had the member been able to give me some notice of that. Nevertheless, in the absence of notice —

Several members interjected.

The PRESIDENT: Order, members!

Hon HELEN MORTON: I actually do not remember each of the six questions the member read out. I think I got down three of them. Let me say at the very outset that this is a tragic situation. I am incredibly saddened by this situation, which I was fully briefed on at 10 o'clock last night. I want to express my sincere sympathy to the family and friends of Mrs Cooper. I have spoken with the Director General of Health. I sought a fuller explanation from him and his department to understand how this terrible situation could have occurred. I also spoke late last night with the executive director of the WA Country Health Service. I asked the director general to ensure that all operational procedures are undertaken to ensure this situation is fully investigated. As Minister for Mental Health, I recognise there needs to be a fundamental shift in the culture of how people with mental health are cared for in this state.

Hon Ljiljanna Ravlich: Just answer the question!

Hon HELEN MORTON: Just be quiet for a minute, please.

The PRESIDENT: Order! Let the minister answer your question.

Hon Ljiljanna Ravlich: She is not; that is the point.

The PRESIDENT: Order!

Hon HELEN MORTON: This is evident in one of the key action areas that we have already identified in the 10-year vision around "Mental Health 2020: Making it personal and everybody's business". I can also add that on a trip last month to Kalgoorlie I met with executives of the Kalgoorlie WA Country Health Service and visited the secure psychiatric ward at Kalgoorlie Hospital. I spoke to staff there and got a fuller understanding of the improvements that are taking place there at the moment. In particular, a mental health liaison nurse is being recruited to the Kalgoorlie Hospital emergency department —

Hon Ljiljanna Ravlich: You haven't answered one question!

Hon HELEN MORTON: You will just have to wait.

Hon Ljiljanna Ravlich: You don't understand.

Hon HELEN MORTON: You will just have to wait!

The PRESIDENT: Order! Two things: first, please do not interject and, secondly, I refer to the standing orders about addressing all remarks through the Chair. If the minister would do that, I promise I will not interject!

Hon HELEN MORTON: Thank you, Mr President. It is actually much more pleasant addressing you! The issue around Kalgoorlie Hospital's mental health liaison nurse is that that person will be based in the emergency department. He or she will have a connection with all people with a mental illness coming in and out of the hospital to indicate whether they need more appropriate services and to assist in the discharging process. Of course, I have talked at length about the work taking place across the system in terms of meetings with the executive directors of WA Country Health Service and with all of the other executive directors of mental health, including the director general and the Chief Psychiatrist around improved discharge, admission and some clinical practices around that.

With regard to the particular question Hon Ljiljanna Ravlich asked, I want to make it absolutely clear that having got the briefing that I did and being provided with the level of information I was provided with, and also with the knowledge that the hospital has initiated a full internal analysis of the event, it is expected that a subsequent —

Hon Ljiljanna Ravlich: We have no faith in them, I can assure you!

Hon HELEN MORTON: Mr President, I am addressing you and somebody is interjecting. I am sure this is not somebody that you want to be interjecting on this very important, tragic and sensitive matter.

As I said, this situation is quite tragic and is still very recent. The family are grieving. There is real concern that providing any information over and above the preliminary work that has been provided to me would be insensitive and inappropriate. I prefer to wait until the full root–cause analysis has been undertaken before I provide any more information.

"PERTH WATERFRONT MASTERPLAN"

970. Hon LYNN MacLAREN to the minister representing the Minister for Planning:

(1) Were any public submissions supportive of the proposal in the "Perth Waterfront Masterplan" to relocate the Florence Hummerston kiosk?

(2) What action will the government take to alleviate the concerns raised by the National Trust of Australia (WA), the City of Perth, and CityVision, amongst others, regarding the proposed relocation of the kiosk?

(3) Has the public consultation process for the Perth Waterfront project resulted in any modifications to the master plan; and, if so, please identify those modifications?

(4) Please explain how the proportion of the Perth Waterfront development maintained for public use was calculated at 60 per cent when the bulk of the development appears to comprise the lake and private commercial property.

(5) How many commuter cyclists use the cycleway adjacent to Riverside Drive and how will plans to develop the waterfront accommodate these cyclists?

(6) Could the development include a segregated cycle route to avoid potential conflicts between cyclists and pedestrians?

Hon HELEN MORTON replied:

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

(1) No.

(2) The state government is no longer considering the prospect of relocating the Florence Hummerston kiosk to the Supreme Court Gardens, but is considering options for other relocation opportunities in a similar setting.

(3) An extensive public consultation process undertaken in 2008 resulted in the master plan being substantially reduced in scale to align with community sentiment for the project to better reflect the existing city environment. The recent public comment period was to support the rezoning of the land rather than address the design detail of the master plan.

(4) The publicly accessible area has included all aspects of the public domain including the promenades, island, roads and the inlet.

(5) Cycle volume counts are conducted annually at the Narrows Bridge and Causeway interchanges. From this data, the estimated cycle volumes passing through the waterfront area are between 1 200 and 1 500 per day. Commuter cyclists will be accommodated through the continuous recreational shared path through the project, or on road routes utilising new Riverside Drive, and Barrack and William Streets.

(6) The recreational shared path will be designed to delineate between pedestrian and cyclist paths to reduce potential for conflict, while new Riverside Drive will accommodate cyclists on road. The waterfront is being designed as a shared zone for all transport modes. It is not considered a good design outcome for the precinct to create separate routes for all user groups.

PRISONS — REGIONAL PRISONERS IN METROPOLITAN PRISONS

971. Hon MATT BENSON-LIDHOLM to the minister representing the Minister for Corrective Services:

(1) How many male prisoners from the Midwest Gascoyne region are currently being held in metropolitan prisons?

(2) How many male prisoners from the Kimberley region are currently being held in metropolitan prisons?

(3) How many male prisoners from the Goldfields region are currently being held in metropolitan prisons?

(4) How many male prisoners from the Pilbara region are currently being held in metropolitan prisons?

(5) Will the minister table the security classifications of the male prisoners from each of the above regions currently being held in metropolitan prisons; and, if not, why not?

