

Legislative Council

Thursday, 29 March 2012

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

PERTH WATERFRONT PROJECT

Petition

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [10.01 am]: I present a petition containing 1 117 signatures couched in the following terms —

To the President and Members of the Legislative Council of the Parliament of Western Australia assembled.

We the undersigned residents of Western Australia, while being strongly supportive of the concept of a Perth Waterfront Plan, are opposed to the current plan for the Perth Waterfront as:

- the cutting of Riverside drive will have serious impacts on traffic congestion in and around the CBD, throughout South Perth and the broader metropolitan region;
- the plan does not recognize the cultural and heritage values of the important Esplanade Reserve, much of which would be sold off;
- the lengthy construction time will disrupt city businesses and tourism;
- the inlet will have a negative impact on the Swan River; and
- the huge costs of the current project is a waste of taxpayer's money.

Your petitioners therefore respectfully request that the Legislative Council inquire into these matters before any further work on this project commences

And your petitioners as in duty bound, will ever pray.

[See paper 4381.]

PAPER TABLED

A paper was tabled and ordered to lie upon the table of the house.

JOINT STANDING COMMITTEE ON THE CORRUPTION AND CRIME COMMISSION

Twenty-sixth Report — "Exceptional Powers Revocation" — Tabling

HON NICK GOIRAN (South Metropolitan) [10.03 am]: I am directed to present the twenty-sixth report of the Joint Standing Committee on the Corruption and Crime Commission entitled "Exceptional Powers Revocation".

[See paper 4382.]

The PRESIDENT: Does the member wish to exercise the right to make a short statement?

Hon NICK GOIRAN: Thank you, Mr President. I think that this particular report will be of interest to those members in this place who take an active interest in the upcoming discussion in this place about covert powers.

The Corruption and Crime Commission currently acts as gatekeeper of a suite of "exceptional powers" that the Commissioner of Police can apply to use. These include such things as the summoning and examining of witnesses in coercive hearings; the conduct of controlled operations by police officers; powers of search and entry without a warrant; powers to stop, detain and search a person or conveyance without a warrant; the acquisition and use of assumed identities by a police officer; and the conduct of integrity testing programs. It was, therefore, of great interest to the committee that the "Corruption and Crime Commission Annual Report 2010–2011" indicated that one of the two exceptional powers findings granted had been revoked. It is important for the whole community that such powers have robust monitoring and accountability mechanisms in place, and the revocation of the granting of such powers indicated a possible problem with the system. Initial inquiries with the Acting Commissioner of the Corruption and Crime Commission and executive at a hearing before the committee confirmed the basic details of the revocation. The committee then referred the matter to the Parliamentary Inspector of the Corruption and Crime Commission to ascertain the details around the revocation. An exceptional powers finding was granted in May 2011, but in June it was found that a written delegation from the Western Australian police commissioner, as required under the Corruption and Crime Commission Act, had not been in the possession of the applicant. The Acting Commissioner of the Corruption and Crime Commission

immediately revoked the finding, even though this was not required under the legislation, and instituted a more formal, written application process, together with guidelines and written information sheets to assist applicants.

This swift response from the Corruption and Crime Commission in identifying and resolving an issue has maintained the integrity, accountability and transparency of the exceptional powers process. The Western Australian community require a strong and dedicated gatekeeper of powers that can infringe upon their usual and expected rights. The actions of the Corruption and Crime Commission in this case provide re-assurance and are commended by the committee.

I commend this report to the house.

JOINT STANDING COMMITTEE ON THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

Ninth Report — “Amendment of Finding 5 and Finding 6 From Report No. 8” — Tabling

Hon NICK GOIRAN presented the ninth report of the Joint Standing Committee on the Commissioner for Children and Young People entitled “Amendment of Finding 5 and Finding 6 From Report No. 8”.

[See paper 4383.]

CLIMATE CHANGE READINESS (COASTAL PLANNING AND PROTECTION) BILL 2012

Notice of Motion to Introduce

Notice of motion given by **Hon Lynn MacLaren**.

HOMOPHOBIC BULLYING

Motion

HON LYNN MacLAREN (South Metropolitan) [10.07 am] — without notice: I move —

That this council calls upon the Minister for Education to —

- (1) Confirm that both she and the Department of Education have a duty of care to protect all students from bullying and discrimination in schools.
- (2) Acknowledge that homophobic bullying is common in Western Australian schools and the absence of specific anti-homophobia policies is a failure of that duty of care.
- (3) Introduce policies and practices that protect all students against homophobia at school.

This is not a new issue. This is an issue that has come up several times over the past year and a half, because this is one of the remaining issues of discrimination that exists after the landmark equality laws were passed in this state. I draw to members’ attention that it was only two weeks ago that we had the National Day of Action Against Bullying and Violence. Many of us went to an Equal Opportunity Commission forum that was held recently. The Equal Opportunity Commission has targeted bullying as a major issue that it is focusing on, and it has been meeting with various groups to try to figure a way forward.

Many people will have seen last month’s newsletter, “Tackling homophobic bullying in schools”, from the Equal Opportunity Commission. In 2010 the EOC consulted with a range of stakeholders in relation to concerns about this type of bullying in schools. It resulted in the establishment of a working group and a steering committee, comprising senior representatives of state government education and health agencies, as well as Independent and Catholic schools and advocacy groups for the gay, lesbian, bisexual, transgender and intersex community. That is an acronym that we will use a lot today: GLBTI. I draw members’ attention to the comment from the Equal Opportunities Commissioner, Yvonne Henderson, who said research in this area of homophobic bullying was both compelling and disturbing. In answers to questions about this issue, I do not believe that the Minister for Education has the same sense of the compelling and disturbing nature of homophobic bullying in schools. That is the purpose of my motion today.

Two years ago, Daniel Witthaus, who is also an activist in this area of making schools safe, travelled the state and produced a book called *Beyond ‘That’s So Gay’*. Members will be familiar with the statement “That’s so gay”. It is one of the statements that is used to discriminate and negatively affect young people in our schools. It seems to be an innocent remark, but on the face of it that innocence disappears when we look at the impact it can have on a young person’s life. Daniel, when he travelled through this state and visited with schools, especially in rural Western Australia, found that there was a lack of a common approach to this issue. I am going to quote from one of his guides for teachers —

At this moment in time, teachers and schools have never been more supported, prepared and resourced by a range of third parties to implement a *Pride & Prejudice* School approach. Significant numbers of schools are open about being on the starting blocks of the race to affirm sexual diversity and challenge homophobia. Clarity of policies and directives from educational authorities paired with resources and

professional development are akin to the starter's gun. Without this signal, these schools are not prepared to commence participation for fear of disqualification. With the smallest amount of leadership and support many schools would be off and running. Their example would encourage even more schools to participate and put an end to schools feeling like they have their hands frustratingly tied on this issue.

What we are trying to do by this motion is assist many teachers and school principals who want that leadership. That leadership is lacking from the Minister for Education. That is why we are calling on members to consider a specific policy against homophobic bullying.

The reason that I think it is a duty of care is partly illustrated by another example in Mr Witthaus's book. It points to what happens when we do not look after kids who are suffering from homophobic bullying. He writes —

What responsibility can be attributed to educational authorities who do nothing? It might take US-style law suits to jolt some educational authorities into action when their risk-assessment heads realise what such blatant negligence of a significant number of their students could cost. For example, a suburban school in San Jose, California agreed to settle a lawsuit by six gay students claiming continued harassment at the school. Particular issues in the case were school officials 'looking the other way' —

Members might think that it is okay to look the other way, but in this case it was negligent —

in relation to homophobia and blaming the students for being too openly gay.

What is the price tag for that case of six students who were not protected by school officials who chose to look the other way? It was settled out of court for \$US1.1 million. That is the kind of duty of care that I want these members to sit up and take notice of. My final quote from Daniel is —

Whether it is palatable or not, educational authorities do matter. They have the influence to turn the current homophobia dilemma in education on its head with clear, unambiguous policy paired with the channelling of largely existing resources. Too often this 'information' is secretive, inconsistent and at best confusing. What is required is nothing new. Yet as we have seen, change is not conditional on educational authorities overcoming their political constraints.

I want to draw members' attention to the minister's answer to a question without notice that was asked by Hon Linda Savage last night. Perhaps the member will choose to comment on this later in the debate, but in the minister's answer she pointed us to policy that was publicly available on the department's website about behaviour management in schools. She is basically saying that there are plenty of resources out there that teachers and principals can avail themselves of. I went onto this website last night, and I can tell members that there is no specific reference to homophobia. It is about bullying. Bullying is a serious issue, but that, too, is an option for principals to take on board. Principals can choose to, in the context of their community, take on board as much or as little of what is offered of those resources as necessary. That is not meeting our duty of care to ensure that we have safe schools. Hopefully, we will get an opportunity to hear more about that.

Schools do not provide safe spaces for kids who do not fit the status quo. Queer kids often do not fit the status quo in numerous ways. That provides fuel for bullies. Teachers lack the training of how to deal with this. Principals cannot create safe spaces when it is optional. There are so many pressures on them to do a million other performance indicators, and sometimes they fail to create these safe spaces. Professional development is not taken on board. This professional development that was offered was not even supported by our education department. This was a guy from Victoria who was funded nationally to come out here and try to assist us with this. Our attempts to get the education minister to take it on board have so far not borne fruit.

School counsellors lack the experience and in some cases they do not understand homophobia at its root cause. Pastoral care in our schools is not dealing with this issue adequately. This is an issue where the state has to step in with a state policy. It is common for queer students to be derided in all areas of school life, both inside and outside the classroom. How many schools implement and utilise these resources? That is a question I would like to have the minister, if she is going to respond to this, answer in this debate. How many schools have actually taken on board the anti-bullying policies, and how many of them have an anti-homophobia policy? If schools are under no obligation to implement these strategies to protect and support minority groups, then principals, teachers and counsellors will place this in the too-hard basket. That is where the leadership of our legislators has to step in.

Ultimately, treating the symptom—if it is depression, truancy or perhaps attempted suicide—is not where we need to be working. We need to be working at the root cause, which is common respect for people, whoever they are, in their diversity. That is the kind of action that we call for. If members look at beyondblue, it has acknowledged that the literature points to a strong tendency for non-heterosexual people to exhibit higher rates of depression and depressive symptoms than heterosexual people.

I will move on to the program that was presented by the Equal Opportunity Commission in this state only a couple of weeks ago. In that program we heard from the latest researchers in Australia about what is happening for Australian kids. Do you know what we learnt? In December last year, this issue rated on the top agenda for the United Nations. The member states met together to talk about stopping bullying and ending violence and discrimination based on sexual orientation and gender identity. They met in New York headquarters on 8 December last year. The United Nations Secretary-General, Ban Ki-moon, said in a message read by the Assistant Secretary-General —

Bullying of this kind is not restricted to a few countries but goes on in schools and local communities in all parts of the world. ...

This is a moral outrage, a grave violation of human rights and a public health crisis.

Do not be complacent on this matter. We have the ability to implement a policy that can change things for kids in this state, and I ask members to consider that at this point. When those researchers looked around Australia to see whether the existence of a policy in a school made any difference at all, they found that in states where a policy existed, it made a huge difference to the students. Students needed to be aware of the policy, so it is not simply the fact that it exists somewhere in the bottom drawer; it is the fact that we talk about it openly. Daniel Witthaus pointed out that simple things could be done, such as having a poster up about being proud to be gay or some kind of message in young people's language to say that diversity is okay; it is acceptable. That is how simple little things can happen when backed up by a policy.

The research findings showed that there were laws against discrimination on the basis of sexual orientation and gender identity at school in all states, so students cannot be discriminated against, but not at the federal level. Also, all state laws contained legal exemptions for religious schools. I am afraid that religious schools fall outside the tenor of this motion today, but that is something I would like to take up. I know that the Equal Opportunity Commission is looking at that religious exemption as well. However, in this case, we just want to look at the schools in this state that we can more directly control at this time. The Australian Capital Territory and New South Wales have direct education policies solely on GLBTI issues, and Victoria is a shining example in that regard. However, Western Australia, South Australia and the Northern Territory—we are not alone in this nation on this—still lack those policies. We want our state Minister for Education to look at the experiences of other states and implement those policies here, because I think that she will find it is an effective way to reduce the pain and suffering that occurs amongst our young people in this state who are gay.

There are a lot of survey results to point to, but I know that lots of other members want to speak so I will just summarise them briefly. A survey was done in Western Australia by Dr Tiffany Jones who did some research. She found that 19.7 per cent of WA GLBTI students attended a school with a policy of antidiscrimination, and 94.1 per cent of WA GLBTI students were given sexuality education. That is stronger than New South Wales; in fact, the results show that we are teaching our kids about sexuality, but it was chiefly on traditional male–female puberty. For 91 per cent of students it was all about male–female puberty and heterosexual reproduction; 88.5 per cent of these students said that it was all about heterosexual reproduction and heterosexual safe sex. It is alarming that only 11.5 per cent of those WA GLBTI students surveyed were taught that homophobia is wrong. That is the lowest result across all states. A tiny fraction of kids who are queer are being taught that homophobia is wrong. What are the others being taught? At Catholic schools, 58.6 per cent of WA GLBTI students were taught that sex without marriage was wrong and 32.4 per cent were taught to convert to heterosexuality. This is the year 2012 and that kind of teaching is happening in this state. I think we should be a bit ashamed about that. GLBTI students who knew that protective policies were in place were more likely to feel safe. In fact, 75 per cent of those surveyed were more likely to feel safe simply because they knew a policy was in place.

I want to move on because there is a lot to cover, and really this is the start of conversation. This is the start of getting the Minister for Education to take this issue on board. The Equal Opportunity Commission will work on this at a high level over the months ahead. I know that some members on the other side think that this is not a big issue, that there are not a lot of kids who are gay in schools. Maybe in the other place —

Several members interjected.

Hon LYNN MacLAREN: I have had conversations.

Several members interjected.

The PRESIDENT: Order!

Hon LYNN MacLAREN: I am only saying some and I like the fact —

Several members interjected.

The PRESIDENT: Order, members! I had not heard one interjection until that flurry. I do not know what sparked that, but let us go back to one member at a time addressing the chamber.

Hon LYNN MacLAREN: I think it is great that comment solicited that degree of offence.

Several members interjected.

Hon LYNN MacLAREN: I do not make stuff up.

Several members interjected.

The PRESIDENT: Order!

Hon LYNN MacLAREN: I have been advised by some people who members opposite hang out with that they do not think it is such a big problem. That is exactly why —

Several members interjected.

Hon LYNN MacLAREN: I can tell members in the hallway if they want to know who it is that they need to talk to. But, this is why we are debating this issue. This is an important issue and we need to hear voices on all sides who are concerned about it. I look forward to hearing members opposite.

Several members interjected.

The PRESIDENT: Order, members! Interjections of any sort do not help, particularly if accompanied by finger pointing about a certain member. Let us get back to the actual substance of the debate, with one member on her feet making her contribution, then others can follow.

Hon LYNN MacLAREN: I want to focus on why homophobia is different. Historically, there has been broad institutional backing for homophobic beliefs. It is harder for those working with young people to challenge homophobic abuse than it is for them to challenge other bullying, such as that based on race or gender. The education department's approach to date has been to just lump it in with other bullying. I am trying to make the point that this is different. It is more difficult for young people to access help because, as we know, a lot of young people struggle with their sexual identity and they do not know how to speak about it. That is why we have to make it safe for all diversity so that people do not feel that barrier to discuss problems or even just the thoughts they have. Maybe students are being bullied and do not understand how to deal with it. If we do not have an overt, anti-homophobia message in schools, it will be really hard for them to find help. Alienation from homophobic bullying is likely to be more absolute. As I have said before, sometimes students face that in society—it is not just in school, it might be at home as well—which is why we need safe places in school at least, and it is our responsibility as a state to do that.

I will finalise my remarks today by noting that Adrienne Rich has died. Adrienne Rich was a very famous lesbian author—a mother, a lesbian and one of America's foremost writers and poets. She said —

When those who have power to name and to socially construct reality choose not to see you or hear you, whether you are dark-skinned, old, disabled, female, or speak with a different accent or dialect than theirs, when someone with the authority of a teacher, say, describes the world —

[Member's time expired.]

Hon LYNN MacLAREN: May I seek leave to complete my remarks?

The PRESIDENT: That is not an option with this debate, which has limited time for members to speak.

Hon LYNN MacLAREN: Can I seek leave to table the quote for incorporation in *Hansard*?

The PRESIDENT: Can you just explain the document to members?

Hon LYNN MacLAREN: It is just a quote from Adrienne Rich. I was about halfway through reading it and I would like to seek leave to table it for completeness and to have it incorporated in *Hansard*.

The PRESIDENT: There are two steps. The first is that the member seeks leave to table the document.

Leave granted. [See paper 4384.]

The PRESIDENT: The second step is that the member seeks leave to have the rest of the quote incorporated in *Hansard* to complete her comments.

Leave denied.

HON PETER COLLIER (North Metropolitan — Minister for Training and Workforce Development) [10.30 am]: This motion contains some very valid points. I agree with identifying the fundamental concept of bullying in its very generic sense. However, when isolating the particular aspect of homophobic bullying, I have some reservations for a number of reasons. That is not because I do not think it exists but because drawing attention to that very real issue, if anything, will accentuate the problems for those affected.

I wish to say at the outset that the Minister for Education and the Department of Education have a duty of care when it comes to bullying. To be perfectly honest, bullying is one of the most serious issues within not only our school system, but also our community as a whole. We went into the last election with a very broad-ranging

policy on behaviour management to ensure that we helped to overcome those issues, not just as they relate to behaviour but to transcend bullying in a very real sense.

The School Education Act 1999 is responsible for ensuring the safety and welfare of students. We would expect that to be a given and to assume that it actually happens. It would be naive to assume that it exists for all intents and purposes; it does not. All bullying is unacceptable. Homophobic bullying is unacceptable but equally unacceptable is bullying for reasons of racism or other physical ailments, or against those who are perhaps less academically able, those who have parental issues or those who are quiet and isolated. They are all forms of bullying. We have to remember that literally thousands of students in our schools suffer from bullying at the hands of bullies every single day of the year. In addition, thousands of others—not those who are so overt or who seek help or assistance—suffer in silence.

We have extended the counselling services around bullying that are available in our schools, particularly over the past three years. We have sought to ensure that we offer more pastoral care and support mechanisms for the victims of bullying. We have to be mindful of the fact that we need a cultural shift within not just our schools but the community at large to understand and accept that bullying is unacceptable. I am talking about not just homophobic bullying, but all areas.

Prior to the past couple of years behaviour management was very, very general and often inadequate. We came to the conclusion as an opposition that we needed to do something about it, and we did. We understood that we needed some hands-on policies that intimately interacted with students and provided that basis of pastoral care to ensure that all students—not just the victims of homophobic bullying, but across the board—were provided with support mechanisms.

As I said, students in contemporary society have become much more sophisticated when it comes to bullying. There is a misguided notion that bullying is only about someone who is going to bash someone else, hit someone on the head, push someone or pinch something from someone. Bullying in contemporary society is much more subtle. Cyber-bullying is prevalent throughout the community, particularly in schools. The use of texting to intimidate students, lower their self-esteem and destroy their resiliency skills is problematic and becoming more and more widespread. The silent treatment from groups of girls or boys against their peers is becoming more and more prevalent. As I said, bullying is much more subtle now than it ever was. The advent of physical bullying will always be around. That is very overt and very easy to identify. The more latent bullying is the real issue as it affects thousands of students who suffer in silence. They are the students who go home and very often dwell on it. The mind is a battlefield so they will sit around and not talk to anyone, they will not communicate with anyone and very often they are very susceptible to self-harm. That is a very real issue. I am talking about not only those people who are victims of homophobic bullying, but those individuals who are victims of bullying that cover a whole raft of different areas. That is why we need a generic policy on bullying. That is what we are doing as a government. We are working on policies that existed within the education policy, but using the foundations of those policies and enhancing them across the board.

Prior to being elected to Parliament, I was a teacher for 23 years. I taught in a co-educational school, I taught in an all-girls school and for the last 15 years of my teaching career I taught in an all-boys school. I have had a fair degree of experience in the education sector. I am very cognisant of the fact that bullying exists. I would be naive to stand up and talk about bullying and reel out a pile of policies without some sort of practical insight and experience. I have it. As I said, for the last 15 years of my teaching career I taught at an all-boys school where we would assume that homophobic bullying, if anything, would be as prevalent as in any other education system. During the last 10 years of teaching at this all-boys school, I was a house head, which meant that I was responsible for the pastoral care of around 100 boys. I looked after their everyday welfare, not only ensuring that they had their lunches and had done their homework or the punitive things but also that they were in the right space as individuals to enhance their educational opportunities. I also needed to ensure that they were personally responsible for their own actions and everything they did. I came across bullying quite regularly in that role. I am not saying for a moment that this is justification for it not occurring but very rarely would I come across homophobic bullying in that role. As I said, I am not suggesting that it did not exist but we would assume it would happen in an all-boys school. Certainly from that perspective, I found that there was much more tolerance.