Hon SIMON O'BRIEN replied:

I thank the honourable member for some notice of the question. Some of the regions are described slightly differently in Corrective Services parlance than the ones the member has referred to. I think it will be clear when the honourable member hears the answer.

(1) The Midwest Gascoyne is in the central region. The number of male prisoners concerned is 64.

(2) One hundred and fifteen.

(3) The Goldfields is in the south eastern region. The number of male prisoners concerned is 140.

(4) Sixty-six.

(5) In the central region there are 15 maximum, 30 medium and 19 minimum–security male prisoners. In the Kimberley region there are 20 maximum, 90 medium and five minimum–security male prisoners. In the south eastern region there are 12 maximum, 113 medium and 15 minimum–security male prisoners. In the Pilbara region there are 11 maximum, 44 medium, and 11 minimum–security male prisoners.

HIGHGATE HILL POLICE STATION — EXCESS LAND

972. Hon ED DERMER to the minister representing the Minister for Police:

Some notice has been given of the question.

I refer to the excess land at the rear of the original Highgate Hill Police Station in Lincoln Street, Highgate.

(1) Has the land been sold in whole or in part?

(2) If yes to (1) —

  (a) what funds were received from the land sale;

  (b) have funds received been used or will they be used to pay for a new police helicopter as originally stated by the minister; and

  (c) how much of the land was sold and how much has been retained for use by the Western Australia Police museum?

(3) Has the land been rezoned and what development will take place on the land?

Hon PETER COLLIER replied:

I thank the member for some notice of this question.

(1) Yes, in part.

(2) (a) $1 860 062.73, excluding GST.

(b) Yes.

(c) Fifteen hundred square metres were sold and 1 770 square metres were retained for use by the Western Australia Police Historical Society for the police museum.

(3) The land was sold to the Department of Housing. All issues regarding zoning and site services were being addressed by that agency.

BAIGUP WETLANDS — FUNDING

973. Hon ALISON XAMON to the minister representing the Minister for Water:

I refer to the answers to my questions on notice 4629 and 4631, in which it was clarified that the Department of Environment and Conservation had transferred $900 000 to the Department of Water to be put towards the Baigup Wetlands, and that approximately $35 000 was spent on the development of the Baigup Reserve and remediation plan. I ask the minister to please specify how the remainder of that $900 000 has been or will be spent and when.

Hon HELEN MORTON replied:

I thank the member for some notice of this question. All the funding was spent on the investigations, which included extensive groundwater drilling and chemical sampling; sampling and analysis of adjacent Swan River estuary water; extensive soil sampling in the Baigup Wetlands area, especially the areas disturbed by construction of wetland formation; and long-term groundwater monitoring for acid events. The preparation of the management plan based on these investigations cost $35 000, as noted in the earlier reply.

MENTAL HEALTH — NON-GOVERNMENT ORGANISATIONS — FUNDING

974. Hon LINDA SAVAGE to the Minister for Mental Health:

I refer to the answer to additional question 48.4 from the 2011–12 budget estimates hearing for the Mental Health Commission that $3.692 million has been allocated to non-government organisations to fund programs specifically targeting children and youth.

(1) What programs have been funded to date?

(2) Of the programs that have been funded, what amount has been allocated to each program?

Hon HELEN MORTON replied:

I thank the member for some notice of this question.

(1)–(2) The following agency programs have been funded to date: $150 266 to the Arafmi Mental Health Carers and Friends Association for the mental health promotion—school education program—and holiday recreational program; $175 937 to Curtin University of Technology for the early intervention Aussie Optimism program; $85 404 to the Fremantle GP Network for early intervention; $1 615 729 to Life Without Barriers for youth homeless supported accommodation; $551 240 to the Mental Illness Fellowship of WA for the independent living skills–psychosocial support and recreation program; $160 138 to the Perth Inner City Youth Service for psychosocial support; $80 441 to the Samaritans for early intervention; $446 922 to Youth Focus for early intervention; and $426 463 to Wanslea Family Services for carer family support for children of parents with a mental illness. That is a total of $3 692 538.

SOUTH HEDLAND AND PUNDULMURRA TAFE CAMPUSES — BUILDING MOULD

975. Hon HELEN BULLOCK to the Minister for Training and Workforce Development:

I refer to the answer to question without notice 807 asked on Thursday, 22 September 2011.

(1) Has the mould remediation process at the South Hedland campus and the Pundulmurra campus of the Pilbara Institute been completed?

(2) If no to (1), what is the reason for the delay?

(3) Have any new workers' compensation claims or hazard or incident reports related to the mould outbreak and remediation been received by the occupational health and safety management; and, if so, how many?

(4) Has the Pilbara Institute management been transparent in its dissemination of information to its employees, students and visitors regarding the health risks posed by the mould contamination?

(5) How many staff of the Pilbara Institute have started workers' compensation claims to date, and what action has management taken to follow up on those claims?

(6) How many staff resignations have there been to date from the Pilbara Institute that could be attributed to health concerns resulting from the mould contamination?

Hon PETER COLLIER replied:

I thank the member for some notice of this question.

I note that part (4) does not have a response. I did not notice that when I signed off on the answer. I apologise for that. We had an issue with responses today because the network was down in Dumas House, so I received this answer only about 2.20 pm. I will get the member an answer to part (4) by early next week.

(1) No.

(2) There is no delay. The remediation process is scheduled for completion in stages during November and December 2011.

(3) The Pilbara Institute has received five workers' compensation claims relating to mould.

(4) I imagine that the answer will be yes, but I will confirm that and provide an answer by next Tuesday.

(5) The Pilbara Institute management has received from staff five workers' compensation claims relating to mould. The institute is processing workers' compensation claims through the Education and Training Shared Services Centre and RiskCover. The institute has followed and exceeded the recommended actions in relation to dealing with the mould at both South Hedland and Pundulmurra campuses.

(6) One.

PERRY LAKES DEVELOPMENT — CARNABY'S BLACK COCKATOOS

976. Hon GIZ WATSON to the minister representing the Minister for Environment:

(1) Has the Department of Environment and Conservation received a revised location for R15, the main roosting area within the Perry Lakes night roost site, from Birds Australia?