I think we are now growing as a much more tolerant society. From a practical perspective, yes, I saw an enormous amount of bullying. Perhaps it is such a sensitive issue that boys were less inclined to talk to me about it. But in the areas of bullying that did exist, unfortunately, racism was still a component in some instances. More often than not, the bullying was over ridiculous things; it would come down to a personal adjunct against an individual that would fester and grow and morph into something larger. More often than not, we could resolve it because most of the students I dealt with one on one during my teaching career understood that their actions were inappropriate. We had that pastoral care at the school I was at.

When I was the shadow Minister for Education, it was very important that we tried to enhance those strategies to incorporate them in the public sector. That is why we introduced independent public schools. We significantly

increased the number of school psychologists and chaplains in our education system to ensure that that pastoral care was available. Having a policy per se and saying this is the panacea for overcoming homophobic bullying is naive. It will not happen. We need a much broader range of strategies to ensure that they incorporate all areas of bullying. Homophobic bullying is no less significant than racist bullying or bullying someone who has a physical ailment or something along those lines. We need to understand that bullying is unacceptable. The education department and the Minister for Education understands that and that is why we were so emphatic when we came to power that we would do something about it, and we have done something about it.

From the minister's perspective, I turn to the strategies that the department has in place at the moment. The "Bullying. No Way!" website is nationally endorsed and is the department's key resource. Students and parents can access this debate through the Ed-e-News webpage on the department's website. As I said, we have to be careful that it is not just a policy per se and we direct people to a website; it has to be incorporated throughout the schools. I am just telling members what is available. All public schools have been informed of the online resources available to support them and prevent and manage gender and sexuality-based bullying and harassment. All public schools have access to the "Growing and Developing Healthy Relationships" curriculum support materials, which were developed in partnership with the Department of Health. GDHR provides specific advice to teachers relating to sexual orientation and identity, homosexuality and the law and discrimination. The Department of Education is committed to the ongoing development of resources and materials for schools, and has representatives on the Equal Opportunity Commission's gender and sexuality-based bullying and discrimination in schools steering committee and working party. The purpose of these committees is the development of a coordinated and coherent strategy across public and private schools to systematically address gender and sexuality-based bullying and discrimination experienced by students in schools. Should the committee develop further resources, these may be a useful complement to resources that schools already have available.

As I said, we have policies that are embedded within the school curriculum and within the school system. But, as I said, it would be naive to assume that people will read those documents or incorporate them into actual practice. That was very evident to me because I found that the difference between the pastoral care provided in the private system as opposed to that in the public system was seismic. That is not a slight on the public education system at all, because there are some terrific things happening in our public education system. We have a magnificent public education system. As I said when I started speaking, one of the biggest issues in our school system is bullying. It is a big issue, but the way around it and the way to support victims is through pastoral care and to look at it as a generic issue and not look at specifics. That is why, as I said, when we went to the last election we promised 60 additional school psychologists to assist with pastoral care. We have already delivered 48; there are 337 in total. That is a 40 per cent increase since 2008. Now, 578 schools have access to a school chaplain. That is an increase of 342 since 2008, or a 145 per cent increase.

Some people have issues with the idea of school chaplains. I do not; I really think it is a magnificent policy. It is a great program. People think that employing school chaplains is some sort of eye-raising issue because they might try to indoctrinate Christianity into a school ethos. I do not have a problem with that personally, but others may have. I am saying that chaplains are not in schools to indoctrinate. Chaplains are there to provide pastoral care; they provide a very, very valuable, rich resource to the school system to ensure that they can provide pastoral care that neither mainstream teachers nor school psychologist can. Very frequently, students are averse to speaking to the school psychologist; a house head, for that matter; a teacher, a deputy or a headmaster regarding a bullying issue. But they will be more inclined to speak to the school chaplain. The school chaplain is someone who will care and listen to them and treat any conversation in confidence and enhance their self-esteem. Having visited several schools now that have school chaplains, I can assure members that they are very successful in providing that support mechanism. That was why it was very important to me, as shadow minister and as part of a Liberal-National government, to increase the number of chaplains in our schools as support mechanisms in relation to behaviour management.

Having said that, we still have a long way to go; we really do. We have to reach a point at which that message filters through to all students in our schools and, ultimately, to the community at large that bullying in any shape or form is unacceptable. Yes, homophobic bullying is unacceptable; racist bullying is unacceptable; and discriminating against someone based upon how they look, how they feel, what they say, who their parents are or how many parents they have is completely unacceptable. That is the message that must translate into our education system. That is why, as I said, it was very important to the government that we gave schools the opportunity to implement those policies.

We introduced the independent public school system so that schools could work to deliver what was needed in their particular cohort. They would not be delivering policy that was decided in "Silver City" and forced upon them; they would listen to their community and provide the support mechanisms that are necessary. Schools are clambering over one another to become independent public schools so that they can determine what support

mechanisms they need, and then enhance those support mechanisms specific to their particular student base. They have been very successful.

We have a long way to go, but at the moment the aim of providing sound behaviour management strategies that incorporate a very comprehensive anti-bullying mechanism within our schools is very, very prominent in the eyes of this government, and will continue to be so. I would like to think we will reach a point at which most, if not all, government schools are independent public schools so that they can determine what is best for their cohort and can implement the policies which are best for them and which will include a comprehensive anti-bullying policy.

The PRESIDENT: I have noted other members who have risen, but I will give the call to Hon Ljiljanna Ravlich.

HON LJILJANNA RAVLICH (East Metropolitan) [10.45 am]: I rise to support the motion. In doing so, I believe that there is no place for homophobia in a civil society. Certainly coming to terms with one's own sexuality is an important part of achieving a happy and healthy life. I cannot imagine the pressure on a student who is trying to come to terms with their sexuality whilst at the same time being bullied about it. This is what is happening to thousands of students in hundreds of schools right across the state. It is happening in not only public schools but also private schools. As shadow Minister for Mental Health, there is no doubt that there are risks, mental health risks in particular, for young people during this time when they are trying to come to terms with their sexuality. I think we would all agree that there is no room for homophobic bullying in Western Australian schools. To that extent, I fully support the motion before us.

Without question there is homophobic bullying in Western Australian high schools and the Department of Education has a duty of care to protect all students from bullying and discrimination in schools. The real question is: does it exercise that duty of care and, if so, why do we have a problem? When we look at the duty of care on the education website, it is clearly a very loosely worded policy. A number of questions have to be asked on this, including: does the education department do enough to deal with bullying, generally? I think most people would say no. Do they do enough to deal with homophobic bullying? I think the answer there in particular would be definitely not. Does the evidence suggest that more needs to be done on both bullying and homophobic bullying? I think everyone would agree that that is the case.

We just heard the Minister for Training and Workforce Development say that a policy would not be a panacea to overcoming homophobic bullying. Whilst that may be the case, any reasonable person would hold the view that it certainly would be of some help. I would argue that if it were to be of some help, surely even that is better than no help at all. As shadow Minister for Mental Health, there is no doubt in my mind that there is a very strong link between school violence, sexual orientation, mental health and, ultimately, suicide. We cannot be complacent on the matter of homophobic bullying. I believe a school policy would make a difference and I think the government should make it a priority to develop a policy for homophobic bullying.

The duty of care policy statement that can be found on the education website is very poorly worded. It talks about teaching staff having a duty to take reasonable care for the safety and welfare of students whilst students are involved in school activities or are present for the purposes of school activities and so forth. It is very general. It is about teaching staff having the duty; it is not about the organisation having the duty. I assume that if a legal case were to arise in relation to any matter concerning a failure of duty of care, the education department would, after all, defend the teaching staff. There is no direct mention of homophobic bullying on the website. However, the policy section deals with a whole range of discriminatory behaviours and refers to sexual orientation, homosexuality, lesbianism, bisexuality, heterosexuality and so on and so forth. Clearly, none of this is tight enough; none of this is acceptable. Clearly missing here is a direct policy on homophobic bullying.

I note that a number of questions about homophobic bullying in schools and education programs have been asked of the Minister for Education by members of this place. The responses have been very, very poor indeed. Questions have been asked by Hon Lynn MacLaren, Hon Alison Xamon and Hon Linda Savage. Hon Linda Savage asked —

- (4) Does the minister believe that teachers have adequate training and policy guidelines to handle homophobic bullying?
- (5) Does the minister agree with the comments of the Commissioner for Equal Opportunity that teachers need specific guidelines on bullying based on sexual identity?

I will provide the minister's response. I cannot believe it. They were two simple questions. This was the minister's response —

- (4)–(5) The honourable member is seeking the Minister for Education's opinion contrary to Legislative Council standing order 104(1)(b).

How pathetic is that? It was absolutely pathetic and unacceptable that a minister of the Crown, on an issue that is so important to the health and mental wellbeing of a significant group of students within our school population, could not answer such simple questions.

The Commissioner for Children and Young People recently produced the report “The State of Western Australia’s Children and Young People—Edition One” in February 2012, which dealt with the concerns of children and young people. It asked a series of questions. According to the report —

Asking children and young people to identify issues of personal concern provides an indication of subjective wellbeing by highlighting aspects which children themselves believe are impacting on their quality of life.

Two age groups were surveyed—11 to 14-year-olds and 15 to 19-year-olds. The report recorded that bullying and emotional abuse was an issue for 21.7 per cent of 11 to 14-year-olds and 19.7 per cent of 15 to 19-year-olds; suicide was a concern for 21.3 per cent of 11 to 14-year-olds and 19.7 per cent of 15 to 19-year-olds; sexuality was an issue of concern for 11.1 per cent of 11 to 14-year-olds and 11.8 per cent of 15 to 19-year-olds; and personal safety was of concern to 24.9 per cent of 11 to 14-year-olds and 21.2 per cent of 15 to 19-year-olds. There is no doubt in my mind that all these interrelate and that all these are risk factors for young people. There is no doubt that the absence of a policy on homophobic bullying in schools means that, for a significant number of young people, their personal safety is at risk, they are at higher risk of bullying and emotional abuse, and they are therefore at higher risk of depression and suicide. That should be enough to send a very strong signal to the government that something needs to be done about it.

Hon Peter Collier mentioned the types of bullying that can occur. I agree with him that it is not just about people being pushed down stairwells or being physically hit. All sorts of mental abuse can occur—social exclusion, people spreading rumours about people who have a different sexual orientation, cyber-bullying, being humiliated and so on and so forth. We know that this is a growing problem. It needs a solution. Simply sweeping it under the carpet, which was basically the response given by the Minister for Training and Workforce Development on behalf of the Minister for Education, just simply will not do the job. That is all I heard in his response from the government—we really do not have a problem; there is no problem out there; what we have and what schools are individually doing is good enough.

The PRESIDENT: I will give the call to Hon Philip Gardiner in the interests of balance across the chamber, and then I will go back to Hon Alison Xamon and then back to this side of the chamber.

HON PHILIP GARDINER (Agricultural) [10.54 am]: Thank you very much, Mr President. I have had some experience in this. It may not be recent experience, but I have some insight into how things can change when there is a bullying environment. My sons and I went to Guildford Grammar School. Those members who are old enough will recall that occasionally parents became very public about bullying at Guildford Grammar School. It was on the front page of the newspaper. There was a view that bullying was an endemic difficulty at Guildford. I came through a system in which we had seniors, if you like. There were different aspects of that. It did not affect me, although there were the bullying groups. When my sons went there, the bullying was sufficiently deep for the school to do something about it. In the year before our eldest son, Charles, became captain of the school, he was part of a committee, with a chap called Angus Turner who subsequently was a Rhodes scholar, that looked at what was actually happening within the school. In there is one of the first ways that bullying has to be treated; it has to be treated with the students learning what the problem is and devising a solution, albeit along with staff and pastoral care people, because bullying is a cultural problem. It is basically about respect, and especially respect for difference. We are all different, but often if someone is too different, they become prone to bullying. On the other hand, that has to be within a value system. I will use the term “drop-kick” to describe some people who either are self-centred or cause much difficulty within a group. How does one try to change that person to be consistent with the value system of a particular school?

This is not just about Guildford; this is coming from all schools. In 1995 Guildford developed an anti-bullying policy, which was subsequently adopted or taken up and maybe tweaked a bit by Hale and other private schools and possibly beyond that. I think Guildford was the first to actually develop a foundation for causing a cultural change in this area of bullying. They appointed a counsellor as a result. We often think of people being bullied physically, but of course non-physical bullying is just as bad. If students felt like they were being bullied, they could go to the counsellor. That came in in 1996. By about 2002 or 2003, my understanding is that the counsellor left because the pastoral care, which the school was also pretty good at, apart from this bullying aspect, began to take over and manage it. The culture had been turned around by the students. When our younger son, James, became the vice-captain of the school, his bullying issues were not so much with his fellow students but more with the way in which those who were insufficiently intelligent were not being recognised enough within the school. He was really taking it on with the school management.

Bullying has a lot of different facets, but it is about respect and respect for differences. That is what I wanted to say in adding a little to this debate. A cultural change has to be put in place. That is the first thing. It is a big

change. It is hard to get cultural change in businesses and large organisations, and it is just as difficult in schools but it can be done. However, this change has to result from the students driving it, with a package of support mechanisms to realise the result.

HON ALISON XAMON (East Metropolitan) [11.00 am]: I rise to give my complete support to this motion. It is a really important issue that we need to discuss. Homophobia and trans-phobia in all its forms is absolutely abhorrent, whether we are talking about discrimination and taunting or the very overt homophobic bashings that occur. People need to remember that homophobic thinking is a sure and steady contributor to the unacceptable and what we know to be the devastatingly high, proportionally, rate of suicide amongst those people in our community who find themselves to be same-sex attracted, intersex or transgender.

We are getting much better at accepting differences. We are quick to condemn racism, although unfortunately not in all cases. It is quite clear that we do not tolerate racism amongst some groups, but there is still a sense that racism tends to be tolerated amongst other groups. Generally, we have come a long way in dealing with racism. In the same way we recognise that discrimination against people on the basis of disability is unacceptable, and we have entire programs dedicated to promote issues around discrimination against those who have a disability and that, at least within our schools, we have an understanding that boys and girls should not be treated differently. Unfortunately, a lot of the overtly sexist behaviour that still exists comes along later in life. In dealing with systemic issues of discrimination, we have come a long way; but we still have a long way to go. However, there is a significant exception, and that is when we are talking about discrimination against people who are transgender, intersex or same-sex attracted.

The issue of specialist programs that deal with homophobia within our schools was something I dealt with a decade ago when I was dealing with equal opportunity as an organiser with the State School Teachers' Union of WA. From 2002 to 2005, I was the union representative on education department equal opportunity committees that, amongst all the other issues of discrimination we were talking about within our schools, started tackling the issue of what to do about systemic homophobia within our schools. I was really impressed with the thinking at that time and that people were starting to recognise this as an emerging issue. It was not a new issue, but the recognition was starting to emerge that this issue needed to be addressed. Part of that meant that through my work within the union, we established a group of teachers called BLGITS—bisexual, lesbian, gay, intersex, transgender and their supporters. They were very happy to put “supporters” in there, which is how I managed to sit in there, because I did not identify with any of those groups although I consider myself to be an ally for the gay, lesbian and transgender community. We tried to raise the issues of homophobia within our schools. Interestingly, the initial focus of that group was to talk about experiences of homophobia by the staff who identified as being same-sex attracted, transgender or intersex. One of the overriding factors that these teachers experienced was that the homophobia they experienced was very rarely so overt as to be able to be pursued within the Equal Opportunity Commission, for example, but it was very much pervasive and ongoing and, more importantly, the fundamental characteristic was that it was incredibly isolating. I found that it was often only one teacher who would identify in this way and they were on their own in a school and expected to address this issue. As the group continued to grow and become more confident and vocal in trying to address these issues, the teachers themselves identified a very strong need to deal with the underlying homophobia that also existed for students who they knew were either questioning or had come out and identified as same-sex attracted. They were very concerned that the experiences they were dealing with were also being dealt with by students that they could identify within their schools. That is why the work of that group started to extend to how we could tackle the overarching issues of homophobia within our schools.

One of the things we started to look at within the education department was the rollout of programs such as Pride & Prejudice, which Hon Lynn MacLaren mentioned, which has actually been around in schools in other states for quite a long time and is considered to be very successful; it is highly reputable and certainly very empowering for students who find themselves questioning their sexuality or who have gender identity issues. I am really concerned that we have actually gone backwards on this issue. I have raised that before and I want to speak today about why I think we have gone backwards. As Hon Ljiljana Ravlich pointed out, I have raised this issue in estimates hearings in the last few years, asking what specific programs the Education Department is promoting on a statewide level to deal with issues of homophobia. The response has been pretty much exactly what the Minister for Training representing the Minister for Education said to us in this place—that is, an assurance on the rollout of pastoral care and psychological assistance programs that should be able to deal with that. I want to unpick that a bit and say why I do not believe it is sufficient.

The first thing is that I acknowledge the enthusiasm for the 40 per cent increase in the number of chaplains within our schools. I accept there are some really good chaplains out there. I have met them. I have spoken to them. Some of them are really highly qualified in youth and counselling issues, and I understand that they are governed by a faith of inclusiveness and love. Having said that, I am going to be very clear that that is not the case for all school chaplains. I have spoken to school chaplains who believe it is their role to proselytise and judge. They may be a minority, but we do not know whether a student who is dealing with issues of sexuality

will end up speaking with that type of chaplain and will face additional problems. There is a real issue here because we do not have consistency and people can bring their own prejudices into their schools and can serve to further aggravate and distress students who are already at a high level of need. Likewise, it is not appropriate to say to students that they need to go and see the school psychologist. School psychologists are already overworked. I am glad we have more, because we need them, but they are already dealing with so many issues already.

Quite frankly, the problem is that we are then pathologising homophobia as being the problem of the individual student. It is not the problem with the individual student; it is a problem with broad thinking that needs to get addressed and tackled at the school level. If an Aboriginal student came to the school and said they were subjected to racial bullying, there is no way we would say to them, “You just go off and sort that out with the counsellor.” We would say that this is a problem and we are not going to tolerate racism in this school and there would be a system-wide approach to address it. That is what happens: we have those programs and people can draw on those resources. But we do not do that for our gay, lesbian and transgender students. That is absolutely unacceptable.

Homophobia is extremely damaging. It is absolutely appalling to expect individual students who are isolated in schools to continue to be isolated and to somehow deal with this homophobia on their own. We need to look at system-wide approaches. We need to encourage these broad programs that tackle homophobia at its roots and to get people to question their thinking and whether it really is appropriate to have these sorts of attitudes permeating within our schools.

Our schools are meant to be secular places and safe places of learning, but we are not ensuring that. We are failing our same-sex attracted, transgender and questioning students. Frankly, we need to turn it around and look at a system-wide approach to tackle this.

HON DONNA FARAGHER (East Metropolitan — Parliamentary Secretary) [11.10 am]: I also rise to say a few words on this motion and in doing so I also recognise, absolutely, the concerns about homophobic bullying that Hon Lynn MacLaren is raising through this motion. I will, however, say very briefly that I disagree quite strongly with some of the value judgements that have been made by not only the mover—we had a chat behind the Chair—but also Hon Ljiljanna Ravlich. It was inferred that somehow members on this side of the house do not think bullying is an issue. That is a very poor value judgement that has been made and a very poor reflection. I, along with all members of this house, I would have thought, believe that bullying in any form is absolutely abhorrent. In saying that, I am also of the view that bullying is unacceptable in any form, irrespective of the reasons that a person is bullied in the first place, whether that is because of their sexuality, cultural background or the way they look.

We know that bullying occurs through a variety of means. It can be done through physical and emotional violence. It can be up-front or insidious. Cyberbullying has been briefly mentioned. I agree with Hon Lynn MacLaren that we need safe places for people who are being bullied. However, unfortunately, we now have mobile phones, Facebook pages, social networking sites and all those things on the internet. Those new elements, which not very long ago we did not have, mean that students who are being bullied can find it very difficult to find a safe place. When they go home, they turn on the internet and it is there. I will read an excerpt from an interview on *60 Minutes* to demonstrate that. Bullying can now be 24/7; there is no escape for these students. That is terrible. I do not disagree that we need to look at the policies in place and if they need to be beefed up, they should be. We need to look at the issues surrounding pastoral care and all those things. We need to make sure that we also have good supports for parents. As I said, parents now deal with things in relation to the internet and the like. Perhaps 20 years ago parents did not have to deal with those things. It is an added element that we all have to manage.

I was one of the lucky ones to not be bullied. It is awful to say “one of the lucky ones” because many people are bullied. Every now and again I would be teased a bit for my red hair. I was called “carrot top” surprisingly enough. When Hon Lynn MacLaren spoke, Hon Ljiljanna Ravlich even made a jibe about my red hair. That is fine; I can handle that. However, teasing can lead to something far more sinister. It might start off in a mild way, but end up far worse than what anyone might have expected.

I will give a couple of examples from a cyber-bullying point of view. In a report on *60 Minutes* the interviewer, Liam Bartlett, spoke to some students who had been bullied, including a young girl called Ali —

LIAM BARTLETT: Like millions of kids around Australia, Ali Destrang is a child of the communication age. She spends hours on the Internet and mobile phone and it makes her a prime target for the new breed of cyberbullies. What sort of things do they say, Ali?

ALI DESTSTRANG: Like, call me a fat loser or — and stuff like that. Really mean stuff.

LIAM BARTLETT: What is it about what they say to you on the computer that hurts?

ALI DESTRANG: Everything.

LIAM BARTLETT: As someone not so familiar with this teenage cyberworld, I was stunned at how rough it can get and how immediate. I watched as, seconds after logging on, Ali was confronted by her tormentors — former friends from school who've turned on her.

This is obviously what they had written —

“Why dun u get in it —

They were referring to a coffin —

and die coz we will all be go to your funeral and be dancing and partying.”

Then they realise that Ali has joined the chat room, so they say —

“Everyone stop talking for a sec. Have to say something to Fat so she reads it.”

That was referring to the girl.

The report refers to a second sort of situation in which —

... the bullies' other weapon of choice is the mobile phone — not just toxic texting, but a violent new trend where a victim is bashed and the humiliation videoed on a mobile phone to be posted on popular Internet sites for millions to see.

It refers to a young girl being bashed and taped by not only one, but three mobile phones. The video was then —

... posted on YouTube and people were laughing about it in Internet chat rooms. Meanwhile, Katie was in hospital with head injuries and a broken jaw.

From my perspective, this is a good opportunity for us to debate this issue of bullying. It is important that as a house we talk about these issues, because we do not know how much they are being talked about in other places. Bullying is talked about a lot and perhaps that is the issue. We need to look at where we can put some other mechanisms in place.

I applaud the work that is being done by the government in pastoral care, school counsellors and the like. I trained as a school psychologist and if there is a gap—I am not sure whether there is—in the training of school psychologists in respect of bullying, let us look at that. That is fine. We need to deal with this issue as a whole. I do not know why these girls in the *60 Minutes* report were bullied in the first place. That is the point; it should not matter why Ali and Katie were bullied. The fact is that they were bullied. It is incumbent upon everybody; whether lawmakers, parents, teachers or simply someone within our community, we should all care for the Alis and Katis of this world who cannot go to school for fear of bullying and who cannot go home because when they turn on the internet, someone will have a crack at them again. That, in my view, is what we should be addressing—the actual reason for the bullying. We need to make sure that those who are bullied are supported, and their parents are supported, in helping them manage the situation. I do not think that we should segment the issue, because I would not want anyone who is bullied, for whatever reason, to miss out on the support they need.

HON LINDA SAVAGE (East Metropolitan) [11.19 am]: I also attended the Equal Opportunity Commission forum for challenging sexuality and gender-based bullying in schools on Friday, 16 March. There were three excellent speakers. The first one was Professor Donna Cross, who is the 2012 Western Australian of the Year. She described bullying as a violation of the basic human right to be respected and safe. On that day, which was National Day of Action against Bullying and Violence, she said that 200 million children would be bullied worldwide and in Australia 100 000 children—that is, they would be the victims of intended malicious behaviour in a situation of unequal power.

Bullying in the workplace and schools is now recognised as a serious problem for not only the individual but also the wider community. The Productivity Commission 2010 report, “Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety” looked at bullying and harassment in the workplace and estimated that it costs \$15 billion a year.

Professor Donna Cross is an expert on bullying. She has provided me with data about the prevalence of homophobic bullying. She said at that conference that she favoured a stand-alone policy that reflects the best research that we currently have.

I will give members some of the data that she provided to me yesterday, for which I am very grateful. I will not be able to read all of it, but I am very happy to share it. The data states —

5–11% of Australian youth are gay or bisexual, and they may be up to 6 times more likely to commit suicide than other young people The experience of homophobic bullying contributes to poor health and wellbeing outcomes among these young people.

In 2010, of over 3000 Australian same-sex attracted youth, 61% reported experiencing verbal homophobic abuse, 18% reported physical abuse, and 26% reported other homophobic abuse (e.g. exclusion, rumours). 80% of those who experienced homophobic bullying reported that this was most likely to occur at school.

One of the reasons that bullying in its current form is so harmful for people who are experiencing it is that it can take place 24 hours a day. But according to the information that has been provided to me by Professor Donna Cross, 80 per cent of those who experience homophobic bullying usually experience it at school. The data states also —

Homophobic bullying was targeted at males more often than females

Gay students in Australian schools who felt that their schools supported them and had clear policies against homophobic bullying were less likely to self-harm and attempt suicide However, 37% described their schools as homophobic or very homophobic. Almost half felt they had no access to social or structural support for homosexuality in their school. Many gay youth desired sexual education in schools which was more inclusive of same-sex attraction

That is coming directly from Professor Donna Cross, who is an expert.

Some reference has been made to the research that was presented at that forum, which showed that Western Australia rates the lowest when it comes to providing specific policies to address homophobic bullying.

With regard to what the Department of Education does provide, I went to the website and I googled the word “homophobic”. I did not get one result. I googled the word “homosexual”. I did not get one result. I also googled the words “same sex attracted”. I got 49 responses. The first of those responses was, “Years 4 to 7: helping your child with maths: Learning Times Tables”. If a parent or a schoolchild went to the Department of Education website and put in those words, that is what they would get.

I also have a reference that was given to me in a very specific question that I asked of the Minister for Education. In that question, I attempted to exclude all the things that I had looked at on the website. The answer to that question pointed me to a document titled “Behaviour Management in Schools”. In that document, there is only one reference to bullying. It is at page 16, point 5.9, and it is headed “Harassment”. It states —

Offensive, humiliating, threatening, abusive or intimidating behaviour that is directed at individuals or group/s for either perceived or real attributes. It includes gender, religious, age, race and sexuality based harassment.

The research that I have received from Professor Donna Cross, and the research that was provided by the two other excellent speakers at that forum—I have a copy of those presentations—shows that Western Australian schools do not have homophobic bullying and same-sex attracted education that is appropriate for this highly vulnerable group who are much more prone to self-harm, suicide, anxiety and depression. I believe we need to move quickly on this because there is a clear duty of care. A well-known case in New South Wales involving a young man called Christopher Tsakalos resulted in a large payment by the New South Wales Department of Education. I presume that the Department of Education would have a real concern about its duty of care, given that people are increasingly prepared to speak out and take action. I would urge those members who are interested in the duty of care to read an article published in 2004 by Dr Christopher Kendall and Naomi Sidebotham. Dr Christopher Kendall is now the President of the Law Society of Western Australia. The article is titled “Homophobic Bullying in Schools: Is There a Duty of Care?”.

Although it is important to talk about the general bullying policies that we do have in Western Australia, there is ample evidence—I have it in front of me—that this is not a direction that is going to work. We know that it does not work. There are some quite specific things that are being looked at now to deal with homophobic bullying, and they should be embraced. The first thing that could be done is to put in place a stand-alone policy, such as the one in Victoria. The second is to fund the already existing services. Members may be aware that UnitingCare West has taken it upon itself to provide services to assist young same-sex attracted and gender diverse young people to face issues, including bullying. That program is being run out of Bunbury. So things are already happening, but those things are not funded by the state government.

Thirdly, in the short time I have left, I want to refer members to Safe Schools Coalition Victoria. That is a program that is run in other states and has enormous support. Members would not think that schools would be slow to embrace this program, because it provides assistance to teachers and brochures about homophobic bullying and issues that affect transgender young people. Which schools have joined Safe Schools Coalition Victoria? It is schools like Methodist Ladies College. It is schools like The King David School, a Jewish school. It is schools like Fitzroy High School. It is schools like Little Yarra Steiner School. More than 50 schools have joined this coalition. They have understood that we need to put in place specific policies to deal with this issue. Frankly, I think that the failure to implement specific policies is because people have a lack of understanding of

this issue. They are obviously not familiar with the research that has been done, and the data that is available. As I said, I have looked at the Department of Education website to try to find a policy on homophobic bullying, and there is not one. That is not anywhere near good enough.

I have an interest in this issue, and I spoke about it 18 months ago, because a friend of mine has a daughter who experienced coming out at a young age. We know that when people are in their teens, it is the time when they are the most vulnerable to bullying. It is also the time when they are trying to work out their sexual identity and where they fit in. Being attracted to a person of the same sex is actually quite common. Lots of girls have crushes on other girls. What we are seeing, though, is, as Professor Donna Cross said to me, an increase in homophobic bullying.

Motion lapsed, pursuant to standing orders.

VARANUS ISLAND INCIDENT PROSECUTION

Statement by Minister for Mines and Petroleum

HON NORMAN MOORE (Mining and Pastoral — Minister for Mines and Petroleum) [11.28 am] — by leave: I wish to inform the house that the Department of Mines and Petroleum is discontinuing its prosecution case against Apache Northwest Pty Ltd and its co-licensees, Kufpec Australia Pty Ltd and Tap (Harriet) Pty Ltd, with regard to the pipeline explosion incident that occurred on Varanus Island on 3 June 2008. The government's case against Apache was based on our view that the company did not maintain the pipeline "in good condition and repair". The decision to discontinue was made in response to new information and evidence provided by Apache Northwest and its co-licensees during the pre-trial proceedings in the prosecution action. After extensive consideration of advice from the State Solicitor's Office, the Department of Mines and Petroleum decided to seek a discontinuance. This was granted in the courts this morning. The department's advice was that there was no substantial prospect of the state establishing two essential elements of the prosecution—put simply, there was a fatal flaw in the prosecution. This included the state being unable to negate the statutory defence that appeared available to Apache that the company's senior executives did not hold "the honest and reasonable but mistaken belief" that the section of the pipeline in question was "in good condition and repair". It was also considered that there was no prospect of the state successfully proving that the section of the pipeline that ruptured was licensed under the Petroleum Pipelines Act 1969, due to a technicality in a variation document from 1992.

The charge under the Petroleum Pipeline Act 1969, Section 38(b) was "failure to maintain the pipeline in good condition and repair". The "technicality" is that the portion of the gas sales pipeline between the gas processing equipment and the mean low-water mark on Varanus Island was not licensed as a "pipeline" by the variation of the relevant pipeline licence issued in 1992. Essentially, the variation document in question referred to "pipeworks" not "pipeline". It was part of the pipeline that ruptured, rather than the pipeworks.

I might note at this point, that while Apache find it "convenient" at this time to use this legal technicality to disclaim that it was the licensee of the pipeline, the company has operated for almost 20 years with the understanding it was the operator of the pipeline, and responsible for its "good condition and repair".

The initial Varanus Island report provided to the department by the then National Offshore Petroleum Safety Authority—NOPSA—on October 7, 2008 identified that Apache Northwest and the co-licensees may have committed offences under the Petroleum Pipelines Act 1969 and noted that the company "did not maintain the pipeline in good condition and repair". It was on this basis after receiving advice from the State Solicitor that the prosecution was launched by the Department of Mines and Petroleum. Despite this, the department now cannot proceed with the prosecution.

I am very unhappy that due to what I believe to be a legal technicality, Apache is able to avoid facing the court in regard to this offence, which is related to the major incident which cut Western Australia's gas supplies by 30 per cent. Some members of the house may be wondering why it has taken the state so long to identify the defence leading to the discontinuation of proceedings. For two years Apache blocked and hindered the department's efforts to acquire evidence that was crucial to the prosecution case—a statement from Apache Northwest's managing director. That statement was finally obtained in February 2011 pursuant to schedule 3 of the Criminal Procedure Act 2004.

In August 2011 the State Solicitor's Office advised that the department had identified that the state may not have a prima facie case. At that point the department sought a second opinion from the Special Counsel to the Premier who advised there was reasonable prospect of success. The department then sought a third opinion from the independent bar to settle the conflicting advice, and in December last year the department received an opinion not to continue the prosecution. Further advice received last month, on 2 March, from another Senior Counsel from the independent bar confirmed for the department that it had no reasonable prospect of success in proving that the section of the pipeline that ruptured was a licensed "pipeline". It is therefore only now, after so much time and effort to get the additional evidence from Apache, and an equal amount of time deliberating the state's ability to proceed, that the Department of Mines and Petroleum applied for the discontinuance of the

prosecution. I would like to reassure the house that the Department of Mines and Petroleum and the State Solicitor's Office have thoroughly examined all avenues to try to keep the prosecution alive. At one point the possibility of raising a new prosecution was even considered; however, the case had already passed the limitation period contained in the relevant legislation. Options of implementing some other form of penalty under the various acts were also thoroughly explored.

As the house would be aware, Apache has also initiated continuous litigation for almost two years. That litigation has hindered every effort by the state, as well as the joint state and federal government effort, to thoroughly investigate this incident and publicly release findings. When the joint state and federal government effort was disrupted by legal action, this government initiated the independent final stage investigation. That investigation aimed to report on the causes of the Varanus Island incident and to investigate WA's regulatory regime and the performance of the regulator.

On 8 May 2009, together with federal minister Martin Ferguson, I appointed Messrs David Agostini and Kym Bills as inspectors under the Petroleum Pipelines Act 1969 so they could obtain the necessary information required to report to the state on the Varanus Island gas pipeline incident. Their report was delivered to the Department of Mines and Petroleum on 18 June 2009. However, its release to me was blocked by further litigation by Apache until the Court of Appeal of the Supreme Court dismissed the company's final injunction application on 22 December 2009.

As the minister responsible for the safety of workers in the petroleum industry in our state, I have held concerns throughout the course of litigation by Apache as to what this report contained and what information it could provide the state government to reduce the potential risk of further similar incidents occurring. Since receiving the Bills and Agostini report, I have thoroughly reviewed the findings and had time to carefully consider if it is of significant public interest to release that information. While the state was pursuing the prosecution, I was reluctant to release any findings from the final investigation report, as I had a responsibility to ensure that the state's prosecution case was not jeopardised by any further court action from Apache Northwest. Given the history of litigation, I felt it was a very real possibility. I believe the people of Western Australia have a right to know the cause of that incident, as well as the level of effectiveness of the state's regulatory systems at the time and the safety and security implications for the state. However, I must inform the house that I am still unable to release the findings of the final phase of the state's investigation documented in the "Offshore Petroleum Safety Regulation—Varanus Island Incident Investigation Report"—that is, the Bills and Agostini report. Before the report was released in 2009 to me I had to give an undertaking to the Supreme Court that I would not publicly release any findings of the report until I had provided Apache a fair and reasonable time to review the report. Now that the prosecution has been terminated, that process has commenced today and I would expect to be free to publish the report very soon.

RETAIL TRADING HOURS

Motion

HON MAX TRENORDEN (Agricultural) [11.35 am] — without notice: I move —

That this Council does not support the extension of retail trading hours until there is a legislative and regulatory framework in place which supports and encourages a fairer marketplace, enabling small business to be competitive.

The first thing I want to do is thank the Leader of the National Party and the National Party itself for arguing for this time on the agenda in this place. It allows our party and other people in weeks to come to put positions that were not available to be put prior to the change to the standing orders.

We have major problems in retail in Australia. Let me run through a quick list: rents are rising; outgoings are rising; sales are declining; margins are declining; 50 per cent of all small businesses end up bankrupt, bust or lost; businesses have been lost; high wages are at risk; the Western Australian lifestyle is also at risk; law and regulations are constantly increasing; and there are a range of planning issues. Extending trading hours is just to extend all of those issues mentioned above; it extends all those problems.

Hon Simon O'Brien: How? Are you going to tell us?

Hon MAX TRENORDEN: I know to tell members. I actually have 13 minutes and 20 seconds to tell members that. I do not want to spend too much time not telling you that, so I am going to get into it.

All of that is on a collision course. You do not have to be Einstein to work out that those facts that I have just read out lead to a substantial collision. It cannot physically continue. I want to talk about some of those issues straight-up as the minister just asked me to. Let us talk about wages and extended hours. Extended trading hours extend the penalty costs to small business. It will all depend on which small business a person is in, but it does do that. We are concerned about regional areas as well, because retail is a major employer of regional people. Those people are important to us. The fact that they get paid salaries is important to us. Those small businesses

are also important to us as well. Businesses in the metropolitan area are important to us as well; I am not saying there is any difference. Those issues are on a direct collision course and need to be sorted out.

Members opposite have all voted for extended retail trading hours. What they have done is vote to change penalty rates. Let me give a couple of examples. Mr Andrew Stewart, a professor of law at the University of Adelaide, who helped draft Fair Work legislation, has cast a shadow over the future of weekend penalty rates in the retail and hospitality sectors. He says that employers could make a strong case that these rates in some sectors do not necessarily help. Professor Stewart, one of the architects of the current legislation, said the survival of penalty rates should not be taken for granted. He says employers had previously failed to change the higher penalty rates, largely because they had failed to show how workers could benefit from a change in penalty rates. Professor Stewart said a shift to a higher weekday rate and a lower weekend rate, for example, could benefit both workers and employers. That is an undeniable fact; that is where we are going and it is on a direct collision course with ALP members' own policy position. We have not heard Labor Party members say how they will handle that. We are concerned. As I said, retail is a major employment factor in the regions, so our people will be affected by this. Not once have I heard a person from the opposition, from the leader down, say how it will deal with this wages situation. I will read what Mr Shorten, the federal minister, in recent times said. An article from *The Australian Financial Review* states —

Business says the refusal by the union movement to accept lower wage increases for higher superannuation will cost it \$20 billion and reduce employment.

...

Mr Shorten assured the business community it would not face higher wage bills because workers would accept lower wage rises given their increase in super, meaning that the cost to business would not change.

If members believe that, they are in fairyland! The article continues —

The ACTU's outgoing secretary, Jeff Lawrence, said there was unanimous support among the delegates at the meeting yesterday that there would not be any trade-off.

That is, the trade-off between superannuation and wages. Let us face it, when we listen to the community debate, we hear that people need to pay their mortgages and increased power bills. There are all those issues, so do we think that people will say, "My superannuation benefits are more important than feeding my family?" They will not. There is no question that that is going to be the case.

Small businesses make up 96 per cent of business operators in Western Australia; in 2009, there were more than 200 000. It has been demonstrated in recent times that the biggest expenses of large retailers, such as David Jones and Myer, are rental costs and employee wages. Many people who are professionals in this area argue that those issues are on a collision course. Something clearly has to give: either we finally get more turnover and more profit into our shops or we cut rents, wage costs and outgoings generally. We cannot do that ourselves and the National Party is not suggesting that we bring in legislation to do that. National Party members are saying that we have to bring clarity and an open attitude to the market so that people who are going into small business can make those decisions. Retailer and former Reserve Bank of Australia board member Solomon Lew recently said that rents cannot keep rising as sales are decreasing and, at the same time, wages are increasing. That is pretty obvious. There probably is no more respected retailer in Australia than Solomon Lew. We cannot ignore what he is saying.

On top of this is the increase in superannuation. The moral argument about increasing the superannuation contribution from nine to 12 per cent, particularly for someone such as me who was in that industry for quite a few years, is that it is a good thing to do as an overall task, but that \$20 billion a year has to be paid by someone. That is the obvious outcome of the federal government's current proposal. A really important argument is that of the roughly 2.4 million small businesses in Australia, only 720 000 will be eligible for a company tax deduction. Therefore, two-thirds of small businesses in Australia will get no compensation for the increased superannuation levy that will cost \$20 billion a year. That has to be recognised.

We have the other question of rents. Again, we need to talk about the superannuation industry. One of the reasons we have to talk about the superannuation industry is that it represents the biggest slice of property owners in the market. The superannuation industry is kidding itself that it is trying to retain growth and capital assets and also tell us that everything is okay. However, we know, because there have been not one or two but countless reviews done since the 2008 global crash, that the turnover in those businesses is just not there. Those people who know, or believe they know, about these things say that it is not coming back. The world has changed. The retail attitude of consumers has changed forever. Therefore, those properties do not have the value that they used to have, so those owners cannot ask tenants in shopping centres to keep paying rents that are not related to the market. Those rents are not related to the turnover of the shopping centres, or whatever property it is. That simply has to change; there has to be a realistic attitude from the superannuation industry and property owners that rents have to go down.

This was debated in this place some time ago and I thank the minister and Hon Ljiljana Ravlich for the movement that has happened on developing a lease register. I do not have time to read them all, but there are plenty of quotes by federal parliamentary committees, the Productivity Commission and a range of others that I could quote from today that say there is secrecy over rents that is not sustainable, not fair and is too protective of big businesses. What the open lease register—which is what Hon Phil Gardiner and I pushed in this house some months ago and which hopefully we are all talking about now—means is that the small business operator, or the person who wants to go into small business, can obtain a fair rental because they can look across the spectrum and see what other people are paying in rent. We are not saying that they should be protected, because everyone has and should have the right to make their own decisions, but they should be able to make those decisions based on reasonable, fair and transparent information, which is not currently the case. We give the minister accolades for that, so he does not have to pick on me when he gets —

Hon Simon O'Brien: You should do so more often, then!

Hon MAX TRENORDEN: Exactly.