(2) If yes to (1) —

(a) what are the GPS coordinates of the new location;

(b) has DEC updated its records accordingly; and

(c) how does the revision change the information the minister gave in answer to my question without notice 425 asked on 21 June 2011?

Hon HELEN MORTON replied:

I thank the member for some notice of this question.

(1) Yes.

(2) (a) Latitude 31.9475 degrees south—that is, 31 degrees, 56 minutes and 51 seconds south; and longitude 115.7914 degrees east—that is, 115 degrees, 47 minutes and 27 seconds east.

(b) Yes.

(c) The answer to question without notice 425 asked on 21 June 2011 was based on Department of Environment and Conservation geographic information systems data available at that time. The revision of the central point for night roost site R15 confirms that this night roost site includes the Perry Lakes development.

HARDSHIP UTILITY GRANT SCHEME — WATER CORPORATION — MARGARET RIVER AND SOUTH WEST REGION

977. Hon ADELE FARINA to the minister representing the Minister for Water:

I refer to the Water Corporation.

For each of Margaret River and the South West Region for 2011, how many Water Corporation customers have —

(a) applied for hardship utility grant scheme assistance;

(b) received HUGS assistance;

(c) applied for exceptional circumstances HUGS assistance, and how much additional funding assistance did they receive;

(d) arranged to have their water bills paid by instalments to avoid disconnection; and

(e) had their water disconnected due to the inability to pay?

Hon HELEN MORTON replied:

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

(a) No Margaret River customers; 57 South West Region customers.

(b) No Margaret River customers; 37 South West Region customers.

(c) Four South West Region customers.

(d) There were 173 Margaret River customers; 5 763 South West Region customers.

(e) None.

SYNERGY — CANCELLATION OF EVENPAY BILL-SMOOTHING PLAN

978. Hon KATE DOUST to the Minister for Energy:

I refer to Synergy's former EvenPay bill-smoothing scheme.

(1) When the scheme was axed by Synergy, how many customers —

(a) were left with a debt on their account; and

(b) were left with a credit on their account?

(2) Of those customers left with a debt or underpayment at the end of the scheme, what was the total debt for all these customers?

(3) Of those customers left with a credit at the end of the scheme —

(a) what was the total credit for all these customers; and

(b) for what reason is Synergy not paying interest?

Hon PETER COLLIER replied:

(1) (a) There were 1 091 customers.

(b) There were 923 customers.

Synergy inadvertently supplied the incorrect answer to part (2) of question without notice 923 in relation to the total number of customers active at the time of the suspension of the scheme. Synergy and I sincerely apologise for this oversight. The total number of EvenPay customers active at the time of suspension was 2 014.

(2) It was $358 133.51.

(3) (a) Synergy is not able to provide this number in the time provided, and I will provide it as soon as it becomes available.

(b) Synergy is not permitted to pay interest to customers in these instances.

"HEALTH SERVICES PATIENT FEES AND CHARGES MANUAL" — TABLING

979. Hon ALISON XAMON to the minister representing the Minister for Health:

I refer to the "Health Services Patient Fees and Charges Manual", August 2011.

(1) Will the minister please table this document?

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

Hon HELEN MORTON replied:

I thank the member for some notice of the question.

(1)–(2) The member's electorate officer contacted the Minister for Health's office on 2 November 2011 seeking a copy of the document. A copy has been forwarded to the member's office as requested.

QUESTION ON NOTICE 4716

Paper Tabled

A paper relating to an answer to question on notice 4716 was tabled by **Hon Simon O'Brien (Minister for Finance)**.

COMMITTEE REPORTS — CONSIDERATION

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Hon Jon Ford) in the chair.

Standing Committee on Uniform Legislation and Statutes Review — Sixty-third Report — "Information Report: Scrutiny of Uniform Legislation" — Motion

Hon ADELE FARINA: I do not propose to address all the issues raised by Hon Norman Moore, mainly because they do not relate to the report that is currently before us. They foreshadow what he is proposing to do with the changes to the standing orders, more than anything else. However, I make the point that it would be really helpful if Hon Norman Moore would indicate how he expects the Standing Committee on Uniform Legislation and Statutes Review to inquire into the issue of state sovereignty, because it is my view that we cannot inquire into that issue and how the bill may impact state sovereignty without having a look at the bill in detail and what it does, which requires a clause-by-clause examination of the bill. If the Leader of the House has a different view about that, perhaps he should state that clearly so that we can get an understanding of exactly what he wants.

The other issue is that the Leader of the House has asserted on many occasions that the committee does not have the capacity to look at the policy of the bill. On numerous occasions the committee members have stated very clearly that we do not look at the policy of the bill.

Hon Norman Moore raised the fact that the role of the committee is to look at the impact of the legislation on state sovereignty. It seems that if the executive in a ministerial council meeting, then endorsed by cabinet, has made a decision to enact harmonised law, it has made a policy decision to trample over state sovereignty. If the committee is not permitted to look at policy, and this is a policy decision of the government, perhaps Hon Norman Moore can explain how the committee can then look into the issue of state sovereignty, because clearly this is a policy decision that has been made by the government at the time it decided to enact a harmonised law. Therefore, there seems to be an inherent inconsistency in what Hon Norman Moore is proposing, and perhaps some clarification of exactly what he has in mind and what he means would assist the committee greatly.

It is probably best that the other issues that have been raised by Hon Norman Moore be discussed and considered when we are considering the proposed new standing orders.

I recommend to members of the chamber that they take the time to read the committee's information report so that they get a clear and correct understanding of the history of the work of this committee and exactly what the current standing orders require the committee to do, so that they get a clearer understanding that the committee is operating within the requirements imposed upon the committee by the current standing orders.

Hon NORMAN MOORE: I have been asked a number of questions by the member. I make this point very clear: I am not the person who is proposing to change the standing orders; I am but one member of a committee that has recommended a set of standing orders to the committee. So please do not suggest that I have been responsible for what is in the report of the Standing Committee on Procedure and Privileges. I expressed my point of view in that committee like everybody else. If the member reads the report of that committee, she will find that the report has been signed off by all members of that committee. Whether they ultimately agree in the chamber is another question, but please do not suggest that I am somehow or other running a vendetta against the Standing Committee on Uniform Legislation and Statutes Review and that I have personally been responsible for proposed changes to the standing orders, because that is simply not correct.

In respect to the policy of the bill, there is no question that governments make policy decisions on uniform legislation. It is for the chamber to make a decision about whether it accepts the policy. My view of the uniform legislation committee's role is that it does not pass judgement on policy issues, but in fact passes judgement upon the effect of that policy on state sovereignty. It is as simple as that. We could argue for a long time about this, but I do not propose to take up any more of the chamber's time, other than to indicate to the member that there will be another occasion to debate this further. If the member can convince the chamber that the views of the Standing Committee on Procedure and Privileges are wrong, the chamber will agree with her and put in standing orders that she regards as appropriate.

Hon Adele Farina: The numbers in the house will determine that, and you know what the outcome of that will be straightaway. We will only be going through the motions.

Hon NORMAN MOORE: Hon Adele Farina says that, but let me also say that the review of the standing orders was commenced by a motion that I moved. It involves all parties and if the member was aware of how that committee operates, she would know it was generally done by consensus. I do not recall any occasion on which anybody used any numbers on that committee to come to this particular committee report and its views about the standing orders. Therefore, we have before us the considered deliberations of members from all parties. Whether the house agrees with it is another thing. It may well be that we go off on a divergent path on some standing

orders—I do not know. Our party room has not dealt with it yet, but from my own personal point of view, what is in this report reflects the consensus that was obtained on that committee, and I am of the view that that consensus should prevail. There may be a couple of little areas on the outside in which my party will tell me that it does not agree with me and I will, as always, give in to it.

Several members interjected.

The DEPUTY CHAIRMAN (Hon Jon Ford): Order, members!

Hon NORMAN MOORE: As I said, we will debate those matters in due course, but —

Hon Adele Farina: You might want to read the report, too.

Hon NORMAN MOORE: I did not personally recommend the change to standing orders; I argued my case with others —

Hon Adele Farina: Yes you did; you told me you drafted them.

Hon NORMAN MOORE: I tried to, but it was not accepted. I sought some advice from the State Solicitor's Office about how they might be drafted and how we might deal with the issues that seemed to be causing concern on both sides of the political divide. I know the member is aware of that. I am not the only person in this chamber who had some concern about the amount of legislation going to the Standing Committee on Uniform Legislation and Statutes Review and the huge burden that it is carrying. As much as anything my ambition was, I guess, to more narrowly define the role of the committee so that it can cope with the amount of legislation it is getting. If the committee wants to delve into the policy of every decision made by government that involves uniform legislation —

Hon Adele Farina: We don't and you know that we don't.

Hon NORMAN MOORE: It is my view —

Hon Adele Farina interjected.

The DEPUTY CHAIRMAN: Order!

Hon NORMAN MOORE: It is my view that it is not the job of the committee to say that the policy is wrong because that is for the house to decide, not the committee, but it is the committee's role to tell us the consequences of the government adopting the policy that is contained within the bill and the consequences for state sovereignty. I suggest that is not easy and of course the committee has to go through every clause. There is no argument about that, but it is how the committee comes to the conclusion about the effect on state sovereignty—that is what I think the role is; it is not to tell us that the committee does not think we should have uniform legislation for preprimary education or something, because that is a decision for the chamber, not the member's committee. If the uniform legislation committee was in fact a legislation committee—somebody might like to change the way the committees operate in this house and say the uniform legislation committee should also be a legislation committee that deals with the policy issues surrounding a bill—the member might want to do that, too. I do not care, but the point I am making —

Several members interjected.

The DEPUTY CHAIRMAN: Order!

Hon NORMAN MOORE: We have the Standing Committee on Legislation and the Standing Committee on Uniform Legislation and Statutes Review and they are both meant to be different; they are meant to do different jobs. That is the —

Hon Ken Travers: Well, one of them is just not doing anything!

The DEPUTY CHAIRMAN: Order!

Hon Ken Travers interjected.

The DEPUTY CHAIRMAN: Order! We are in committee dealing with the consideration of reports. One of the great things is that everybody can get a chance in the given time to get to their feet.

Hon NORMAN MOORE: I am happy to sit and let somebody tell me that the legislation committee is not doing its job properly, but that is another thing for another day.

Hon Ken Travers: No, it's not doing a job!

Hon NORMAN MOORE: It had a very, very significant job to do and it came up with a recommendation that said not to pass the bill, which I would have thought was quite a significant achievement really. However, until now, the house has not decided to send any bills to it. It is the house that decides these things, not me.

Several members interjected.

The DEPUTY CHAIRMAN: Order! I give the call to Hon Adele Farina.

Hon ADELE FARINA: Thank you, Mr Deputy Chairman —

Hon Ken Travers: You're just baiting each other to try to extend Parliament; he's got no business.

Hon ADELE FARINA: That is true and I accept that and I will try to be brief.

Hon Norman Moore: For the first time in history we've probably done all the committee reports, as well— they've all been considered.

Hon Ken Travers: Except for one! You won't bring that on, though, will you?

Hon Norman Moore: Which one's that?

Hon Ken Travers: The important one, the one that actually deals with a matter of privilege!

The DEPUTY CHAIRMAN: Order!

Hon Ken Travers: Bring that on, I dare you to! I challenge you, right now, before we go home tonight.

Hon Simon O'Brien: I want to hear Adele; she's only got a minute.

Hon Ken Travers: Sorry, Adele.

Hon ADELE FARINA: I have got zero time, have I not?

Several members interjected.

The DEPUTY CHAIRMAN: Order, members! A great deal of disrespect to the Chair is being shown. I do not want to be interjected on either. The net result is that somebody is going to have their time in debate now reduced because of the interjections. They are a waste of time, in the interest of the public, because Hansard will not be able to pick up on them, so stop it.