Quickly, because I am running out of time, I will talk about online trading. We cannot ignore online trading. Just a few months ago, both Myer and David Jones said that they were buying a lot of perfume at the same price as you or I could pay for it on the internet. That is unsustainable for David Jones and Myer, but it is not unsustainable for the public. Why would we go to those stores to buy those products? The whole question of turnover and online shopping is important because Ernst and Young in a report this year stated that electronics purchases valued at less than \$1 000 were 11 per cent cheaper online. Therefore, people who shop online on average get electronics 11 per cent cheaper and clothing and apparel 23 per cent cheaper. People are not foolish, so they will use those options. As much as we all want to debate the issue of the pressures on people's lives, one of the sensible ways to change those pressures is to find a cheaper way to live and a cheaper way to operate. Taxation laws, superannuation laws, security laws, power costs and security charges are all part of that. A major part of this issue does not just relate to rent and wages; it comes down to us. We play an enormous role in regulating and forcing costs onto the retail industry, and that should be recognised.

The only growth sector in the retail commercial area is franchising. We need to make franchising an open, transparent activity and good for everyone, big or small. We are a strong supporter of the Small Business Commissioner. Hon Phil Gardiner and I met with him yesterday. We voted for the legislation in this house. We want to give the commissioner a range of new powers and new teeth to ensure that the vital industry of retailing in Western Australia can exist in a transparent manner.

HON SIMON O'BRIEN (South Metropolitan — Minister for Finance) [11.51 am]: I want to turn to the motion before us. I contemplated what this debate is about when trying to frame my remarks today. The motion raises concerns about a different legislative and regulatory framework being put in place that supports and encourages a fairer marketplace, enabling small business to be competitive. That is what it relates to. The obvious implication—it was taken further by Hon Max Trenorden in his remarks earlier—is that the current framework is inadequate, it is not as fair as it should be and small business is not presently competitive. It also strongly states, without qualification, that in such an environment as exists now we should not support the extension of retail trading hours. I think I have fairly characterised the motion. That is how I have interpreted it from the point of view of what I bring to this debate in the brief amount of time available to me. I ask members to forgive me if I do not canvass all the matters —

Hon Max Trenorden: You've only got eight minutes.

Hon SIMON O'BRIEN: Indeed. I do not have the time on this occasion but there will be other occasions. I know that Hon Max Trenorden had a good meeting with the Small Business Commissioner yesterday, and I hope that opened up a whole new line of dialogue that will increase mutual understanding in that regard.

I do not want to talk about lease registers and franchising today; they can be debated another day. I will touch on them only in passing in courtesy to respond to and acknowledge the fact that Hon Max Trenorden has raised them. I have already discussed with the member the powers available to the Small Business Commissioner with franchising. The agency of that brand-new position will be brought to bear to assist in dispute resolution and also in the provision of advice to government about the nature of problems that may or may not exist—I am sure some do—in that field. Again, I will come back to the issue of the lease register. I will not talk about consultation papers and all these things that I have undertaken to do and I have in train just now except to make one observation. The member described his concern about how regulations, legislation and further regulation just adds more and more costs that small businesses, small retailers in particular, have to bear. I cannot agree with the member. From all that I have seen, a lease register, whatever its merits, will relieve that situation. All of the advice available to me, which should be available to the member as it is certainly available to those who are dealing with government from every perspective, is that regardless of which model register this faction or that faction wants to pursue, it will amount to considerable cost to all stakeholders. It will add regulation and it will

add cost. It is hard to determine what benefit will accrue to many of those stakeholders. That is a debate for another day.

We are left with the contention that the retail trading hours amendments as proposed via a bill I have taken through cabinet and which may find its way through cabinet in due course —

Hon Max Trenorden: It should do.

Hon SIMON O'BRIEN: Yes, it should do, although not with the help of the member's colleagues. Those amendments will probably be opposed because some members think they will adversely affect the environment in which small businesses currently operate, it will make them less competitive and the marketplace will not be as fair. With the greatest of respect, the facts are quite different. I was taken by one comment that Hon Max Trenorden made. I think he said "our people will be affected by this". I do not know whether he was referring to the ALP's constituency or the National Party.

Hon Max Trenorden: I am just talking about people who live in the regions.

Hon SIMON O'BRIEN: The facts relating to retail trading hours are as follows. The current restrictions exist in the metropolitan area; they do not exist in the regional areas. North of the twenty-sixth parallel it is open slather; retailers can open their retail shops, big or small, whenever they like. Small business continues to operate in those areas.

Hon Jim Chown: Successfully.

Hon SIMON O'BRIEN: Yes, successfully. Outside the metropolitan area, south of the twenty-sixth parallel, regional variation orders are in place in umpteen different shires.

Hon Jim Chown: Twenty-four local government areas.

Hon SIMON O'BRIEN: Yes, they operate in a couple of dozen local government areas. Guess what? Small business continues to flourish in those areas as well.

Hon Max Trenorden: Minister, I drive around those areas and there are shops in every country town.

Hon SIMON O'BRIEN: The honourable member is quite right in his observation when he points out—I thank him for interjecting because it is something I should have acknowledged upfront—that there are small businesses doing it hard. They are responding to the challenges of a post-global financial crisis world and they are dealing with competition from internet retailers and a range of other uncertainties that exist. To some extent, that has always been the landscape for small retailers. That is just the nature of the marketplace. The fact is that the member acknowledges—I share this view—that in certain places small business in particular is doing it tough.

Hon Max Trenorden: Our argument is that there is a declining market.

Hon SIMON O'BRIEN: The market in Western Australia, if anywhere, is growing.

Hon Max Trenorden: It is declining.

Hon SIMON O'BRIEN: But it is also changing at the same time. There are opportunities but there are also perils and pitfalls for those who do not want to adapt and respond to change in like kind. The point is—this is in the motion that we are debating today—that while small businesses in different places have problems, it is not because of amended trading hours. The substance of the member's message today, which dealt with the actual motion, was that we cannot lay the problems at the feet of more deregulated trading hours because they have those deregulated trading hours in those areas that he is concerned about. Small businesses anywhere can operate 24/7 if they want to. It is not a problem. The problem here is competition and that is seen as putting small business out of business or risking doing that. In Albany, Bunbury, Busselton, Harvey, Kalgoorlie, Boulder, Katanning, Mandurah and a range of other places, including the Shire of Northam that the member represents—all of the area north of the twenty-sixth parallel—there is a greater or lesser degree of deregulated trading hours and small business continues to do business there. Sure; they have some difficulties, but they are not brought upon them by the extension of retail trading hours.

With that in mind, I cannot support the motion that Hon Max Trenorden has moved today. I thank him, though, for raising it. It is an important vehicle for the discussion of an important topic. In due course, I hope we discuss it and bring some changes into law. That is something that will be welcomed by the vast majority of Western Australians, which includes Western Australians in every single region represented in this house of Parliament.

HON PHILIP GARDINER (Agricultural) [12.00 pm]: I am very happy to rise to speak to this motion. Among the things Senator Barnaby Joyce has said, although I do not agree with everything he says, one of the things that rings in my ears is that every big business began as a small business. Small business is a very important component of our economy. As Hon Max Trenorden said, 96 per cent of businesses are small businesses. I am not sure of their rate of employment but 96 per cent of this state's economy is based on small business. Some of us in this chamber may have been involved in small business. Those who have been will all know how tough

small business is. Be it retail, manufacturing, transport, services or farming, it is tough. People in small business work inordinately long hours and they face continuing pressure because most small businesses do not have the cushion of capital to enable them to operate more easily. That is the nature of small business, whereas big businesses have a much greater resource with market share, scale and so on.

Small businesses have a tough time. This motion seeks to make sure that small business has as much of a level playing field as possible with the larger-scale businesses. That is the point, minister. It is about having a level playing field. Take the case of shopping hours about which the minister commented. I think he said it would not make a difference. It will make a big difference unless we get the package and framework right. If we take just one aspect and change it, it may be totally inconsistent with other elements of the environment under which that small business is operating. We propose to the minister that that will be the case if we deregulate shopping hours. It might be fine if there is a level playing field, but what we will not have is a level playing field.

Hon Jim Chown interjected.

Hon PHILIP GARDINER: Just listen. Maybe it is not now, but that is not an excuse to do nothing, Hon Jim Chown.

Hon Jim Chown: We are doing something.

Hon PHILIP GARDINER: We are doing bits, if anything. If Hon Jim Chown examines the matter closely, he will find that we are doing bits, but he has to open his mind to what the package will be. The package must involve much more than simply deregulating shopping hours. Let us take overheads, and look at a small business that will be under a deregulated retail trading environment. That small business will be trying to compete with the larger businesses. With the extended trading hours, small businesses will have to put on extra staff to make sure they have people to serve their customers and some businesses will have to put on extra security, all at penalty rates.

Hon Jim Chown: They don't have to.

Hon PHILIP GARDINER: I know they do not have to, Hon Jim Chown, but they do if they want to compete.

Hon Jim Chown interjected.

Hon Max Trenorden: You just want to protect the big.

Hon PHILIP GARDINER: If the member wants to protect the big businesses, he can keep on going, but it is not fair competition. When we get down to analysing it, there are a whole lot of areas across this state and the country generally where the competition is not fair. Let me give members the case about the lease rental value register. I heard that a lease register would never work because, I think it was the Small Business Development Commission—I may be wrong about the source—told government that its members did not want a lease register. As happens with a lot of surveys, the results depend on the questions. If a question is, “Are you in favour a lease register”, any people with a rental agreement with termination dates and everything else being fully exposed would not want it. That is absolutely true. But how far away are we from what is actually going on and what can be done to get a lease rental value register? Disclosure of rental value is different from disclosure of all lease elements. The information that is the most sensitive is the termination date. When termination dates are made public, all kinds of games can go on. When a bigger competitor learns a lease termination date it can offer a higher rental to the shopping centre and take out the other fellow.

Having been in pretty big business myself I know what the objective is of big business. The objective is to control the market. If a business can do that, it will get greater prices, if we like, for whatever service or product it is selling. Any big business will try to take out its competitors. That is something I will come to in a minute regarding the Australian Competition and Consumer Commission and the Trade Practices Act, because predatory pricing is a very well-accepted means of commercial practice, if we like, to increase the dominance in the particular market. It is natural when trying to control the market that businesses owners will do everything to rid themselves of competitors. Unless they are thinking about what big businesses do to be in that big business frame, they will not care about the fairness of the competitive playing field.

When it comes to the deregulation of trading hours, the labour costs for small businesses that are trying to compete with the bigger businesses will be effectively overheads. We can assume for the time being that labour costs for big businesses will be roughly the same. But they will have much more flexibility to impose more direct costs, not overheads. Those of us who have been in business all know what it is like trying to meet overheads all the time. It is tough because the gross margin is a contribution to either overheads and/or profits if we make enough, but we have to cover our overheads first. If they are going to keep rising —

Hon Jim Chown: It's core business.

Hon PHILIP GARDINER: Core business! Let us have as close a level playing field as we can, Senator Chown—I mean Hon Jim Chown.

Hon Kate Doust: Is there something you haven't told us; is there a vacancy coming your way?

Hon PHILIP GARDINER: Sorry. Maybe that is right; that may help. We have to have a level playing field, but we will not get it under our current system. It comes back then to what the wages will be. We have to change the way penalty rates apply so that they come down. Sure, wages will be higher outside normal hours. I do not believe we should have regulated penalty rates because that disproportionately disadvantages small businesses because it is added to their overheads as opposed to what happens in big businesses. That is one of the regulations we must change.

Hon Ken Travers: What about the poor worker; what about them?

Hon PHILIP GARDINER: The poor worker? I accept that the workers who are banking on penalty rates will get less money. The evaluation has to be on what will give us a better economic effect. Sure, some adjustment will need to take place, but we need to make it a level playing field. If we have deregulated hours, it does not make sense to apply penalty rates. They need to be looked at and renegotiated.

The other body that can influence some of this is the Australian Competition and Consumer Commission. That is just another part of this package and framework that we need to consider if we are going to have something that allows small business to compete on a much more level playing field. In America there is the Sherman act, which most of us would have heard about. Under that act, big businesses that become too dominant can actually be broken up. We have nothing like that in Australia. On the federal scene there are other elements like that and also to do with cooperative law, which at last is uniform across Australia. I know that Hon Simon O'Brien is aware of cooperatives and how that corporate structure works. It is a corporate structure that is rarely used but is very important for small business, as is the franchising structure. There are structures in place, but they need uniformity across the country. That would then allow small businesses to work together to become a vital and sustainable part of our commercial practice.

The DEPUTY PRESIDENT (Hon Col Holt): Members, we are dealing with non-government business and the question is that the motion be agreed to. Does the mover wish to make—the Deputy Leader of the Opposition.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [12.10 pm]: Thank you Mr Deputy President. I thought that given that this is —

Hon Simon O'Brien: I didn't think you were replying today.

Hon KATE DOUST: I just thought that as it was backbenchers' time I would wait for a few more backbenchers to get up and share their views on this issue.

Hon Simon O'Brien: Well, sit down and let them.

Hon Ken Travers: They didn't jump.

Hon KATE DOUST: Nobody jumped. I waited and waited. I thought Hon Jim Chown was going to get to his feet and share his views. I am sure he has some very clear views on this matter.

When I first looked at this motion I thought that National Party members were going to use it as an opportunity to critique their coalition colleagues in the Liberal Party for not addressing these issues over an extended period. I listened to Hon Max Trenorden. I agreed with him on a number of issues. We have reached a point over time where there are a number of serious concerns about the retail sector, and Hon Max Trenorden canvassed those. I have always thought that it is a bit of a dog's breakfast. I must say that when I listened to Hon Max Trenorden's speech today, I thought it was a bit of a dog's breakfast as well. I really was not too sure what he was getting at; he was chopping and changing. He talked about all the problems faced by retailing and then he skipped to the other side of the country and talked about our good friend Bill Shorten, who is doing a fabulous job in the federal government. He then talked about issues with superannuation and then he came back and had a bit of a go at us. He then started talking about wages. Hon Max Trenorden alluded to an impact in the regions but did not actually explain what that impact would be. I thank Hon Simon O'Brien for reminding Hon Max Trenorden that extended trading hours have been in place in those regional areas for an extended period, and in particular above the twenty-sixth parallel, where they have been able to trade 24 hours a day, seven days a week since the 1980s; in fact, prior to my time as a union official. I used to organise in that part of the state and we used to see our members at all times of the day or night.

I was not too sure whether Hon Max Trenorden was raising these issues in here because the National Party has absolutely failed in raising them with their Liberal coalition members and has failed to get them to come to the party on this. The only reason we are going to be dealing with legislation in due course is that the Premier has always had such a strong and public position on trading hours. Ever since he worked at the Chamber of Commerce and Industry of Western Australia he has been very clear on his view on trading hours—he is a 24/7 man. I cannot see that changing. The referendum did not change that view. He might have gone quiet for a while, but at every opportunity he has been pretty consistent and pretty determined. Of course he is going to want to bring through this policy and deliver it in the form of legislation. What the National Party has failed to do in its

relationship with the Liberal Party is to bring it to heel and to get it to acknowledge its concerns. The National Party went into this coalition, this partnership, this family relationship with the Liberal Party.

Several National Party members interjected.

Hon KATE DOUST: National Party members failed to get them to take their side. They did not make this a condition of coalition or partnership. Now the National Party is attacking us as part of its failure.

Several National Party members interjected.

The DEPUTY PRESIDENT: Order, members!

Hon KATE DOUST: Thank you, Mr Deputy President.

Hon Ken Travers: I have never seen them get so excited!

Hon KATE DOUST: I know. This is because they do not like to be reminded. They sit here silently in most cases.

Hon Sue Ellery: At the cabinet table.

Hon KATE DOUST: They sit at the cabinet table and they refuse to speak up. They did not make this a condition of their relationship with the Liberal Party to get into government—to take those cabinet positions or the parliamentary secretary position. They have sat there silently. They have said, “Fine; we’re not going to vote for it”. I was pleased to hear Hon Max Trenorden say that he supports the franchising legislation. I am pleased to see that he has had that epiphany, because down in the Assembly his party did not support the franchising legislation; it did not support the changes that back small business and that provide an open and accountable way of conducting business and support for small business. The National Party did not support that.

Several members interjected.

Hon KATE DOUST: We have re-read that bill into this chamber. We now expect the National Party members in this chamber to deliver on what they have talked about today. We will bring on that bill in due course.

Hon Sue Ellery: Some days you want to be the opposition and some days you don’t. You’ve got to make up your mind. Do you want to be at the cabinet table or not?

Hon KATE DOUST: I thank the Leader of the Opposition for that help. We will bring that bill into this chamber. We fully expect Hon Max Trenorden to gather his colleagues and support Labor’s franchising bill.

Several members interjected.

The DEPUTY PRESIDENT: Order, members! The rules of debate are very clear. The member on their feet has the opportunity to speak. All other members should listen.

Hon Sue Ellery: I’d better leave.

Hon KATE DOUST: Out you go; you told me to behave myself!

Hon Simon O’Brien: You’re getting a bit overexcited.

Hon KATE DOUST: I have a bit of the flu, so if I am raising my voice it is because I am concerned I will not have a voice. This is an issue that does get me very passionate. I have spent the bulk of my working life in the retail sector. I am very concerned about the implications for people working in that sector. When I heard Hon Philip Gardiner talk about the impact on small business, I thought, “Wait for it, wait for it; it’s going to happen,” and sooner or later he talked about penalty rates. At the end of the day, that is the one thing we always know people will talk about. They say, “Let’s open up the shops so that consumers have the access”. That is fine, but at the end of the day they want to target shop assistants—they target the workers. The one thing we are very concerned about, and which our leader has talked about, is that whilst we want to get this issue bedded away so that it is not a political football all the time, we want to make sure that people working in the sector who give up their Sundays are appropriately remunerated for doing so. The one thing we need to do is to ensure that people get paid appropriately. We now have a situation in which people are struggling to pay their bills. Let me tell members that as much as people work hard to get better benefits for shop assistants, they are not getting the top-rate dollars that some people in our mining sectors and others are getting. Those people who are supporting families find it pretty damn tough to pay their bills, feed their kids and pay their mortgages. What the National Party is saying is, “Let’s look at changing that system. Oh well, it might be hard, but sometimes you’ve just got to cop the pain so that small business can continue.” I say to National Party members that that is not fair, it is not appropriate and it is unreasonable. Why should people working in that sector have to pay the penalty? There have to be other ways of doing it.

I agree with the National Party; issues like rents and leases and all those things are vital and important. The National Party is in coalition with this government. The National Party should be doing its job by putting pressure on this government to address those issues. We look forward to the National Party supporting us when

we canvass those issues and deal with it in legislation. National Party members should not come in here and talk about the dog's breakfast in the retail sector and cloak that as an attack on shop assistants and penalty rates and talk about flexibility, because they are —

Hon Max Trenorden: What are you going to do about it?

Hon KATE DOUST: What is Hon Max Trenorden doing about it? He is in government; he is sitting on the government benches. He should go and sort it out with the government. He should not come whinging to us; we are the opposition. The National Party refused to come into coalition with us. We could have resolved these issues. National Party members should get off their seats and talk to the government and fix it; do not whinge in here. Do not come in here and try to cut the wages, working conditions and aspirations of shop assistants. National Party members are on the wrong train. If they want to come in here and talk about issues associated with the types of products that can be sold, I agree that that is an issue. If they want to come in here and talk about leasing arrangements and lack of transparency, I agree that there are issues there. If they want to talk about rents paid by retailers in shopping centres, I agree that there is an issue there. There is a significant issue with franchise agreements. The National Party refused to do anything to address those issues in the other chamber.

Members of the National Party should not come in here and talk about cutting shop assistants' wages as a way of assisting small business, because in my working experience whenever employers and the Liberal Party and National Party talk about flexibility in the workplace it is always about attacking the worker and cutting back wages. The definition of flexibility to members opposite is cutting wages; they never look at other ways of shifting the parameters and other ways of doing business. If that is how members of the National Party want to cloak its argument, it is an appalling way of doing business. National Party members need to go back to this minister and the Premier, who have been hell bent on driving this agenda, and to their ministers and their parliamentary secretary, who have negotiated their way into the cabinet table, to sort this out with them. National Party members should not come in here and attack us. This system has been in place for a long time. Employers in the regions have been paying penalties for years and should continue to, so that their workers can have a fair and decent wage for the work they are doing. It is vitally important work. It is a serious job. It is something that people build a career and a lifestyle on. I am very disappointed in Hon Philip Gardiner over what he has proposed and for trying to attack the wages of and opportunities for people in that sector. The National Party should be very ashamed of the way it has conducted itself. If that is the way the National Party is going to address these issues, it is appalling: members of the National Party are not doing their job and they have sold out the people who are working in the sector in their regions.

We will have ample opportunity for a more extensive debate in due course, and I hope we can persuade the government that shop assistants need to have their rights protected when they work on Sunday.

HON KEN TRAVERS (North Metropolitan) [12.22 pm]: I am amazed that the members on the other side who were ready to argue by way of interjection do not have a contribution to make in this debate. This is supposed to be government members' time yet only two members of the government have got up to speak, and the other backbenchers are silent. This highlights the problems. Hon Kate Doust is absolutely correct about the problems that we have. The Leader of the National Party in this place talks about dysfunctional government. We have a government that is charging ahead with retail trading hours reform, and we have National Party members in this place who make speeches off the cuff about what is wrong as a result of the decisions made by their government but who then challenge Labor members to outline what we would do to change it. All of the protections in that legislation, including such things as the lease register, were included by the Labor Party because we saw the inevitability of what would happen to trading hours because of the actions and decisions of this Liberal–National government. We sought to provide protections to small businesses by putting in those protections. Even after we had agreement from the Premier on retail trading hours, he tried on a regular basis to welch on those agreements. National Party members need to take a long hard look at themselves. They sit in that government; it is their government that is doing this—no one else's government. The National Party is a member of the government that is implementing these changes. It is the Labor Party that has supported protections for small business, and there have been many protections. We have even supported protections for franchisees in small business and the government has removed those. The Labor Party will stand up for small businesses, as we will stand up for the workers in those small businesses to get a fair return for their efforts. We are the only party in this chamber that does that. Members on the other side will always look to screw over small business or their workers. We will stand up and defend both groups.

HON MAX TRENORDEN (Agricultural) [12.23 pm] — in reply: The debate to this point has shown that retail trading hours are a real mishmash and that members have not applied their minds to the issue. We are saying to the opposition that this place is meant to be a house of review and our responsibility is to look at what is a really key part of the social and commercial fabric of Western Australia. For 50 years the retail sector has shown growth and aptitude so that everyone can gain. Since 2008, which some members opposite do not seem to understand, the world has changed—not only Western Australia but the world! Members can see from review

after review in western countries that the world has changed. My argument with the minister is that although he can say that the markets are increasing statistically, he can pick up today's newspaper and see for himself what is the price of a TV set and he can work out the margins that are left for the retailers when they pay the outgoings like power, rent and salaries.

Hon Ken Travers: And who put the power bills up? It is your government!

Hon MAX TRENORDEN: That is right, and also your government! The estimation is that the federal government's carbon tax will add at least another 10 per cent on to those bills.

Hon Ken Travers: For which they will be compensated!

Hon MAX TRENORDEN: Can Hon Ken Travers tell me how a small business operator will be compensated?

Hon Ken Travers: They will be compensated.

Hon MAX TRENORDEN: Hon Ken Travers has not told us how! The federal government has not told us how.

Hon Simon O'Brien: If you cannot trust the Gillard government, who can you trust!

Hon MAX TRENORDEN: Exactly! I will say one word to members opposite—Queensland! People are uncertain. We have a different world out there. We have two problems here: the biggest one is rentals, which are not transparent. If we want to buy a house anywhere in the metropolitan area, we can find out the sale price of every house in the area, what the house is on the market for and how the market is changing. That information is available to any Western Australian. We can make our decisions, based on that information, on what we are prepared to offer for a house. If we ask for a rental price in a shopping centre in Perth, we cannot get that information.

Hon Ken Travers: And we agree with you.

Hon MAX TRENORDEN: The member has, and Hon Ljiljana Ravlich has also been very good in this argument, I agree. However, we have to consider how it will work. We will bring legislation into this place on these issues. That is why we have raised the debate. The National Party is concerned about franchising, but rather than support the Franchising Bill 2010 in the other place, we would prefer to put that issue to the Small Business Commissioner, who was sitting in the public gallery earlier in the debate. We are talking to industry now about where that focus should rest. We are saying it should rest with the commissioner.

Hon Ken Travers: In the meantime, your government is doing these things. We have been trying to get the government to put these things in place and it is your government that is failing. Do not blame us! Look at your own government!

Hon MAX TRENORDEN: We are having a discussion with the minister right now, I would think. The other side of the argument is that one of Labor's own architects of the federal law on work practices has said that it is unsustainable. What do we need to do when one of your own people—someone who put all that together—is saying that cannot be sustained? The other issue that members opposite have totally forgotten is that many people are saying to us that they want the opportunity to work on Saturday and Sunday and to change the working relationship because of the nature of families. There are people who are happy to work on a Saturday, Sunday and Monday. However, the issue of juggling that for a small business person is difficult. A business that has 100 or 200 employees finds it much easier to do that juggling. But how does a small business with five employees cover the extra hours? The other issue that earlier interjections ignored is if small businesses choose not to open, they pay the outgoings anyway. It is the case, Hon Jim Chown, that if a small business in a shopping centre does not open, which is its right, it still pays the outgoings. About 75 per cent of the lease space in shopping centres is held by the anchor tenant, who pays approximately 25 per cent of all costs. Where is the level playing field? If someone takes a lease in a shopping centre and puts their house, their marriage and everything else on the line, all of us in this room support that because we like that enterprising attitude. All we ask is for those people to be given reasonable information about making that decision. For example, is it appropriate for someone to set up their shop in the Galleria shopping centre or should they take a smaller turnover and go to a strip shop nearby? We want them to make those decisions. We have no issue about protecting small business owners. Everyone who goes into a business should make their own decisions and sail by the seat of their pants like everyone who preceded them. However, they require information. We are talking to the minister about that and we are grateful for that.

Hon Ken Travers: I am glad you've finally got it on the agenda. We've been talking about it for years, Hon Max Trenorden. Your Premier welched on the deal.

Hon MAX TRENORDEN: Our Premier?

Hon Ken Travers: Yes, your Premier—the man you made Premier, Hon Max Trenorden. You personally made the choice. Your colleagues did not want him, but you did. You gave him to them. You foisted him on them.

Hon MAX TRENORDEN: Oh, dear! I feel better by the moment. I am a most powerful man and I really appreciate the power that I have and I hope that I wield that power with great —

Several members interjected.

The DEPUTY PRESIDENT: Order, members! We have had a good go at it. Hon Max Trenorden will address the Chair.

Hon MAX TRENORDEN: I think I will have to stop speaking soon because I need to bolt over and tell my wife how powerful I am and how lucky she is to have married such a powerful man and to ask whether she will give me any considerations in my argy-bargy with her and the operations of my household, which I have to say I do not do too well in!

We appreciate the opportunity to raise this issue. We say to those in the Labor Party, the Liberal Party, the Greens, who are not here, and ourselves —

Hon Kate Doust: It is unusual because they normally are and you normally aren't.

Hon MAX TRENORDEN: I agree with a lot of what Hon Kate Doust said in her speech —

Hon Ken Travers: Don't tell it to us. Sort it out in your government. We agree with you; we always have!

Hon MAX TRENORDEN: I am talking at the moment to Hon Kate Doust. One of the arguments that she put to me is correct. My speech is all over the place, and part of the reason for that is —

Hon Ken Travers interjected.

Hon MAX TRENORDEN: We will not go there.

This is a massive issue. We have built regulation, tax laws and a whole raft of things with the right intention for the past 50 years in a market that was constantly growing. Every record, not some of the records, says that market is in decline. Therefore, not only is the market in decline, but so are the margins of the people involved in those markets. The conditions that we are talking about are on a collision course. We make those decisions on the conditions of a shopping centre and how it will operate and we make planning decisions about strip shops and shopping centres. We make those decisions about security and power. We cannot say that there is a market out there and small business should adapt to that. We cannot, because we make those decisions. Some of these changes have to be made by industry, but some of the really important changes have to be made by reviewing the legislation to ensure it is fair—not so that someone gets protection against someone else, but so that it is fair.

Motion lapsed, pursuant to standing orders.

BILLS

Returned

1. Gas Services Information Bill 2011.
2. Business Names (Commonwealth Powers) Bill 2011.

Bills returned from the Assembly without amendment.

LAND ADMINISTRATION ACT 1997 — AMENDMENT TO CLASS A RESERVE 22429 — DISALLOWANCE

Motion

Resumed from 28 March on the following motion by Hon Phil Edman that was moved pro forma on 27 March —

That proposal 11/2011 — amendment to class A reserve 22429, tabled in the Legislative Council on 23 November 2011 under section 42(4)(b) of the Land Administration Act 1997, be and is hereby disallowed.

HON SALLY TALBOT (South West) [12.35 pm]: This was brought on last night. I thank the Leader of the House for giving us a bit of time to respond to this disallowance motion moved by Hon Phil Edman. As other members have remarked, this is an unusual situation because, to avoid delays to the project in question, Hon Phil Edman has moved a disallowance that he then opposes. The project that we are talking about is, of course, the extension of Mundijong Road to the west of the freeway. I use that road frequently; it is my preferred route to get to that part of my electorate that is on the South Western Highway. I go down the freeway to Mundijong Road and then left. This road will go the other way from that exit and, as Hon Phil Edman has pointed out, it effectively provides the entranceway into Rockingham.

For some time the City of Rockingham has tried to get all the approvals in place to get this road built. I can sympathise with that. Honourable members will know that we in Mandurah had quite a lengthy battle—in fact, I

think it went on for even longer than the City of Rockingham has been trying to get this off the drawing board and into reality—about what used to be called road A in Mandurah, which now is the main entrance road to Mandurah off the Perth–Bunbury highway—Mandjoogordap Drive.

Hon Phil Edman has put this disallowance on the notice paper in an effort to speed up things and avoid any delays that should be avoidable. He has then asked us to vote against it to effectively give the green light to the next stage of this process.

I noticed that the WA Greens put a similar disallowance on the notice paper and it became clear in the debate last night exactly what we are being asked to do. I must say that it is likely to be the closest I ever get to supporting Hon Phil Edman, because he is asking us to support him by voting against his motion. That almost does it for me. I indicate that we on the Labor benches will take that course. We will support Hon Phil Edman by voting against his motion. I will put on the record exactly the reasons for that. I want to point to a few difficulties that we have had in arriving at that position.

The first thing that needs to be pointed out is that Hon Phil Edman noted in his address to the house on this disallowance motion last night that the state government is a large part of this problem. It has taken the state government all these years to get the approvals in place, to make the appropriate land acquisitions and to get all the assessments done to get us to this point. I do not know why it has taken so long. I notice that Hon Simon O'Brien showered Hon Phil Edman with considerable praise last night about his activism as a local member.

Clearly, he has not been successful enough in that activism, because he did not get things moving before now. The state government could have done things faster and, if it had, we might have been able to have this debate in a more timely fashion. I was further confused last night when Hon Simon O'Brien got up and said, "The government supports the motion." I think what he actually meant to say—I do concede that I am reading this from the draft *Hansard*—is, "The government is not supporting the motion." When I read Hon Simon O'Brien's speech further on, he actually said what I have just referred to; namely, that we should support Hon Phil Edman by voting against his motion. So that is what Labor will be doing.

There is a troubling aspect to this. I have a copy of a document—a public document, I would assume—titled "Submission to Parliament under Section 42(4) of the Land Administration Act 1997 — Proposal — Submission No: 11/2011". That document contains the formal submission to Parliament, and it was submitted by, and signed by, the Minister for Lands, Hon Brendon Grylls. That document also contains a note, which I assume was written by a ministerial adviser, or perhaps somebody from one of the local organisations who is trying to give effect to the government's intentions in the Rockingham area. The note is headed, "Amendment to Class A Reserve 22429 under Section 42(4)(b) of Land Administration Act 1997 (LAA)", and it gives the bald details about what is proposed here. The penultimate paragraph on that page states —

The Rockingham Kwinana Department Office has advised the Member for Rockingham and each Member from the South Metropolitan Region have been briefed all of whom have been supportive of the proposed.

I am quoting exactly what is stated in the document, so *Hansard* might want to put the word "sic" there, because as it reads it does not make good grammatical sense. But I guess the intention there is to advise the minister that the Rockingham Kwinana Development Office has talked to the member for Rockingham, Hon Mark McGowan, and each member for South Metropolitan Region, and they have all been briefed and have been supportive of the proposal. Hon Lynn MacLaren informed the house last night that she certainly had not been consulted; and of course if she had been consulted, she most certainly would not have agreed, because her disallowance motion is one that she intends to support, and that motion will not allow the excision of this small part of this Bush Forever site to go ahead. I understand that not one Labor member for South Metropolitan Region was briefed on this, let alone agreed with it. That is more than a trivial oversight. The information that has been provided to the house in the shape of this proposal is actually wrong. It is not a trivial matter. The government needs to make it very clear among its own members who sit around the cabinet table, and among the officers who are supposed to service the functions of government, that this kind of thing just will not be tolerated. My colleagues on this side of the house who are members for South Metropolitan Region have not been briefed on the proposal to excise this part of the Bush Forever site. That is not good enough, and it is a source of great disappointment to us that this has been allowed to occur.

I would have thought that Hon Phil Edman, who I know talks to a lot of people in the course of his duties as a member for South Metropolitan Region, would have sussed that out and perhaps taken steps to rectify that situation. Having said that, I know that my colleagues in the other place Hon Mark McGowan, Mr Paul Papalia, the member for Warnbro, and Mr Roger Cook, the member for Kwinana, have been consulted about the proposal and are supportive of this extension going ahead. This is clearly a road that will be much used by people who work in that area. Indeed, wearing the hat that I have recently acquired as shadow minister for Peel, in the last few weeks I have met with most of the local government authorities in the Peel region, and they have all pointed out to me that the east–west links through the Peel, and north of that region, are a major transport planning

problem in that area; therefore all the local governments in that area are supportive of this extension going ahead. On that basis, Labor will be voting against this motion.

I want to make one final point. I listened very carefully last night to the Greens (WA) submission on this disallowance, and I do substantially agree with the point that the Greens make about the way in which this government is running its environmental offsets policy. There is a problem. We have been promised for the three and a half years that this government has been in office that we would be given an environmental offsets policy that is a public document and that sets out clearly and unequivocally what the government intends to do in managing its environmental offsets program, how it has been managed in the past and how it will be managed into the future. When that document was eventually made public a matter of a few months ago, it consisted of precisely four pages. There has been no attempt by this government to do any kind of analysis of how environmental offsets have been working up to this point in time. A four-page document is not sufficient for us to be confident that when this government talks about running a robust and effective environmental offsets program, it is actually going to work. There are big, big issues at stake here. There is a great deal of money involved, because a lot of environmental offsets involve payments by proponents to government. I am sure honourable members opposite who follow the estimates process know that we have for some years been asking questions in estimates about exactly how that money forms part of the government's accounting system, and all we have been told thus far is effectively that it does not. That is not good enough. So when Hon Lynn MacLaren talks about problems with that offsets program, I absolutely concur with her statement that this is a cause of some unease.

However, I have looked at the offsets associated with this particular proposal, and I think they are adequate to address the concerns about providing sufficient habitat for the wildlife in this reserve, particularly the black cockatoos that are likely to be disturbed by the loss of some habitat trees as a result of this excision from this Bush Forever site. The fact that the area to be offset is a few kilometres from the area that they currently inhabit is not an issue in this case. I have spoken before in this place about the concept of ecological connectivity. That concept might be new to some members of the government, but it has been around for some time now. It is about the need to leave corridors of biodiversity that will enable species to move around, even where there is a substantial amount of development. My understanding, from people who have been working in this area for many years, is that with species like the black cockatoo, it is much less of a problem to offset with habitat that is a few kilometres from the site that they currently inhabit; but with small birds, of course, and with creatures like frogs and insects, it is much more of a problem because they simply cannot make the journey to the new habitat. But in this case I think those concerns have been addressed.

In summary, my view is that there is plenty wrong with the way this government is running the environmental offsets system. But in this particular case, with this particular amendment, I think those concerns have been addressed. Labor will be opposing this disallowance motion.

HON ROBIN CHAPPLE (Mining and Pastoral) [12.48 pm]: I rise to speak briefly to the document titled "Submission to Parliament under Section 42(4) of the Land Administration Act 1997 — Proposal — Submission No: 11/2011". This is the submission by the Minister for Lands that contains the statement to which Hon Sally Talbot has just referred —

The Rockingham Kwinana Department Office has advised the member for Rockingham and each Member from the South Metropolitan Region have been briefed all of whom have been supportive of the proposed.

I ask the minister to ensure that the record is corrected to reflect what actually occurred and not what is stated in this document, and that the minister in charge of this advise the Minister for Lands that this chamber would in future request accuracy in documents that come before it.

HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary) [12.50 pm]: The minister that the honourable member is referring to, I would think, is the Minister for Lands, whose representative I am in the house. I take note of those comments that have been made.

HON PHIL EDMAN (South Metropolitan) [12.51 pm] — in reply: I thank everybody for their input in relation to this motion. Can I very briefly say that Hon Wendy Duncan made it very clear last night in her reply that the members for Rockingham, Warnbro and Kwinana and the federal member for Brand were all briefed in relation to this road. In relation to Hon Lynn MacLaren's position that she is in favour of the connection, I thank her for her report, and I also thank Hon Sally Talbot representing the Labor Party.

The City of Rockingham had an opportunity to put in a submission after a lifting of the reserve was advertised for three weeks, but none was made. Being fair, there was an opportunity, and there was not one submission. The lifting of the reservation was advertised by State Land Services for 30 days. Once again, there was another opportunity for anybody to make a submission, and there was none. In saying that, we live in a democratic country. Everybody gets the right to speak. I appreciate everybody's input, but I just want to make very clear that

there have been lots of opportunities, and there have been no submissions whatsoever. The Rockingham Kwinana Development Office and my electorate office have received no emails in relation to anybody being against this connection. With that, I ask the house to support the building of Mundijong Road by voting against this motion.

Question put and a division taken with the following result —

		Ayes (4)	
Hon Lynn MacLaren	Hon Giz Watson	Hon Alison Xamon	Hon Robin Chapple (<i>Teller</i>)
		Noes (27)	
Hon Liz Behjat	Hon Kate Doust	Hon Philip Gardiner	Hon Simon O'Brien
Hon Matt Benson-Lidholm	Hon Wendy Duncan	Hon Nick Goiran	Hon Ljiljana Ravlich
Hon Helen Bullock	Hon Phil Edman	Hon Nigel Hallett	Hon Sally Talbot
Hon Jim Chown	Hon Sue Ellery	Hon Alyssa Hayden	Hon Ken Travers
Hon Peter Collier	Hon Donna Faragher	Hon Col Holt	Hon Max Trenorden
Hon Mia Davies	Hon Adele Farina	Hon Michael Mischin	Hon Ken Baston (<i>Teller</i>)
Hon Ed Dermer	Hon Jon Ford	Hon Helen Morton	

Question thus negated.

Sitting suspended from 1.00 to 2.00 pm

GAS SERVICES INFORMATION BILL 2011

Statement by Minister for Energy

HON PETER COLLIER (North Metropolitan — Minister for Energy) [2.01 pm] — by leave: I am pleased to rise today to advise the house of another significant step towards strengthening the security and reliability of Western Australia's gas supplies with the passage of the Gas Services Information Bill 2011. This new legislation will provide for the establishment of a Western Australian gas bulletin board and gas statement of opportunities, which were two key recommendations of the Gas Supply and Emergency Management Committee. I established the committee in 2009 in response to two significant gas supply disruptions that occurred in 2008 during Labor's term of government—the Karratha gas plant shutdown in January and the Varanus Island incident in June of that year. Comprising industry and government members, the committee was tasked with reviewing Western Australia's gas security and gas supply disruption management, and with looking at potential disruption mitigation options. Key recommendations from the committee included the implementation of gas supply disruption response plans; the establishment of regulatory frameworks for gas contingency services to mitigate the impact of any future gas supply disruption; and the establishment of new gas market arrangements, including a gas bulletin board and a gas statement of opportunities. The government has implemented the majority of the committee's recommendations.

In relation to gas disruption management, strategic and response plans for gas and liquid fuel supply disruption have been developed and evaluated using input from the private sector, emergency management agencies and independent consultants. With regard to mitigation measures, the Independent Market Operator is currently developing a rule change proposal to provide a financial incentive for dual-fuelling as part of the reserve capacity mechanism. Importantly, in May 2011, I approved a long-term arrangement between Verve Energy and the APA Group to further develop the Mondarra gas storage facility near Dongara. Once operational, the expanded facility will be able to provide up to 150 terajoules of gas supply a day in the event of a gas shortage. The arrangement will provide Verve Energy with up to 90 terajoules a day, enabling an additional 800 megawatts of gas-fired generation to operate during peak-demand periods for up to 60 days.

In addition to the committee's recommendations, recently approved domestic gas supply contracts between the Gorgon joint venture and the government-owned corporations Verve Energy and Synergy will provide long-term and reliable domestic energy supply. The implementation of the bulletin board and the statement of opportunities will fulfil the committee's recommendations in relation to gas market arrangements. The bulletin board will comprise a website containing near-term information on gas production, transmission, storage capacity and demand. It will also include an emergency management facility to help government and industry to manage gas supply disruptions. The bulletin board is aimed at improving the transparency and availability of gas system and market information for the benefit of the gas industry and gas consumers.

The statement of opportunities will be an annual publication that provides a comprehensive picture of the gas industry in WA over an outlook period of up to 10 years. This information will help guide future investment decisions in the state. The Independent Market Operator, which is currently responsible for the operation of the wholesale electricity market in the south west interconnected system, will be the operator of the bulletin board and will prepare the annual statement of opportunities. It is expected that the gas bulletin board will commence operation in July 2013 and that the first gas statement of opportunities will be published in mid-2013. Collectively, these initiatives will provide for greater security of gas and a more dynamic gas sector for Western Australia.