Hon ADELE FARINA: Hon Norman Moore continues to assert wrongly that the committee inquires into the policy of the bill. The committee does not inquire into the policy of the bill. The standing orders make it very clear that the committee is not to inquire into the policy of the bill. The standing orders also make it very clear that the whole bill stands referred to the committee, so the committee is required to inquire into the bill, but we do not inquire into the policy of the bill. For Hon Norman Moore to continue to make this assertion in the house is to mislead the house and I believe that he needs to be careful with making these statements that are plainly false. The committee understands its role, it does not inquire into the policy of the bill and we very carefully operate within the terms of reference that the standing orders have clearly set out for the committee to operate within.

Question put and passed.

Progress reported and leave granted to sit again, on motion by Hon Norman Moore (Leader of the House).

WOMEN — PROVISION FOR RETIREMENT

Statement

HON LINDA SAVAGE (East Metropolitan) [3.17 pm]: I would like to begin to speak this afternoon about the rapidly looming crisis that many women in this state and country face; namely, that many do not have adequate savings or superannuation to provide for themselves in retirement. It is no secret, of course, why women find themselves in this position.

Today I begin by giving a bit of background on why so many women, particularly those aged over 50, face this situation. It starts, of course, with the historical failure to recognise and value the unpaid work of women who do the work that is described as "traditional women's work" primarily in the home and caring. However, I will start by looking at paid work income. Income remains one of the most important markers of where women fit in to society. As members know, until 1969 employers in Australia were entitled to pay women less than their male colleagues even though they performed exactly the same work. It was not until 1969 that the Commonwealth Conciliation and Arbitration Commission adopted the principle of equal pay for identical work, which meant women performing the same tasks as men under the same award had to be paid the same award rate. In 1972, the commission expanded that principle to require equal pay for work of equal value, meaning women who performed the same task but under different awards had to be paid the same. If we read the debate from around that time, we can see that there was very substantial opposition to these equal pay claims, particularly on the grounds that the economy could not afford it. Fortunately, in response the commission said —

> In our view the community is prepared to accept the concept of equal pay for females and should therefore be prepared to accept the economic consequences of this decision.

Despite that milestone decision, women's income today remains significantly lower than that for men. According to the WA Department for Commerce website, the gender pay gap in Australia is about 17 per cent. WA has the very sorry distinction of having the greatest gender pay gap, which I understand is currently 28 per cent. The Department of Commerce's *Labour Relations Newsletter* earlier this year reported that the fifth annual analysis of the gender pay gap for large public sector agencies in this state found —

> The data indicates that the combined GPG of the large agencies is 17.4%. The GPG across these agencies ranges from a high of 21.3% down to one agency with a slight gap in favour of women, of 0.6%.

Of course, as the department's newsletter goes on to say —

> The agencies with lower GPGs tend to have a lower average income and are female dominated.

I would like to spend a bit of time talking about what is meant by the "gender pay gap" and what is meant when we talk about efforts to attain pay equity. It is not only about men and women earning the same amount for the same or comparable work or about enabling women to work and hold positions that previously were open only to men. Even in the last month, for example, women in the armed forces have been allowed to undertake certain front-line work that they previously were not allowed to do. But it is not only about those things, although in the last 30 or 40 years we have continued to mark them because we have continued to wait for women to be the first females in particular jobs. It is equally importantly, perhaps more importantly, about redressing the undervaluation of jobs typically done by women and remunerating women according to their value free of gender bias.

As I said earlier, at the heart of the gender pay gap is the failure to truly value and recognise the traditional work of women in the home. By extension the result of that has been that paid work that involves so-called female skills—those associated with caring for children, the ill or the aged—is less well paid than that which involves male skills. One reason that women are less well paid is the assumption that they use inherent skills, not skills that require training or are acquired. The failure to recognise these female skills and value them has had, and continues to have, very far-reaching implications for women and children and society in general. As I get the opportunity, I will continue to talk about those ramifications that have affected women in a range of areas. In this case I will talk about superannuation and women's legal rights.

People will be aware that the Australian Municipal, Administrative, Clerical and Services Union recently made a Fair Work Australia application for an equal remuneration order in the social and community sectors industry. This represents a sector of workers, largely women, who do paid work in the areas of disability, youth, children, community, migrants, Indigenous affairs, tenancies, drugs and alcohol and community legal services—work that falls into that category that is described as involving nurturing and caring. These jobs are in low visibility, small workplaces that are service related rather than product related. In the case before Fair Work Australia it has been argued that that work has been traditionally undervalued. Part 2–7 of the Fair Work Act 2009 provides a mechanism to enable orders to ensure equal remuneration for men and women for "work of equal or comparable value". A decision has been made, although the final decision is yet to be handed down. It is of great significance that Fair Work Australia has recognised that there is not equal remuneration for men and women workers for "work of equal value" by comparison with state and local government employment. Obviously, I await the final decision.

Recently a number of reports have been published on the financial situation that women face. As I said earlier, this particularly concerns women whose working lives span less than 10 to 15 years. These women face the coming together of a range of things that make their capacity to save or accumulate superannuation very poor. I talked about the fact that we know that women are generally in lower paid work and have often had much less time in the workforce. Those periods when women are out of work caring for their children are not recognised as work or valued and paid as work. Fortunately, paid parental leave was recently introduced, which is a landmark. The federal government began paid parental leave only this year. That goes partway to recognising not only the importance of that role, but the value of it.

The reports I would like to begin to speak about tonight include one recently done by the Commonwealth Bank and another that has been done by the Australian Institute of Superannuation Trustees. When I next get a chance to speak on this matter, I will commence by talking about those reports.

LANGUAGE SERVICES — COMMON-USE ARRANGEMENTS

Statement

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [3.27 pm]: I rise in response to a matter raised by Hon Ljiljanna Ravlich during member statements on Tuesday this week. She raised some concerns about a common-use arrangement for language services. She reported some concerns that had been raised with her or that she had formed about what might be happening. I will take the opportunity now to respond to the main points that she raised so that the house will know what is going on.

This potential common-use arrangement came about as a result of agencies requesting a whole-of-government arrangement rather than each individually continuing to call tenders or purchase services on an ad hoc basis. About 30 key agencies use these services, with an annual spend of around $5 million. It is proposed that the CUA would be non-mandatory in its first term to allow flexibility and to see how it works and whether it could be improved. The honourable member claimed that the Department of Finance is unilaterally fast-tracking this CUA with a lack of consultation. I reassure the member that Finance has not acted unilaterally as claimed, nor is the CUA being fast-tracked in that sense. The development of the CUA commenced in July with a potential start date of February 2012. The Office of Multicultural Interests has been heavily involved and is represented on the client reference group. The member will be glad to know that claims regarding alleged lack of consultation are not correct. There has been considerable consultation with the industry and agencies, including the Department of Education, Department of Health, Department of the Attorney General and the Office of Multicultural Interests. Further opportunity for feedback will occur over the next month; industry will be able to comment on the draft request document. That document was released over the last day or two for public comment. We will also hold further talks with the key industry associations and at the conclusion of the process a decision will be made on whether to proceed with the proposed common-use agreement.

In relation to whether the CUA is simply about saving dollars, it is not about achieving cost savings in the sense that was claimed by Hon Ljiljanna Ravlich. It is designed to establish a much more efficient procurement process and to attempt to engender a higher standard of quality control in this area. This is emerging as a significant concern for agencies, as many of the interpretation and translation services are related to legal matters.

In relation to the competence of service providers, at this stage we have chosen an industry-based national standard to accredit individuals—the National Accreditation Authority for Translators and Interpreters. This is the body responsible for setting and monitoring the standards for this industry. NAATI accreditation is currently the only credential officially accepted by employers for the profession. My department will further investigate Hon Ljiljanna Ravlich's claims that this authority has been found to be seriously wanting as a measure of occupational competence, and I will provide feedback on that when we have completed that examination. The fundamental purpose of the CUA is to ensure that government has access to competent and trained people.

In relation to the suggestion that the government fails to recognise the importance of interpreter and translator services, I reassure members that this is not correct. Agencies will continue to engage these services whether or not a common-use arrangement is in place. The CUA is being considered to raise the overall quality of the translator services available to agencies, in recognition of the importance of these services, both internally for government and also for delivering better services to the community.

Finally, in relation to the suggestion that the CUA should be put on hold, the Department of Education in particular has requested that the CUA be established in time for the new school year, if possible. That is why the February 2012 commencement date is being considered. I am advised that the department sees this as a good opportunity to provide better and more consistent quality of services to the diverse school population. A decision on when or if to proceed will be made once the consultation process has concluded at the end of November. As I have previously stated, these services will continue to be purchased by agencies in the absence of a CUA, but I fear that if that were to continue indefinitely, it might be in a less efficient and robust way. We will consider our position on establishing this CUA once the consultation process has concluded, and advise interested parties, including my friend opposite, when that is done.

Finally, Hon Alison Xamon asked a question relating to matters that touch upon the Building Commission, its predecessor, and the activities of that and related offices. I indicate that I have already had people looking at that since last night, and I will be giving some feedback to the member in due course about the matters she raised.

This is, I think, what members' statements are designed for—for members to raise matters directly and in a very timely way so that government can respond. I hope that my response to those two matters was satisfactory for now.

FRANCES COOPER

Statement

HON LJILJANNA RAVLICH (East Metropolitan) [3.33 pm]: I want to put on the public record my concern about the lack of transparency in relation to the death of Frances Cooper. Yesterday I asked the Minister for Mental Health four very simple questions in relation to that case. I will read them again, because I want them to appear on the public record. I want people to know that these questions have been asked and that they have not been answered —

> I refer to the death of Frances Cooper, an involuntary inpatient in Kalgoorlie Hospital, who was hit by a train 500 metres from the hospital after being let out unsupervised on Sunday, 30 October 2011.

(1) Has the minister been briefed on this incident; and, if not, why not, given the serious nature of the incident?

(2) If yes, what were the events that led to Frances Cooper being unsupervised, given that her family requested that she have full-time supervision and be put into a locked ward for her own safety?

(3) Can the minister explain this apparent breach of duty of care to Frances Cooper and what actions she has taken?

(4) If the minister has not been briefed, will she undertake to get a briefing and report on the incident tomorrow; and, if not, why not?

The minister had no answers for us yesterday, so she went off and got a briefing. Fair enough; I would have thought that her briefing was fairly comprehensive, so I asked a further series of very simple questions today, and the preamble was much the same. I was interested to know what were the events surrounding the eventual death of Frances Cooper. I asked the minister why Frances Cooper was let out of a secure facility. Who escorted her out, and how long did they remain with her? How long had she been missing and what attempts were made to find her? When was the family informed that she was missing? How did Frances Cooper come to be on her own, 500 metres from the hospital, and on a rail line? Were the police informed that an involuntary patient was missing from a secure facility; and, if so, at what time were they informed?

This is a very serious set of questions and the minister quite clearly had a comprehensive briefing note that she was waving around, but she chose not to answer a single one of those questions. She chose, instead, to give a prepared reply that had been given to her either by the Mental Health Commission or the Health Department. I have to say that she resembled a puppet of the agency; she certainly had no intention of providing transparency. The best she could do was to say that we would have to wait for a root-cause analysis, and that after that she may provide some information. I can tell members that root-cause analyses are being carried out all over the state as we speak; there is one root-cause analysis after another, because there is one death after another or one adverse incident after another in public hospitals. We never find out the results of the root-cause analyses; the minister hopes that by that time, all this will go away. But it will not go away, minister, because I will make sure it does not go away.

Subsequently I found out that there is a view in the community that the Kalgoorlie–Boulder Community Mental Health Service is a shambles and that it does not provide good services. It is particularly concerning that the minister is funding a lot of community mental health services across the state without any real assessment of the quality of the services they deliver. I have spoken on this issue in the past. I am told that, had the Kalgoorlie–Boulder Community Mental Health Service responded to the concerns of the family weeks earlier, this event could well have been avoided. Instead, when the daughters of the deceased returned to the service, the best that that service could do was to tell the family that Frances Cooper was "normal" and "sane", and that she would be given tablets and sent on her way. That is very, very concerning.