BILLS*Third Reading*

1. Road Traffic (Vehicles) Bill 2011.

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

2. Road Traffic Legislation Amendment Bill 2011.

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Finance)**, and returned to the Assembly with an amendment.

3. Adoption Amendment Bill 2011.

Bill read a third time, on motion by **Hon Simon O'Brien (Minister for Finance)**, and transmitted to the Assembly.

RESERVES (WANJARRI NATURE RESERVE) BILL 2011*Second Reading*

Resumed from 22 March.

HON SALLY TALBOT (South West) [2.06 pm]: The Reserves (Wanjarri Nature Reserve) Bill 2011 essentially provides for a land swap. It will allow 758 hectares of land in the Wanjarri class A Nature Reserve to be swapped for a much greater area, 8 431 hectares, in the Yakabindie pastoral lease. Nearly 8 500 hectares will come out of that pastoral lease and be vested in the Department of Environment and Conservation in exchange for 758 hectares in the class A reserve. The second reading speech makes it clear that the purpose that has given rise to this land swap is that 758 hectares are needed for the disseminated nickel sulphide project, which of course is part of the BHP Billiton Ltd Yakabindie mine.

At this point, I should thank the government relations people from BHP for the several briefings that they provided to me and my colleagues over the couple of years that this bill has been in the offing and also of course the minister's officers who briefed the opposition quite extensively on the implications of this bill. It was much appreciated and very helpful.

It is interesting to see that BHP does not want to mine these 758 hectares. Often when we are faced with this kind of proposal, it is because some resource has been identified that is contiguous with the boundary of the land that is being excised. In this case, however, BHP wants to use it as a waste dump. That raised a few eyebrows, at least on my part, at the beginning of the process. But having spoken to BHP about exactly what its intentions are, I can see that there is some validity to its argument that this is the best way to proceed. Interestingly, this is such a widely discrepant area that is proposed to be swapped. In the case of the disallowance motion we were debating earlier today, we were talking about an environmental offset that was, I think, only a couple of hectares. In this case we are talking about a very large area coming into the national park reserve system in exchange for a relatively small area. I was very gratified to learn, and the department was very thorough in providing the evidence to back up the point it was making, that we have some areas of very high conservation value coming into the national estate with this land swap; that is very much to be welcomed and celebrated. However, I do not want to give the government the impression that it is all chocolate and roses, because there are a couple of problematic aspects of the bill we are considering this afternoon that I think need further examination. I will raise them now and listen very carefully to the parliamentary secretary's response in her summary of the second reading debate, but I think they are probably more appropriately teased out in the committee stage. The two concerns I have, not surprisingly to anyone who is familiar with the content of the bill, concern the environmental aspects, and aspects that relate to native title and concerns that have been raised by the local Indigenous community.

Let us take the environmental concerns first. It is very important in looking at this kind of land swap that front and centre of our consideration are the conservation values; in other words, the equivalent net gain and loss between the area we are losing and the area we are gaining. I have already referred to the fact that the area we are gaining is not only very large, but also has been extensively surveyed, and demonstrably contains a wealth of conservation values in its own right. It is also worth noting at this stage that BHP Billiton has been running the Yakabindie pastoral lease specifically with this land swap in mind for a number of years. Therefore, the land is not degraded, as a lot of pastoral lease holdings are, by historical practices of grazing and all of the things honourable members will be well familiar with. The environmental values of this land have actually been protected and that makes this proposition, at least superficially, look quite attractive. However, two problems arise. The first is that I am not convinced that the government is applying the right degree of rigour to work out exactly what our objective should be when we look at this kind of land swap, because the point is not that there is a net asset gain in environmental values; it is that the precise quantity of conservation value be kept running along at roughly the same levels. Therefore, is not a matter of saying we have swapped this bucket of valuable things for a bucket that is of equal capacity; we actually have to look at what the contents of that bucket consist

of. Therefore, it is very important that we look at land types for this kind of arrangement of swapping one area with high conservation values with another.

It has been well documented in the debate about this bill in the other place and in some of the commentary that has gone on in the briefings that we are running the risk of diminishing some of those critically important land types when we do this kind of land swap. Therefore, there is, perhaps I can put it this way, an international expectation and standard that 15 per cent should be a ballpark figure when looking at land types that are being diminished because of land-use activities. Therefore, a representation of about 15 per cent of the land type is needed. If it falls below 15 per cent, alarm bells should start ringing. I am not an expert in these areas of science that relate to biodiversity and conservation of threatened land types, but it is my understanding that in the case of this area around the Wanjarri class A Nature Reserve, we are approaching that real red light—ringing danger zone with some of the land types that remain. This is the sort of thing we can go into more detail about when we get to the committee stage, but I think the parliamentary secretary will be familiar with the arguments to which I refer, and I would like to hear her address that point. When talking about the whole issue of environmental offsets, we must consider not only the quantities of land, but also factor in the quality and diversity of the land. This is the basic principle that frames our discussion about land swaps, their ecosystems and the protection of biodiversity. I sometimes feel that biodiversity is intrinsically missing in the government's rhetoric about things like offsets and land swaps. A particular part of an ecosystem cannot be run down too low before the entire system starts to falter. Therefore, I think in this particular instance we are looking at now—which, as I said, is a relatively small area being excised and a large area going into the class A reserve—there are some quite substantive problems about the diminishing land types that will be protected in that region.

I turn now to the concerns that have been expressed by the traditional owners in this region. We are talking here about the Tjiwarl traditional owners and the Tjiwarl native title claim. The applicants on this claim are Keith Narrier, Judy Ashwin, Shirley Wonyabong, Edwin Beaman, Kado Muir, James Calyun and Charmaine Tullock. This native title claim was filed on 17 June 2011. When this bill first crossed my desk, which was a few days after it was introduced into the other place, I made contact with the representative bodies in the central desert area and asked them to look at the bill and give me a summary of their reactions. That process was then taken over by my colleague in the other place, Ben Wyatt, when he became the native title spokesperson for WA Labor, and we received some advice back. Of some concern is the fact that substantially the same advice was conveyed by letter to the Minister for Lands, Hon Brendon Grylls. I am certainly not aware at this point that there has been a response to that letter. The parliamentary secretary may be able to enlighten me when she makes her response to the second reading debate later. I will read the substance of the response from the Central Desert Native Title Service, which states —

The area described as being excised in the Bill ... and the area referred to in the second reading speech as the 'inclusion area' ... is within the area of the Tjiwarl native title claim (WAD 228/11). The Tjiwarl claim was filed on the 17 June 2011 and registered on the 13 January 2012.

I note that is after the bill was already going through the processes of Parliament. It continues —

Central Desert Native Title Services acts for the Tjiwarl native title claimants.

The response went on to state —

We are unaware of any consultation by the Government with our clients either as individuals or in their capacity as native title claimants regarding the Bill, the excision area, or the inclusion area. The excision area and the inclusion area, will almost certainly impact upon our clients registered native title rights and interests. The Tjiwarl native title claimants have an interest in that land and should be consulted.

It goes on to point out that if there is a failure to comply with the future provisions of the commonwealth Native Title Act, that —

... may result in the Bill or future acts referred to in the second reading speech being partially or wholly invalid.

A request was then made to me and to the shadow minister in the other place, Ben Wyatt, that the government should delay passage of the bill to enable the appropriate consultation with the registered native title claimants.

This of course is not the first time this situation has arisen. At the government-provided briefing it was said that all these things have been signed off and agreed to, but when we actually go out and talk to the other stakeholders we find that that is not the case. I well recall, as I am sure other members of this house will, when we were debating the Conservation Legislation Amendment Bill, we successfully petitioned the minister, who, at that stage I think was the Minister for Environment, to have the bill deferred for a month so that negotiations with the representative bodies around the state could take place. I am a bit troubled that the same situation seems to have arisen in relation to this bill. I was first briefed by BHP Billiton; I cannot remember exactly when, but it was certainly 12 months ago, if not more. The government has certainly known that this bill was in the offing for

many, many months. To get to this stage of the bodies representing the traditional owners telling us that those negotiations have not taken place when there is a native title claim already on file with the courts is a bit of a worry. I hope the parliamentary secretary will address that point in her summary of the second reading debate.

I said that Labor would be supporting the bill. It is important to put on record the fact that this is not just about finding a place for BHP to put its waste from this mining operation. This is actually about the expansion and continued operation of the Yakabindie project at Mt Keith. It also has flow-on effects for a great deal of industrial development in that region including the Kalgoorlie nickel smelter and the Kwinana nickel refinery operations, and the flow-on that the state receives in terms of, importantly, job creation and employment, and, as importantly, state royalties. It is incumbent on members of this house to progress this matter without too much delay because there is a great deal at stake here in getting this bill passed. Those matters that I have raised are of some concern.

I thought those concerns would be addressed by going back to the second reading speech but, oddly, I find that the second reading speech is peppered with the kind of language that suggests a lot of elements of this bill are far from locked down. There are two sums of money mentioned in this bill. The first is \$500 000, which will be paid at a certain stage of the proceedings. The second sum is \$2 million, to be set aside until later in the process. The language surrounding that arrangement is all couched in terms of “possibility”, not of certainty. It is far from clear to me and other members on this side of the house why we should allow that vagueness to remain in this bill. I am sure Hon Wendy Duncan will make this point in trying to reassure me that we are dealing with two separate issues here. It is not the province of this bill to deal with the native title claim; nevertheless, the claim is now well and truly in process. It is not that we are foreshadowing the possibility of a claim down the track. This claim is now a reality. I would have thought that we should be talking with far more certainty about when these amounts of money will be paid and exactly what they have been set aside to cover; that is, what precise contingencies they would address. After all, native title is a process that is now well understood in this state. It is not as if we are breaking new ground with this. There must be a sense in which we can give more assurance to the traditional owners about exactly how the land swap will progress and how, in the sense of future acts and the operation of the Native Title Act, this will play out for the traditional owners in that area.

I will be true to my word and take up remaining points as we move into committee. I will finish my comments there by noting that Labor will support this bill.

HON ROBIN CHAPPLE (Mining and Pastoral) [2.27 pm]: The Greens (WA) will be supporting the Reserves (Wanjarri Nature Reserve) Bill 2011, but we propose to move an amendment to it. I will talk shortly about why we propose to move an amendment. It is not dissimilar to the concerns that Hon Sally Talbot has already mentioned.

I was very privileged to spend three days in this area from Thursday, 23 February 2012, through to and including Saturday, 25 February. We looked over the various areas that were to be excised from the Wanjarri Nature Reserve and indeed the areas to be added. We also had a look at some of the other issues. As part of that process we were accompanied by the traditional owners. I want to deal with the site issues—what is to be excised and what is to be added; the heritage values contained within both sites—the mulga ant dreaming sites and the mulga ant hole; and the ecological values of both sites. I want to touch on the issues of Dingo Pool, sandalwood, future act provisions and, latterly, the reason we are doing this. Those members who have been around for a long time will remember that Noonkanbah, Yakabindie and Jones Creek were going on at exactly the same time. There are parallels between those two issues.

I will refer to the land swap. The Reserves (Wanjarri Nature Reserve) Bill is actually not about a land swap; it is about an excision. There is nothing in the bill that actually talks about a land swap. A land swap is mentioned in the explanatory memorandum and in the ministerial statement. We propose an amendment to formalise the land swap contained in the bill. I also should take this time to thank a number of people we met during our review of what has been happening. We met with BHP Nickel West. I want to thank Chris Stone and Ken Weston, both of BHP. We latterly met with employees of the Department of Regional Development and Lands. Again, we had a really good briefing from officers of the Department of Regional Development and Lands, and the Department of Environment and Conservation. We gleaned a lot of information from those meetings and we consider them to have been very, very valuable meetings with people who had a good handle on what was going on.

The land swap, as Hon Sally Talbot has said, is for a triangular piece of land that covers the BHP Billiton–Nickel West Pty Ltd and BHP Billiton–Yakabindie Nickel Pty Ltd leases, and also covers the area of an exploration lease. As has already been identified, this is to facilitate the development of the Yakabindie mine. Of that triangular block, we are looking at the bottom corner for waste stockpiling.

It is really rather interesting; when one goes back to “Wanjarri Nature Reserve: management plan 1996–2006”, and looks at what was originally proposed, there was a triangle—the same triangle we are talking about here—to be excised, and an area just below it, of comparable size, that was to be added. BHP now wants to use that

comparable triangle of land for further lay-down areas, and has come up with the idea of adding the area around Hannans Bore, the top half of Yakabindie station, and the breakaway country into the area.

The area to be excised is described as relatively high mulga country that has a laterite surface, is fairly sparsely vegetated and has obviously had, at some stage, cattle running through it. We have to remember that, prior to this area becoming the Wanjarri Nature Reserve, cattle were indeed running in the area. There are breakaway areas to the east and in BHP Billiton's proposed mine area to the west.

From a heritage perspective, there were artefact scatters across the land; these were tool implements and those sorts of things, but we have to remember that the area was originally fairly well traversed anyway. Both in this area and the area to be added, there are artefact scatters. What is interesting about the area to be excised is that it is the mulga dreaming trail. Just outside the area to be excised, to the west, is a large hole through the breakaway escarpment, which is where the dreaming of the mulga ants coming out of the ground into that area extends from. The land therefore has some heritage and anthropological values, although there is little evidence of archaeological value.

I found the area to be added to be quite stunning country. There are significant breakaways and a large number of caves, all showing evidence of habitation. In fact, we came across four stick-nest rat nests, which is quite a large number to find in any one location. They were all in good preserved order. For those who do not know, the stick-nest rat is theoretically extinct; there have been stories of sightings in the 1990s. They were large marsupial rats that built their nests out of sticks and stones and used their own excreta as a glue to make the nest. The nests still remain and they are rather fantastic systems. There are a large number of them in the new area.

There are also some granitic domes in the new area, which are all heavily carved. We were very privileged to be there just after the rains, and we were able to see how the water was running out of these granite domes into the surrounding country. We could follow the carvings that reflected the water movement. I would think that there is some value in turning the area that is to be added into an Indigenous protected zone, because there is quite clearly a heavy level of historic archaeological and anthropological value there. There is a most incredible pool at the top of one of the breakaways that exists all year round, and it was a known gathering place of some significance.

In respect of the land swap, from a heritage perspective, I do not think we can make an argument that one is better than the other, because they have different levels of heritage value. But from a flora and fauna perspective, I would suggest that this area, even though it is larger, is significantly more diverse and more representative of both the land that is to be excised, and the broader suite of landforms in that area.

One of the things I found interesting is that the area to be added has a large number of creek lines coming down from the breakaway. These all meander across the area to the south west corner. Just outside the south west corner, in the Yakabindie pastoral lease, is Dingo Pool, which also has heritage and environmental value. I am really quite surprised, looking at the area as a whole, that Dingo Pool was not added into that reserve, because it created a synergy, it was all the same system, and I would have thought there were values in that.

It is not specified in the legislation what is to be added, other than the plan that appears in the explanatory memorandum, which makes mention of deposited plan areas as being the areas to be added; they are notional additions. I would appeal to BHP, having been out there, that it considers adding a little more to the south west corner, to provide synergy to the land.

I mentioned to officers of the Department of Environment and Conservation that, although the land swap has not taken place and may never take place because of future legislative provisions, it was really quite adventurous of the Department of Environment and Conservation to have already gone out and fenced the land. When we got there, there was a sign for the Wanjarri Nature Reserve and it was all fenced. We all had a bit of a chuckle at the meeting about the paint still being wet on the sign while the land is yet to be formally added. It may be a good thing, because the fence and the signs provide the community with notional evidence that in a more broad sense the area is protected, although I will point out that the fence and the sign have no legal value at this time.

I have touched on the issue of Dingo Pool.

The area to be excised extends from the northern end of what I call the triangle down the breakaways to the east and west, and there is certainly evidence of significant sandalwood stands in the area. I would like to know the processes the current owner, DEC, has in place to ensure that the sandalwood is harvested prior to BHP Billiton taking the lease or, indeed, what will happen to ensure it is harvested as required by the department's act. I need to know a bit more about that. Perhaps we will touch on it during Committee of the Whole.

I have never been to that particular part of the Wanjarri Nature Reserve or the area to be added, but historically I have spent quite a bit of time further to the west, albeit not very much further to the west, in the area of Jones Creek. We must remember that this legislation facilitates the Yakabindie nickel project, which has been around for a very long time and people have tried to get it up on a number of occasions. I have copies of the environmental approval processes from 1990 and from 1995. For many years, inhibiting the mining of the Jones Creek area was

the focus of significant effort by the Ngalia people for reasons of environmental and spiritual significance. Recently I gave the eulogy for an old woman from the area who had passed away. For many years, she was one of the most significant fighters for the preservation of the Yakabindie area. I am still not at liberty to use her name so I will call her Palu. I am about to have some problems talking to the ethnographic material that I have before me because although I have been given permission to talk to it, they are closed records. Some are men's records and some are female records; and I will not delve into the issue. I really want to highlight some of the values espoused by the Ngalia and other people in the area for many, many years.

In 1991 approximately 20 men and women, in conjunction with P. Moore and J. Pope and the centre for prehistory at the University of Western Australia, visited the area of the then proposed Dominion mining project. They conducted two surveys of the Yakabindie and more particularly the Jones Creek area from 22 to 24 February and then again from 11 to 16 March. Jones Creek is at the centre of the proposed Yakabindie mine and I will talk some more on that in due course. However, Dominion agreed to mine for nickel underground and not disturb the surface. There was provision for what I call a win-win. I understand that BHP want to mine open cut in the area and I have particular concerns about that. The area is subject to a carpet snake dreaming—Iltji—and the story of Tjinkuna, the dragonfly. Many years ago, I was very privileged to be one of the few men to visit, with Palu, some of the periphery of the women's sites in the area. They are stone arrangements of significance, as are the men's areas, which exist in many of the caves and the breakaways. The area is also very important for the bush medicine mulka kutjal, which is a bush common to the country. For many years, the Ngalia have looked, with some American corporations, to licence this bush as a traditional source of medicine. Many surveys were conducted in the area and another significant ethnographic report of the Bar Smith and Violet Ranges that surround Yakabindie deals with songlines and sites in the area. These reports contain extensive site lists covering the area. Although we are dealing with a land swap in an adjacent area, with which we and, I am advised, the Ngalia, do not have a problem, it is part and parcel of a proposal that will facilitate the destruction of significant heritage areas that have, for a very long time, been fought for and that, up until the old woman, Palu, passed away, had not progressed. It is very interesting that after the last strong woman in the area eventually passes away, mining is again on the agenda.

It is important now to talk about the area's environmental value. The Wanjarri Nature Reserve was established in 1971 on what was originally a vacant pastoral lease. The 53 248-hectare station had previously carried sheep. Over the past 30 or 40 years the land has mostly regenerated into a system that is now quite valuable, although when it was originally added, the evidence was that the system would grow back in ecological value. The area was recognised in 1975 in the Environmental Protection Authority's system 11 as a significant goldfields ecosystem. The southern part of system 11 is comparatively well catered for in terms of nature conservation with some 10 nature reserves and national parks. Obviously the Nullarbor Plain world heritage area covers a small part of south eastern system 11. This area fits into the top part of system 11. As was stated by the Environmental Protection Authority a number of years ago, Wanjarri is a small island reserved for nature in a vast sea of human activity. Indeed, it was identified by the EPA as a significant area.

Some of the early work done by the EPA suggests that the lesser stick-nest rat could have been in existence in the 1990s. Sightings of the stick-nest rat and other evidence suggested that it remained in that area. Indeed, there are drawings of the stick-nest rat in that area in a publication produced in 1863 entitled *Mammals of Australia in London*. The area was fairly well renowned. The area also contains peregrine falcons, which use that breakaway country. Again, while we were out there we were lucky enough to see a number of raptors and Alexander parrots. The area that will be added is rather significant. But we must remember that the EPA also identified the area around Jones Creek as being exceedingly significant. In the past I have sat at Jones Creek with old men and heard some of their stories. It is a rather special place. Unfortunately, it forms the very centre of BHP's proposed Yakabindie mine.

It is interesting that the briefings we received from BHP suggested that the development of the Yakabindie mine may be a long way off. I am interested on one level to find out, if it is that far off, why it is necessary to do the excision now, notwithstanding the fact that an excision will have to be done at some stage if BHP is to find somewhere suitable to put its overburden and tailings. The Greens (WA) certainly do not support the driver behind this. But we are dealing with the specific issue of the land swap.