I am told that there was a meeting today between concerned parties and the hospital. This is the time line of the events that the minister could not provide any information on: at 11.25 am, Frances Cooper was let out. At 12.20 pm, the patient care assistant reported that she could not be found. At 1.30 pm, an ambulance is said to have found the body. The hospital did not phone the family. The hospital still has not officially advised the family. At 3.30 the police advised the daughters that their mother was dead. The daughters' response was, "Well she can't be dead; she's in a secure facility. How can our mother be dead?" But she was.

These are simple questions. Simple questions were asked of the minister today. The minister could not provide any answers to any of my questions. It took one phone call from me and five minutes, and some of the truth is starting to come out. We would have to say that this is extremely concerning. We would have to say that what we have here is a minister who is complicit in cover-up after cover-up. We have had no explanation from the minister about the death of Ruby Nicholls-Diver, an 18-year-old woman who committed suicide after an inappropriate discharge from Fremantle Hospital. We have had no response from this minister on the course of events surrounding the death of Mr Michael Thomas. We have had no response from this minister on the circumstances that led to the death of Frances Cooper. The minister knows that there are other cases that have not been made public but which will be made public in due course. She knows there are others. I say to the minister: the families of these people who have died under the watch of her government and while she has been minister deserve answers from the minister. That is the very least she can do. They are simple questions that deserve straightforward answers. The families have a right to know. Can members imagine being the daughters of Frances Cooper and having a policeman knock on their front door and say, "Your mother is dead"? They said, "She can't be dead because she is in a secure mental health facility. She has been put there for her own safety." How can the system fail so badly? How can a patient in a secure ward be let out to have a cigarette and then an hour later be reported missing? Her body was found some time between 12.20 and 1.30 after being hit by a train. How come there are no answers to what happened in this series of very, very sad events? This is a tragic

incident. It involves an Aboriginal woman—a mother, grandmother and community member—who is now lost to all. I put the minister on notice: I want to be receiving, on behalf of this family and all the other families, the information that they need in order to come to terms with their grief.

FRANCES COOPER

Statement

HON HELEN MORTON (East Metropolitan — Minister for Mental Health) [3.43 pm]: I felt that I would just make some comments around the presentation just made by Hon Ljiljanna Ravlich. I find it unbelievable that someone would stand in this place and ask seven questions about things like precise times and dates et cetera but not show respect to this house. Hon Ljiljanna Ravlich was obviously not even looking for the information. That is the issue; there is no real desire for information.

Hon Ljiljanna Ravlich: You had a briefing note and you had information and you chose not to disclose it.

Hon HELEN MORTON: And Hon Ljiljanna Ravlich does not even give me the opportunity —

The PRESIDENT: Order! Look, three members have made statements without one interjection that I can recall. Let us apply the same courtesy and rules to everybody in the house.

Hon HELEN MORTON: Thank you, Mr President. I totally agree with you, because I find the lack of respect shown by this member to be quite unbelievable. She shows a lack of respect to these families—I am not just talking about that particular family. Families have indicated that they do not actually want this sort of information to be discussed this soon after the event. The member lacks respect for this house, because she actually does not want the information. If she did, she would have given me a bit of notice so that I could have made sure that the seven things that she is looking for could have been provided out of the briefing note. The member might have wanted me to answer the question. A tiny show of respect would have been to hand over to me a copy of the seven questions that she has asked. Instead, I was expected to remember all seven points, but I could not remember so many points given her rambling style of conversation and the way the points were run off at a rate of knots, which did not give anybody the chance to write them down, let alone remember them. The lack of respect shown by this member when trying to elicit information is one reason she does not get what she needs or what she thinks she wants.

Hon Ljiljanna Ravlich then went on to say that she already had the information, so she was not actually looking for information; what she was trying to do was to find out whether I had the information. I will tell the member that I have got the information. I can be absolutely clear about one thing; in the space of 24 hours the member has changed her story on the basis of information that she has been given, to the point where at one point somebody said that the time elapsed was four hours or five hours and now it is two hours or one hour. That is an example of what happens when people try to run off too quickly to get information and do not allow a proper briefing, analysis or level of information to be gathered appropriately by the responsible people. The people who are responsible are the director general and his agencies in Health. They are providing information to me. It is coming through in various stages and I am going back and seeking additional information about this, that and the other. I have to say that the appropriate way for Hon Ljiljanna Ravlich to have done this, if she was genuinely looking for information, would have been in a manner that was respectful to the family, the government and the people who provide the services. We need to take into account that some people do not necessarily have the same account of events that she has. However, I am not prepared to stand here and say that the department says one thing and it is different from what people who are in touch with Hon Ljiljanna Ravlich are saying. Therefore, I am not going to make a comment until I get clarification of those sorts of things.

Hon Ljiljanna Ravlich needs to learn that a certain level of respectfulness is needed when going about certain things. I do not believe she will ever manage to get that clear in her head. She has been here for long enough to realise that. She has not learnt it in all these years. Unfortunately, the people whom she represents do not necessarily get the best opportunities from this opposition spokesperson for mental health when they, in particular, do not want her to have information because of the way she handles it.

The PRESIDENT: Are there any further members' statements? No. As we are rising a little earlier than normal, I indicate to members that afternoon refreshments will still be available in the members' lounge.

House adjourned at 3.48 pm

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QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

GOVERNMENT DEPARTMENTS — FORMER WOODSIDE EMPLOYEES

4625. Hon Robin Chapple to the Leader of the House representing the Premier

I refer to the staffing of the Department of Premier and Cabinet and the Department of State Development, and ask —

(1) Are there any former Woodside employees or Board Members currently employed at the Department of Premier and Cabinet and the Department of State Development?

(2) If yes to (1) —

(a) how many former Woodside people are employed by the Department of Premier and Cabinet;

(b) what positions do they hold;

(c) when were they appointed; and

(d) in which Division do they work?

(3) If yes to (1) —

(a) how many former Woodside people are employed by the Department of State Development;

(b) what positions do they hold;

(c) when were they appointed; and

(d) in which Division do they work?

Hon NORMAN MOORE replied:

The Department of the Premier and Cabinet advises:

(1) Yes.