I will now talk about why the Greens have proposed an amendment that stands in my name. It reads —

Page 3, after line 8 — To insert —

- (5) The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

We suggest that the area to be added should go through all its legal processes. Therein lies a bit of a rub, because although the current land is held under the Yakabindie pastoral lease, the moment it moves out of that lease it becomes unallocated crown land. It might become so for a millisecond, but once it is unallocated crown land, it is subject to the future act provisions. Once it is added to the Wanjarri Nature Reserve, native title will be

extinguished. That moment in time will most probably mean that we will again have to go through the whole native title process for that piece of land. When we talked to BHP representatives and the government's advisors, we asked whether that means that the land might never be added. They could not tell us yes or no, because they do not know what is going to happen. Quite clearly there is a native title claim over the area—that area is claimed. The moment it becomes unallocated crown land, it is subject to the future act provisions of the Native Title Act. That is all absolutely perfectly right and proper, but it does mean that we may never get that piece of land. If the conservation estate is to be altered in size, we suggest it mirror the size or become the expansion we are talking about. The bill before us is about excision—nothing in it refers to the land swap. The explanatory memorandum refers to it and the minister's statements have referred to it. However, there is nothing in the provisions of the bill that deal with the land swap. The bill states that the —

excision area means the area of about 758 hectares identified as the Excision Area on Deposited Plan 72976 ...

But that is the last reference to a deposited plan. It should refer to the area to be added being reflected in the deposited plan, but it does not deal with that. By moving the amendment the Greens are saying that we do not have a problem with the land swap—let it occur, absolutely—but let us have that provision in the legislation so that the land swap occurs and then there will be some imperative to getting the land swap moved forward in an erudite fashion. That is the nature of the amendment. We hope to have the support of the opposition and the government for what we think is a genuine attempt to fix that problem in the legislation. I do not doubt the intent of the department, the Minister for Lands or BHP; but the problem exists and we must try to address it.

The money to be paid by BHP is interesting, particularly the \$2 million that will be paid once Nickel West receives final internal approval to commence the nickel project, or by June 2017. I want to question the minister about some of that fiscal exchange and what it will be for when we reach the committee stage.

In essence, the land swap is a good deal. I believe the area should be identified by the Minister for Heritage as a protected area. In a simple sweep over a couple of days we found an immense amount of cultural material. We also think that the Department of Environment and Conservation should get out there and have a good look around to see whether there are any stick-nest rats in existence, because some of the nests looked pretty new. They were in caves, so one never knows. The caves were incredible; some were really deep, others were extensive. There was bat refuse everywhere. In some of the caves fireplaces still exist. Because of the highly acidic nature of bats' urine, it was creating an environment in which no wood borers were coming in, so fireplaces still existed. It was a treasure-trove for somebody who likes heritage and archaeology.

On the strength of that, that will be our position, and as we move into committee I will most probably have a number of other questions.

HON WENDY DUNCAN (Mining and Pastoral — Parliamentary Secretary) [3.00 pm] — in reply: I thank the honourable members opposite, Hon Sally Talbot and Hon Robin Chapple, for their contributions on the Reserves (Wanjarri Nature Reserve) Bill 2011 and their indications that they will support it. I will take a bit of time now to try to cover some of the matters raised. Firstly, I agree with Hon Robin Chapple that the beauty of that breakaway country is very special indeed. It certainly is a great place to go to renew one's spirit and appreciate this magnificent state that we have. I think that is why this proposal is one that we should support. For the 758 hectares that is proposed to be excised from the Wanjarri Nature Reserve, we are proposing to have 8 431 hectares of land with very important conservation values included in the reserve.

The Wanjarri Nature Reserve is a class A reserve of 53 000 hectares. The excision area is only 1.4 per cent of that area. Of course, the proposal, should this bill be passed today, is that the excision area will then be reserved for the purpose of mining and move into the care and management of the Minister for Mines and Petroleum in his capacity as a corporation sole established by section 10(2) of the Mining Act. Under this agreement, the Minister for Lands has 20 years to require Yakabindie Nickel to surrender the inclusion area from the Yakabindie pastoral lease for inclusion in the Wanjarri Nature Reserve. Until he does so, Yakabindie Nickel will manage the inclusion area at its own cost to ensure its conservation values are not degraded. Hon Robin Chapple noted that the area is already fenced and has signage on it, and he said that he thought that the Department of Environment and Conservation had done a really good job when it did that. I suspect that it was actually BHP Billiton that did the fencing.

Hon Robin Chapple: It was certainly a CALM sign.

Hon WENDY DUNCAN: Yes. The Department of Conservation and Land Management may well have put up the sign, but I suspect BHP has borne the cost. Also, I am advised that BHP is already undertaking the management of feral animals within that enclosed area. Therefore, any concern that the area will not become part of the reserve or be treated as a reserve should be allayed by those actions on behalf of BHP Nickel West that we can see already.

There are implications under the future act provisions of the commonwealth Native Title Act 1993 in relation to the proposed land tenure actions for the inclusion area. These have been considered by the relevant agencies and are reflected in the land swap agreement. Under the agreement, Nickel West will pay \$500 000 after this bill is passed and has received royal assent, and a further \$2 million by the earlier of the final investment decision for the project or 30 June 2017. Hon Robin Chapple in his remarks queried how those funds will be used. The money will be paid into the consolidated account, but it is intended that it will be used for compliance with the Native Title Act processes, which may include negotiating an Indigenous land use agreement before the inclusion area can be added to the Wanjarri Nature Reserve, and also to cover any other costs associated with the addition of the inclusion area in the nature reserve. It should be noted that any mining proposal in respect of the project is still subject to the due processes of the Mining Act and the Environmental Protection Act. Therefore, we believe that the package is, on balance, of benefit to the state, given the significant conservation values of the inclusion area and the economic and social benefits that will accrue from the project.

Hon Sally Talbot raised the issue of the conservation values and the net benefit, I guess, that can be attributed to this land swap agreement. I inform the house that more than 3 000 hectares of the Bullimore land system, which is the habitat for the brush-tailed mulgara, and 4 000 hectares of the Sherwood land system, which supports 12 priority flora and undescribed flora species, will come into the conservation estate. The breakaway chenopod plains and mixed chenopod shrub-land habitat units will also come in. There will be increased representation of nine priority flora species and the populations of three unspecified flora species, two of which have not previously been recorded in the WNR. The land swap results in some losses in the overall scheme of things, but if we look at the table that identifies this by the detailed land system, we can see the losses as a percentage of the Murchison subregion. The Bevon land system incurs a loss of 0.04 per cent, the Jundee land system incurs a loss of 0.02 per cent, the Nubev land system incurs a loss of 0.02 per cent, and the Tiger land system incurs a loss of 0.37 per cent. In that way of measuring land systems, the rest of the land systems —

Hon Sally Talbot: Are you able to table that?

Hon WENDY DUNCAN: Yes, I could. I seek leave to table this table for the information of members present.

Leave granted. [See paper 4385.]

Hon WENDY DUNCAN: Overall, the outcome for the conservation estate is a good one.

A copy of the agreement has been provided to the opposition parties. Hon Robin Chapple asked a question about the reason for the urgency of this bill, given that the development of the Yakabindie mine may be some time off and given that nickel prices are at a bit of a low point at the moment. By definition, there are quite significant fluctuations in the price of nickel, so we really need to have this excision in place to be able to take advantage of the inevitable improvement in price that will come. Not only that; BHP Billiton cannot make its final investment decision until this excision has occurred, because its project is not feasible without this parcel of land to enable it to lay down its waste and undertake other activities.

We have been advised by BHP that this project remains an important future project for Nickel West as it provides a 20-year ore supply for operations at Nickel West Mt Keith. In spite of its strategic importance, Nickel West would need to defer studies on the NDS1 project until the current unfavourable economic conditions improve and the Reserves (Wanjarri Nature Reserve) Bill 2011 has been passed.

I also thank Hon Robin Chapple for his queries during the briefing period regarding the survey markers on the ground, because following the investigation of the questions the member asked, an error was identified in deposited plan 72583, which had been tabled in Parliament in support of the bill. The diagrammatical representation of the excision area actually did not correspond to the total area of 758 hectares that had been identified in the legend of the plan. That error was corrected in the other place, and a new agreement was subsequently drawn up to reflect that change and the changed number of the deposited plan, which is now 72976.

Hon Robin Chapple: If you have changed the deposited plan, and I'm referring to the deposited plan in the explanatory memorandum in my amendment, I assume I might have to amend that amendment?

Hon WENDY DUNCAN: Yes, I would say so, Hon Robin Chapple, because the bill came to this house with the number amended.

Hon Robin Chapple: Okay; fine.

Hon WENDY DUNCAN: So perhaps that is something that Hon Robin Chapple might need to have a look at.

Hon Sally Talbot: I do not think it affects Hon Robin Chapple's amendment.

The DEPUTY PRESIDENT (Hon Jon Ford): Order, members. It seems to me that we are slipping into a third reading debate. It is very hard for me to follow, and it is certainly hard for Hansard.

Hon WENDY DUNCAN: Thank you, Mr Deputy President; I will take your advice.

I advise the house that just before we came in today, the new agreement was signed by BHP, the representatives of the Department of Environment and Conservation, and the Minister for Mines and Petroleum. I am not sure whether the Minister for Lands has quite got there yet, but he certainly has every intention of doing so.

Central Desert Native Title Services represents the dual native title claimants for the inclusion area, and it has written seeking consultation on the bill and the inclusion area as it could impact on its clients' right. As Hon Robin Chapple has noted, this bill does not deal with the inclusion area, and the inclusion area cannot be incorporated into the Wanjarri Nature Reserve until the native title process has been followed; the funds being provided under the agreement will allow that process to flow. We need to note that the native title claim was not confirmed until January this year, so claims that there has not been consultation may be difficult to substantiate. But I certainly take the point of Hon Sally Talbot and Hon Robin Chapple that we need to consult fully with the native title people there. I have a good relationship with Kado Muir, and we have been advised by the Department of Environment and Conservation that it has not discussed the addition of the Sir Samuel block with the dual claimants. When DEC was discussing this proposal in June 2011, the dual claim had not been registered with the National Native Title Tribunal; also, it was DEC's understanding that BHP would consult with Aboriginal groups about the excision and addition. The claim is now registered with the National Native Title Tribunal and Mr Ian Keeley of DEC, who has a very good relationship with Kado Muir and is a man who is highly respected in that area, and Central Desert Native Title Services will be discussing the addition of the Sir Samuel block with the dual claimants after the reserves bill has been proclaimed. Mr Keeley also advised that he has spoken to Mr Kado Muir and others about the original excision and the addition proposal as outlined in the Wanjarri Nature Reserve management plan.

We have also received advice from BHP Billiton that Nickel West has advised the dual claim group, its legal representatives—namely, Central Desert Native Title Services—and Mr Kado Muir that it will liaise closely with the traditional owners regarding the treatment of heritage sites, to ensure that there is reasonable, minimum impact on sites in the project disturbance area. The company will engage with the claim group for a long-term land access agreement. That is the consultation that has happened to this point, given that the native title claimants' claim was lodged in January.

I will refer to a couple of other points. I suppose the most important one, of course, is the proposed amendment by Hon Robin Chapple, which is that —

The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

The effect of that amendment would be that the excision would not occur until the inclusion land is added into the Wanjarri Nature Reserve. Given the native title requirements and the negotiation process, particularly if we want to do it properly and give due consideration to many of the issues Hon Robin Chapple raised, that would not be concluded until some years into the future. If that amendment is passed, Nickel West would not have the certainty it requires to commit to the project. I would like honourable members to consider that when we debate the amendment during Committee of the Whole.

I will also respond to Hon Robin Chapple in relation to Dingo Pool and some of the other important matters in the Aboriginal archaeological sites in the reserve. I have been told that the bottom fence line on the reserve is not straight, because there had already been some endeavour to include it in Aboriginal heritage sites. I would say that in the negotiation process for the inclusion of that reserve and the native title agreement there may well be some flexibility in the boundaries. I think that could be brought into that negotiation.

As I mentioned before on the issue of sandalwood, the application to use that excised area for that purpose will go through the normal approvals process. DEC will have the right to ensure that that sandalwood is properly managed and not wasted. Hopefully, that answers the member's query on that front.

I think I have probably covered most of the matters raised in the second reading debate, and perhaps we could go into committee. I think we had that indication from the speakers.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jon Ford) in the chair; Hon Wendy Duncan (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Hon SALLY TALBOT: I will make some comments on the short title, and I am sure that you, Mr Deputy Chair, will pull me up and tell me that I should not be saying this now if that is necessary. We are looking at a three-clause bill, so I do not think it will be too confusing.

As both Hon Robin Chapple and Hon Wendy Duncan have pointed out, the land swap is not dealt with in the bill; the bill deals only with the excision of the 700-odd hectares. First of all, I will ask a question about the time frame. If we are going to debate this issue involving a land swap, we have to include the agreement, because the agreement contains the provisions of the land swap. At page 8 of the agreement, it refers to the inclusion area and a 20-year time frame. Can the parliamentary secretary make some comments about why it is 20 years, not 10 years or 40 years? How was that figure arrived at?

I have another question that I think comes under the short title provisions of the bill. A correction has been made to an error that was made by, I understand, Landgate when it submitted the original numbers of the plans. Can I be absolutely clear about what documentation has changed as a result of the correction of that error?

Hon WENDY DUNCAN: I thank Hon Sally Talbot for the questions. The 20-year time frame was decided upon to allow plenty of time for native title negotiations. That is the maximum time frame, but the agreement can happen any time before then, as long as all parties are agreeable. The fact that we have until June 2017 to make the payment of the second tranche of funds will be an incentive to have the matters concluded sooner rather than later.

In response to the member's second question about the documentation that has changed, the deposited plan has been changed; it has a new number. That was amended in the bill in the other house. It is attached as a schedule to the agreement, so the agreement has subsequently been amended. As I pointed out in my response to the second reading debate, that agreement has been signed by nearly all parties; and, if it has not been signed by all parties by today, it is certainly well progressed.

Hon SALLY TALBOT: On a further point of clarification, is the only difference between the version of the agreement that was signed on 17 November 2011 and the current version the corrected plan number?

Hon WENDY DUNCAN: A variation to the agreement has been signed. The only matter that that variation dealt with was the change to the deposited plan.

Hon ROBIN CHAPPLE: While we are dealing with the short title, I want to touch on a few points. Sterilisation occurs when a mining company goes over land and ensures that there are no minerals there. We went over the area to be added over a couple of days and we did not find one drill hole. I am interested in what level of sterilisation was done and whether this area will be wanted for utilisation by the mining industry in the future. As far as we are aware, there is an indication that the area has been sterilised, but we could see no evidence of that.

Hon WENDY DUNCAN: Yes, the forensic Hon Robin Chapple is correct; there has been no drilling on the site. However, we have an assurance from BHP Billiton Ltd that the land does not support mineralisation. The Department of Mines and Petroleum has conducted sampling of the area to ensure that the area is deemed sterilised of minerals. In fact, a section 19 notice has been placed over that area for two years until that can be fully established. Certainly, BHP and the Department of Mines and Petroleum are satisfied that the geology does not support mineralisation.

Hon ROBIN CHAPPLE: Assuming that the bill passes within the next short while, under the agreement, when will the area be released from the Yakabindie pastoral lease? Will that occur immediately, or is there a projected date for that to occur? Some of that sort of information might be of use. When will the application begin to add the area to the Wanjarri Nature Reserve?

Hon WENDY DUNCAN: The excision from the pastoral lease will most likely occur at the same time as the Indigenous land use agreement being agreed upon, but really the state has the right at any time to excise the land from the pastoral lease. The member talks about including the inclusion area into the Wanjarri Nature Reserve. That is the intention, but it may well be that that reserve, in negotiation with the native title parties, may have a different type or status to suit the native title party. Therefore, that will be part of the negotiation, but it will be at the time of the reaching of agreement or a decision of the minister.

Hon ROBIN CHAPPLE: I am really trying to get to the time frame. The parliamentary secretary stated that it would be at that time of the signing of the ILUA; is there any projected idea of when that may occur? Are we talking about a year, 10 years, six months, a week or whatever?

Hon WENDY DUNCAN: There are quite a few players in this process and I suppose the most important ones are the negotiators in the native title agreement. Also, of course, the second tranche of funding, the \$2 million, will go into that negotiation agreement at the time that BHP Nickel West decides to proceed with the project or June 2017, whichever occurs the soonest. Therefore, that is another variable in the agreement. If BHP Nickel West decides to proceed sooner, the \$2 million comes across sooner and that may well advance the conclusion of the agreement and the inclusion of that land in the reserve.

Hon ROBIN CHAPPLE: I think we are a little vague at the moment and I understand the reasons for the vagaries, but that also gives me the same concern that may or may not —

Hon Sally Talbot: Vagueness, not vagaries!

Hon Wendy Duncan: Don't accuse me of vagary!

Hon ROBIN CHAPPLE: When we come to the amounts to be paid, it has been identified that both the \$2 million the parliamentary secretary has talked about and the original, I think, \$500 000, will be for the purposes of assisting the native title agreements. The parliamentary secretary also said that the money was also going to general revenue. With that money, how restrictive or articulated is it to a particular process? Could it end up in general revenue and just sit there?

Hon WENDY DUNCAN: Yes, the funds are going into consolidated funds, which is, I guess, where they will be held until the application is made to the Economic and Expenditure Reform Committee to release them for the purposes of the negotiation and the inclusion of that land into the reserve. I would say that the intention is clear both from the minister's statements in the other place and my comments in this chamber that that is what the funds will be used for.

Hon SALLY TALBOT: I am looking at the precise place in the agreement where this is covered. I think we are talking about 6.3. It states the following —

... The CALM Executive Body shall use the moneys paid under clause 6.1 for any, some or all of the following purposes:

- (i) compliance with the future act provisions of the NTA as they relate to the Inclusion Area ...; and
- (ii) covering any other costs associated with the addition of the Inclusion Area to the Wanjarri Nature Reserve.

There, we are talking about the purposes for which the money can be used, not the money itself. I put to the parliamentary secretary that there is a very good reason for some degree of nervousness on this side of the house about money that is allocated to the Department of Environment and Conservation's consolidated revenue. We have seen what has happened with the waste levy: only a fraction of the money that was originally supposed to go to the Waste Authority now ends up with the Waste Authority. It makes me very apprehensive when I read that DEC's consolidated revenue bucket will have an extra \$2.5 million allocated to it and under this agreement I can only see a provision for what the money should be used for, not any stipulation that all of the \$2.5 million should be spent on those purposes. What if only half that money is expended? Where does the rest of it go?

Hon WENDY DUNCAN: The money is actually not going to DEC; it is going to consolidated revenue, therefore Hon Sally Talbot's concerns and reference to the waste levy is probably not relevant at this point. DEC will need to apply to the government of the day as the expenditure is required.

Hon SALLY TALBOT: I thank the parliamentary secretary for that clarification, but I think my basic question has still not been answered. What will be the result if only \$1.5 million is required for those purposes that I have just read out? Does the rest of the \$2.5 million stay in consolidated revenue?

Hon WENDY DUNCAN: The funds have been directed into consolidated revenue for a specific purpose that is identified in this agreement. If there is an underspend, as the member suggests, it would be for DEC, the native title holders or the people with interests in the reserve to negotiate how the balance would be expanded. There are examples in other areas in which, if the funding allocated to a particular project is under-expended, there is negotiation about what happens to the rest.

Hon SALLY TALBOT: Does that mean that there will be accounts produced on a regular basis to show how much of the \$2.5 million has been expended? Otherwise I am not sure at all how the negotiators of the native title agreements, presumably the people whose names are on the claim, are going to have a sense from month to month about how much of the \$2.5 million has been spent and what it has been spent on. I have already referred to clause 6.3(b) of the agreement, but subparagraph (ii) states —

covering any other costs associated with the addition of the Inclusion Area to the Wanjarri Nature Reserve.

Will regular accounts be produced? Will this be subject to scrutiny in estimates? How do we get this information on the public record about how that \$2.5 million tracks through the system?

Hon WENDY DUNCAN: Yes, it would be through the normal accounting systems of government and, yes, the member is right: there is the opportunity to also ask those questions in estimates. I do not think it would be accounted for any differently than other project-specific funds.

Hon SALLY TALBOT: If I could ask one final question—I am trying to spare Hon Robin Chapple the pain of leaping to his feet—I will sit down after this one, for a bit anyway. Can the parliamentary secretary tell me how the \$2.5 million was arrived at? She has referred to other instances where this tracking process has worked well. How did we get to \$2.5 million?

Hon WENDY DUNCAN: There really is not a lot of information out there to advise how much these negotiations cost. The amount is usually held in confidence. The amount arrived at here used information at the disposal of the Department of Environment and Conservation, and also drew on the experience that BHP Billiton can bring to the table about what is deemed a reasonable amount to conduct a negotiation of this sort and reach the conclusion that we are all wanting to reach.

Hon ROBIN CHAPPLE: In answer to Hon Sally Talbot, the parliamentary secretary said that if the money was not expended and there was a surplus of funds at some stage in the future, the native title claimants might have potential to claim that or acquire it. Can the parliamentary secretary either restate that or clarify what she meant by that?

Hon WENDY DUNCAN: I thank Hon Robin Chapple for the opportunity to clarify that. What I really meant was there may be matters in the native title negotiation that need resolving as they get towards the end of the process, but the money will always be held by government and managed by DEC.