(2) (a) The department does not keep a data base of the employment history of each of its employees. The department considers maintenance of such a data base could conflict with EEO principles and lead to questions of discrimination. Properly the department does require disclosures in relation to potential or actual conflicts of interest for all employees should they arise. However, as has been disclosed previously, one person employed in the Office of the Premier is a former employee of Woodside and another former Woodside employee provides services to the Office of the Premier through a ministerial contract of services engagement of a company.

(b)–(d) The two persons referred to in the response to question 2 (a) are:

(i) Mr Brian Pontifex who is employed as the Chief of Staff in the Premier's Office pursuant to Section 68 of the Public Sector Management Act 1994. Mr Pontifex was appointed on 8 February 2010.

(ii) Mr Geoffrey Wedgwood who provides services to the Office of the Premier through a ministerial contract for services engagement of Bright Blue Communications Pty Ltd. Mr Wedgwood is not an employee

(3) Not applicable.

Department of State Development advises:

(1) The Department of State Development is not aware that any of its employees have previously worked at Woodside. The Department does not maintain a database of employees' previous work history and must rely on disclosures by its employees.

(2)–(3) Not applicable.

OFFICE OF STATE SECURITY AND EMERGENCY COORDINATION — BROOME DEPLOYMENT

4626. Hon Robin Chapple to the Leader of the House representing the Premier

With reference to the Office of State Security and Emergency Coordination, I ask —

(1) Are there officers from the Office of State Security and Emergency Coordination (OSSEC) stationed at the Kimberley Police Complex in Broome?

(2) If yes to (1), how many officers are there and what positions do they hold?

(3) Have Perth based OSSEC officers been dispatched to work in Broome during the past six months?

(4) If yes to (3), how many OSSEC officers have been based in Broome during the past six months and at what cost to the State?

(5) If yes to (3), have they been appointed to assist police with controlling the activities of anti-gas protesters based at camps on the Manari Road north of Broome and near James Price Point?

(6) If yes to (3), how many times have they been posted to work in Broome during the past six months and for what period of time on each occasion?

(7) If yes to (3), how often and how many times have these assignments occurred during the past six months?

(8) If yes to (3), are OSSEC officers currently stationed in Broome to assist police with the control of protester activities?

(9) Have OSSEC officers been sent to assist police with controlling community protest activity elsewhere in the State?

(10) If yes to (9), where have they been sent and for what period of time?

Hon NORMAN MOORE replied:

The Department of the Premier and Cabinet advises:

(1) No.

(2) Not applicable.

(3) No.

(4)–(8) Not applicable.

(9) No.

(10) Not applicable.

DEPARTMENT FOR CHILD PROTECTION — RESTRAINING ORDERS FOR A CHILD

4651. Hon Linda Savage to the Minister for Child Protection

How many applications have been made by the Department for Child Protection pursuant to section 18(2)(a) or 25(2)(a) of the *Restraining Orders Act 1997* for a restraining order for a child in the following years, and how many orders were granted in each of those years —

(a) 2007;

(b) 2008;

(c) 2009;

(d) 2010; and

(e) to date in 2011?

Hon ROBYN McSWEENEY replied:

The Department does not collect aggregated data in respect of applications for violence restraining orders (VROs) made pursuant to section 18(2)(a) or 25(2)(a) of the Restraining Orders Act 1997. Data is held at individual child level.

The Department does encourage fieldworkers to consider a VRO on behalf of children in circumstances where they are living with family and domestic violence, and this is in their best interests.

PUBLIC TRANSPORT — FARE EVASION

4716. Hon Ken Travers to the Minister for Finance representing the Minister for Transport

For each of the Perth Urban rail network, metropolitan bus services and regional bus services —

(1) How many inspectors are employed to monitor fare evasion?

(2) In each month of 2009, 2010 and 2011 what were the —

(a) total number of infringements issued;

(b) categories of offences for which infringements were issued;

(c) total number of infringements cancelled;

(d) total number of cautions issued;

(e) rate of fare evasion;

(f) value of fares evaded;

(g) value of fines issued;

(h) value of fines paid; and

(i) value of fines written off?

Hon SIMON O'BRIEN replied:

The Public Transport Authority advises:

(1) 480

(2) (a) Please refer to Columns 1 and [See paper 4036.]

(b) Fare Evasion, parking infractions, contravening boom gates, consuming alcohol, smoking on premises, possession of a prohibited item, damage, causing a nuisance, obstructing an Authorised Officer.

(d) Please refer to Column 5 [See paper 4036.]

(e) Please refer to Column [See paper 4036.]

(f) Unable to accurately answer this question.

(g) Please refer to Column 4 [See paper 4036.]

(h) Please refer to Column 6 [See paper 4036.]

(i) The value of infringements written off or were unable to proceed (UTP) is outlined in Column 7 of the attachment.

TAXI LEASE PLATES — EXPIRY

4717. Hon Ken Travers to the Minister for Finance representing the Minister for Transport

(1) Is the Minister aware that the first of the taxi lease plates will expire in May 2012?

(2) Does the Minister intend to renew or reissue these lease plates?

(3) Will the existing lessee be given first right to the renewed or reissued lease plate?

(4) If no to (3), what process does the Government intend to undertake to renew or reissue these plates?

(5) How much notice will taxi drivers be given that their lease will or will not be renewed?

(6) When will the Minister advise the taxi industry of what the Government intends to do when these leases expire?

Hon SIMON O'BRIEN replied:

The Department of Transport advises:

(1)–(6) Yes, the lease plates will be offered to a successful pool of applicants and reissued in accordance with relevant legislation. The industry and current plate holders are aware of the lease expiry terms.

CHILD ADOPTION — ASSISTANCE TO MOTHERS

4777. Hon Alison Xamon to the Minister for Child Protection

I refer to past adoption practices, and ask —

(1) Are any non-government organisations provided with government funding to assist mothers with search and mediation?

(2) If yes to (1) —

(a) which organisations are funded; and

(b) how much funding does each organisation receive?

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

Hon ROBYN McSWEENEY replied:

(1) Yes.

(2) (a) Adoption Research and Counselling Service Inc;
Adoption Jigsaw WA Inc.

(b) Adoption Research and Counselling Service Inc. $188,912;
Adoption Jigsaw WA Inc. $113,274.

(3) Not applicable.

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