Hon ROBIN CHAPPLE: Given that the area we are talking about is relatively small and it is my understanding that the claimants are more or less happy with what is going on, is not \$2.5 million a significant amount, given what might go through very, very quickly? Again, following on from Hon Sally Talbot, what happens if that money is not all consumed? Does it go to DEC? Does it go to the native title claimants? Does it go to the Department of Indigenous Affairs, which might want a protected area? I am trying to get an idea of whether it would just disappear into the bucket or whether it will actually be defined in the amending bill how it is to be used.

Hon WENDY DUNCAN: The object of the exercise is to conclude the negotiations to create the reserve inclusion area. Should funds be left over, it would be up to the government of the day and the Department of Environment and Conservation to determine how they are used.

Hon ROBIN CHAPPLE: So, it is a government decision and potentially DEC's decision. Is there no involvement with the traditional owners or the native title claimants regarding what may or may not be resolved in that area?

Hon WENDY DUNCAN: We really are trying to gaze into a crystal ball here. I do not think I can give the chamber a response that will resolve this issue. The money will remain with the government and the Department of Environment and Conservation. If there are surplus funds—there may well be—the government of the day and the parties around the table may decide there is an opportunity to undertake or entertain some of the matters the honourable member suggests. However, that is in the future and I cannot give that commitment. Clauses within the agreement might be agreed to that deal with such matters.

Hon ROBIN CHAPPLE: If DEC ends up with \$500 000 or \$1 million that has not been expended, is there a requirement that the money must be expended on the Wanjarri Nature Reserve, or can it go to DEC's general administrative procedures?

Hon WENDY DUNCAN: One thing we know for sure, Hon Robin Chapple, is that there is no obligation to return the money to Nickel West, so we can discount that possibility. I cannot confirm what would happen in those circumstances. That would be up to the minister at the time, the Department of Environment and Conservation and the parties to the negotiation.

Hon SALLY TALBOT: I think there is a degree of confusion arising here. I asked the parliamentary secretary a question about the accountability of the expenditure of that money through the estimates process, or whatever process is open to us. My question was: how will the native title claimants know the rate of expenditure and what is left over? I understood the parliamentary secretary to say that they would have some say in claiming that money. That is the first point I put to the parliamentary secretary. The second point is that the parliamentary secretary explained to me that the money will not go into DEC's consolidated revenue, but that it will go into Treasury's consolidated revenue. Why then does DEC have a say about how that money is spent?

Hon WENDY DUNCAN: The reason that DEC is the party involved is that DEC requires the land to go into the nature reserve. The department is the respondent in the native title negotiation. It will be undertaking the negotiations. Can the member just remind me of the other half of her question?

Hon Sally Talbot: What role do the traditional owner claimants have in determining how the money is spent? I thought you'd said earlier that they would have a role.

Hon WENDY DUNCAN: Yes, they certainly will. They have a role in the fact that they were at the table in the negotiations, and the negotiated agreement will not only use that money, but also determine whether the whole amount is expended on that, in negotiation with the Department of Environment and Conservation and the government.

Hon SALLY TALBOT: On a point of clarification, when the parliamentary secretary talks about "DEC", does she mean the Department of Environment and Conservation executive body? After she has answered that, can

she explain to the house how the DEC executive body is constituted? It does not actually appear in the definitions of the agreement.

Hon WENDY DUNCAN: Hon Sally Talbot is correct; it is the DEC executive body, and that is a body corporate under the Conservation and Land Management Act, so it has the ability to negotiate in that —

Hon Sally Talbot: Under the Environmental Protection Act or the Land Administration Act?

Hon WENDY DUNCAN: Under the Conservation and Land Management Act.

Hon ROBIN CHAPPLE: We have mentioned claimants, and Hon Sally Talbot has identified the claimants more than the parliamentary secretary has. Has the Department of Environment and Conservation and/or BHP Billiton had agreement from the claimants that the area should be included in the Wanjarri Nature Reserve? What level of negotiation has gone on with the claimants in respect of the Department of Environment and Conservation and BHP?

Hon WENDY DUNCAN: No, there have been no negotiations on the inclusion area going into reserve because this bill needs to pass before we have the parameters to commence those negotiations. That will be the first step in progressing towards the ability to actually undertake this negotiation.

Hon ROBIN CHAPPLE: I note that the Wanjarri Nature Reserve management plan was from 1996 to 2006. Is there to be a new Wanjarri Nature Reserve management plan that the Wanjarri Nature Reserve will fall under? Given that we have recently passed amendments to the CALM act allowing for native title parties to be involved in the management of nature reserves, is there to be a new management plan, and will it be inclusive of the native title parties?

Hon WENDY DUNCAN: At this stage, there has been no decision to update the management plan. That is something that may well happen as we go forward with the negotiations for the inclusion, if that is actually seen to be something that is needed.

Hon ROBIN CHAPPLE: The next part of that question is: as a certain part of the area to be added to the Wanjarri Nature Reserve is now being negotiated and structured with the native title claimants, will the native title claimants, under the CALM amendments for joint management, be included in the management process of either the land that is to be added or the entire Wanjarri Nature Reserve?

Hon WENDY DUNCAN: The balance of the Wanjarri Nature Reserve is a DEC nature reserve, so the terms that the member is talking about would be part of the native title negotiations for the inclusion area, and how they relate to each other would be also part of those negotiations.

Hon ROBIN CHAPPLE: In relation to both the area to be excised and the area to be added, have site clearances been done by the relative native title parties in respect of the area to be added to the BHP lease, which is coming out of Wanjarri, and the area to be added? If the parliamentary secretary has any advice on that, could she advise me when they occurred?

Hon WENDY DUNCAN: Those clearances, particularly for the excised area, will be part of the normal approval processes to commence the use of that land for the purposes that BHP Billiton–Nickel West Pty Ltd wishes to use it. It still needs to go through those processes. In respect of the inclusion area, I would imagine that that would be part of the negotiation and assessment that is about to take place.

The DEPUTY CHAIR (Hon Jon Ford): Before I give the call to Hon Sally Talbot, given the discomfort that Hon Robin Chapple seems to be feeling from getting up and down in his chair, I am quite happy to allow some leniency; he just has to put his hand up!

Hon Robin Chapple: Thank you, I appreciate it!

Hon SALLY TALBOT: I have a few more areas of questions. If I may just return briefly to the subject of the error that was made in the Landgate information, Hon Robin Chapple was obviously in much better condition than he is now when he went on this foraging expedition! I think the parliamentary secretary referred to him as “forensic”; that is only one of many words I think could be applied to him! It seems that we discovered this error only because Hon Robin Chapple was out there and fell over something. I know that this is a hypothetical question, and the parliamentary secretary is quite at liberty to say that it is a hypothetical question in her answer, but this is a very serious mistake: how would we have discovered the error? At what point in the system would we have discovered that we were actually looking at the wrong plan? Would we then have had to come back to Parliament and submit another bill, if this had not been discovered at the moment when Hon Robin Chapple fell over a stake or whatever it was?

Hon WENDY DUNCAN: It is a hypothetical question!

It is unfortunate that this error has happened; it is fortunate that Hon Robin Chapple assisted the officers in actually going back and checking. I do not think Hon Robin Chapple actually found the error itself, but in the

process of going back to check a question he had raised, the officers reviewed the plan. As to when and how this would have been rectified at any future date, that is a hypothetical question, but with modern GPS and so on, I imagine that it would have been identified.

Hon SALLY TALBOT: I thank the parliamentary secretary. To a degree, BHP obviously regards settling this matter as something of a pressing concern; I would have thought that it was less than impressed with the failure of the government's record-keeping or information retrieval systems, which I think are a cause for concern. Although no doubt the minister will have already rapped the appropriate knuckles and put in place the appropriate mechanisms, it would be a shame if, in six months, we were back here discussing the same bill because of that kind of technical error.

Could the parliamentary secretary clarify the role the Minister for Environment played in bringing the bill to this place, in light of the parliamentary secretary's answers about the control of money and of the process that we are about to embark on ending in either 10 years or in 2017 with a final payment? Section 45(2) of the Land Administration Act states —

... the consent of the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor,

Will the parliamentary secretary clarify for the house the position of the Minister for Environment?

Hon WENDY DUNCAN: The honourable member refers to section 45 of the act, which relates to administrative matters whereby more minor matters can be undertaken without reference to the minister. Because we are excising land from a class A reserve, there has been full negotiation with the Minister for Environment and the Minister for Mines and Petroleum. The bill has also been to cabinet and therefore all ministers have been involved in this process.

Hon SALLY TALBOT: I will add to the question and ask the parliamentary secretary to clarify the role of the Conservation Commission of Western Australia as an independent body with the majority say in the care and control of the conservation estate.

Hon WENDY DUNCAN: The Conservation Commission has been involved and has considered it. In its meeting of 16 May 2011, the commission noted its endorsement for BHP Nickel West's proposal to excise this section from the Wanjarri Nature Reserve.

Hon ROBIN CHAPPLE: I seek the Chair's advice. I want to talk to a matter in a clause. Are we dealing with everything during the short title debate or —

The DEPUTY CHAIR (Hon Jon Ford): The short title debate is wide ranging.

Hon ROBIN CHAPPLE: Thank you. I refer to clause 3(3), which states —

Immediately after the excision area is excised from the affected reserve —

(a) the area ceases to be classified as a class A reserve;

I assume that it then becomes unallocated crown land. Is it subject to native title or is that area excluded from native title by the mere fact that it was in a nature reserve?

Hon WENDY DUNCAN: Native title has been extinguished in the process of the class A reserve being created. The area ceases to be an class A reserve and immediately becomes crown reserve for the purpose of mining.

The DEPUTY CHAIR: If we have dealt with clause 1, I will put the question and we can move to clauses 2 and 3.

Hon SALLY TALBOT: I have a couple more questions about the inclusion area that cannot be easily debated in clauses 2 or 3.

We have spent some time discussing the implications of a bill that is not about a land swap but the excision of land. We have talked quite a lot about the need for certainty for the traditional owners and the claimants on the native title claim, and the degree of certainty that other land will be included, which covers the question about Indigenous interests in the area. I want now to ask, from an environmental perspective, about the area to be included. I made the point in my contribution to the second reading debate that I understood that BHP acquired the lease with a view to maintaining it in such a state that it would eventually be suitable for a land swap. I have read all the details about the conservation value of the 8 500 hectares going into the Wanjarri Reserve. However, I am not clear about the certainty the Western Australian community and the traditional owners can have about the condition of that land down the track—be it 2017 or 10 years from now—and how that land will be cared for in the interim. To articulate this concern, I refer to paragraph 5.2(a) of the agreement, which I think the parliamentary secretary quoted in her second reading response. It states —

Unless and until the Inclusion Area is surrendered in accordance with clause 5.1, Yakabindie Nickel shall, to the extent that to do so is not inconsistent with its pastoral lease obligations under the LA Act

and the Pastoral Lease, manage the Inclusion Area at its own cost and in a manner not inconsistent with the intended addition of the Inclusion Area to the Wanjarri Nature Reserve to ensure that the conservation values of the Inclusion Area are not degraded from the current condition.

I have no criticisms about BHP's practices to this point because clearly it has done over and above the right thing to keep this land in a good environmental condition. However, what assurances can the parliamentary secretary give that that situation will prevail in the future? I make the point, without labouring it, that if we were to ask the people of Ravensthorpe whether BHP's intentions were always honoured into the future, they may give a slightly different answer than the one we would hope to get in the case of Wanjarri. Has the government obtained any assurances? Can the government reassure the Western Australian community?

Hon WENDY DUNCAN: The people of Ravensthorpe did not have a written agreement with BHP Billiton. This is an agreement that has been signed. That is the assurance.

Hon SALLY TALBOT: Anybody from DEC will tell the parliamentary secretary that management of a class A nature reserve is not easy. I would suggest that if it were easy, we would have a lot more class A reserves! I often make the point in this place that it is great to have hundreds of identified Bush Forever sites, but it is not good that most of them do not have a management plan. Keeping up the conservation values on a pastoral lease is an intense business. I ask again: what assurance do we have that BHP will continue this arrangement? I am specifically asking what penalties will be incurred under the agreement were that not the case.

Hon WENDY DUNCAN: I reiterate that an agreement is in place. The other thing is that once the bill is passed, there will be a memorial on the title of the pastoral lease to ensure that those conditions are complied with. At any time the government can resume that area if it is not being managed in the way we would like it to be managed.

Hon SALLY TALBOT: To be absolutely clear, is the parliamentary secretary saying that it will be the government's responsibility to monitor the ongoing management of the Yakabindie pastoral lease to ensure that BHP complies with the terms of the agreement? I will repeat the question I asked earlier: what penalties will be incurred if BHP does not maintain the pastoral lease in line with section 5.2(a) of the agreement?

Hon WENDY DUNCAN: The area can be resumed by the minister. I imagine there will be a penalty to the reputation of the company if it does not comply with the legal agreement. I have just been advised that there is the option to sue for damages if the land is not managed the way it needs to be.

Hon SALLY TALBOT: The state government could sue BHP for breach of the pastoral lease conditions.

Hon WENDY DUNCAN: The option is for the government to sue for breach of the signed agreement.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Reserve 30897 amended —

Hon ROBIN CHAPPLE: I move —

Page 2, line 19 — To delete "The" and insert —

Subject to subsection (5), the

Page 3, after line 8 — To insert —

- (5) The excision of the excision area is not completed until area 42831 as indicated on the deposited plan to the affected reserve has been included within the affected reserve.

It is quite clear from the discussions we have had with the minister and from the debate so far in this chamber that BHP is not in a particular hurry for this. It has indicated in meetings that I have had with it that the price of nickel at the moment means that it might be a number of years before this comes to fruition. I understand the notion of the need for BHP to get surety to invest. But I think the intent of the chamber is clear. We do not have a problem with the exchange. What we are saying is if we are going to put a new piece of land into the Wanjarri Nature Reserve, we cannot leave it to chance that that may or may not occur in the future. The proposed subclause will provide impetus to the government, the native title parties and BHP to fast-track this proposal so we end up with the addition in an early time frame.

Committee interrupted, pursuant to standing orders.

[Continued on page 1579.]

Sitting suspended from 4.15 to 4.30 pm

QUESTIONS WITHOUT NOTICE**DRAFT MENTAL HEALTH BILL 2011 — COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE —
RECOMMENDATION****160. Hon SUE ELLERY to the Minister for Mental Health:**

I refer to the draft mental health bill 2011 and to the short amount of time for public comment.

- (1) Will the minister support the recommendation of the Commissioner for Children and Young People —
That the Mental Health Commission should prepare a second Draft Mental Health Bill 2011 following detailed consideration of all submissions received in response to the first draft and provide a further opportunity for public consultation and comment.
- (2) If not, why not?

Hon HELEN MORTON replied:

I thank the member for the question.

- (1)–(2) I think that I might have already made a comment about this when I made my ministerial statement on the mental health bill. However, I am aware of the recommendation from the commissioner. I have indicated that in the first instance I want to assess the issues that have been raised by the submissions that have come in. At the moment they are being put into three or four different categories. A whole bunch of submissions have been sparked by the Church of Scientology. Some of the submissions that have been encouraged by the Church of Scientology have some additional information as well. Then there are what I would consider to be far more considered submissions. The submissions from the Commissioner for Children and Young People, the Council of Official Visitors, the Mental Health Law Centre and a variety of other organisations and individuals fall into that latter category.

At the moment the Mental Health Commission is going through every submission, line by line, identifying how these recommendations can be accommodated, if in fact we want to accommodate them. As long as the amendment in the draft bill is not a major rewrite, I propose that the bill would then go through the process of going to cabinet, getting approval to print and being brought into the Parliament. In that process there would be additional opportunities for people to have input—for example, to amend the bill. One of the opportunities that have been mentioned is whether the bill should go to a committee. I am not necessarily in favour of that, but that is one of the opportunities, I suppose. However, the other side of that is that if, in considering all the submissions, the outcome is that I believe the bill absolutely needs a rewrite, which I do not believe will be the case, I would certainly consider that recommendation.

**DRAFT MENTAL HEALTH BILL 2011 — RICHMOND FELLOWSHIP WESTERN AUSTRALIA —
SUBMISSION****161. Hon SUE ELLERY to the Minister for Mental Health:**

I refer to the submission of Richmond Fellowship Western Australia on the draft mental health bill 2011. The minister would be well aware that Richmond Fellowship is a leader in providing innovative and person-centred recovery programs for people with mental illness in Western Australia and, indeed, internationally. Given that Richmond Fellowship acknowledges that electroconvulsive therapy “may be beneficial for some people” but opposes the use of electroconvulsive therapy for children and adolescents, will the minister commit to reconsider her dogged defence of those provisions in the draft bill relating to ECT for children as young as 12 years of age?

Hon HELEN MORTON replied:

I thank the member again for the question.

As much as the Richmond Fellowship believes what it believes, I agree with the Leader of the Opposition entirely about the Richmond Fellowship being a very forward, contemporary agency with a fantastic reputation in this state, nationally and internationally, that has for a long time been very focused on bringing many of the reforms around recovery from mental illness to the fore in Western Australia. I have to make special mention of Joe Calleja, the CEO of Richmond Fellowship, for his role in that process. However, given that consideration put forward by Richmond Fellowship, other considerations have to be balanced up. It has not yet been determined how we will deal with the issue of ECT. I have had a look at the statistics on how many times ECT has been used in the last three years or five years—I am not sure of the exact time—for people under the age of 18 years. It is not very often. Nevertheless, there is a body of thought that believes that it is still beneficial and may be worthwhile leaving in the bill, but with the added safeguards that are already in the bill. All those considerations are taking place, but they are not determined yet.

Hon Sue Ellery: You’d have to acknowledge, though, that it is not just the Scientologists.

Hon HELEN MORTON: I am fully aware of that.

DECLARED PLACE FOR ADULTS — TIME LINE, FUNDING AND PRIVATISATION

162. Hon KATE DOUST to the Minister for Mental Health:

I refer to the concept of the declared place that was announced as being close to finalisation by the minister in this house on 1 September 2011.

- (1) What is the projected time line of opening a declared place for adults?
- (2) What is the projected cost of establishing a declared place for adults?
- (3) Will the declared place be funded in the 2012–13 budget; and, if not, how will it be funded and by how much?
- (4) Can the minister give an assurance that the declared place will not be privatised or operated by Serco or any other similar provider; and, if not, why not?

Hon HELEN MORTON replied:

- (1)–(4) That was a question without notice and I did not take the time to write all those things down, so I will make a sort of general statement. The issue of declared places has had a considerable level of consideration, and agreement has been reached by government about the concept and how it will be implemented. I think that any further consideration of it in terms of how much it will cost—I cannot remember the other specific questions that the member asked—and the time line associated with it —

Hon Kate Doust: Whether it will be funded this year and by how much, and whether the minister anticipates privatising or operating it by Serco.

Hon HELEN MORTON: Yes. The answer to that is that the member will just have to wait until the budget is announced, and then she will have most of those answers.

DRAFT MENTAL HEALTH BILL 2011 — ELECTROCONVULSIVE THERAPY — RECOMMENDATION BY COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE

163. Hon SALLY TALBOT to the Minister for Mental Health:

I refer to the draft mental health bill 2011, which provides that when a child or adolescent is so unwell that electroconvulsive therapy is recommended by the treating psychiatrist, 12-year-olds can give informed consent to the treatment.

- (1) Can the minister explain how a child so mentally unwell that they are in need of ECT as a treatment of last resort is expected to have the capacity to comprehend information and advice on the nature and effect of the treatment in order to give informed consent?
- (2) Does the minister support the recommendation of the Commissioner for Children and Young People that electroconvulsive therapy should be banned on all persons under the age of 18 years?
- (3) Has the minister made up her mind already or will she genuinely reconsider this based on the concerns in the submission?

Hon HELEN MORTON replied:

- (1)–(3) Again, that question was without notice. There were some similarities to the question asked by Hon Sue Ellery around ECT. The issue about how can a person so incredibly unwell give consent —

Hon Sally Talbot: A 12-year-old.

Hon HELEN MORTON: Yes. How can a person of any age, let alone a 12-year-old, give consent? If the member does not understand the concept of mature minor or competent minor, she will not understand how that overlays anything that she has just said. The concept of mature minor or competent minor applies in every jurisdiction in Australia, not just Western Australia. It basically says that if a person—I am just paraphrasing it in my own words—has sufficient understanding and competency to understand both the process and the consequences and is obviously able to exercise sufficient judgement under those conditions, then a general practitioner may take consent from a mature minor. Of course, that happens at the moment across the board in every area of health. It happens when young people go to a GP and ask for an abortion without their parents being involved, for example, or it happens when young people ask to go on a contraceptive pill. For all sorts of procedures and medical treatments, medical consent can be given by a mature minor.

The member asked how a person who is 12 years old and so unwell as to require electroconvulsive therapy could be in a situation of giving consent. My answer to that is that if a person is so unwell that they need ECT, it is very unlikely that they would be able to achieve the requirement to meet the eligibility of being a competent minor.

NATIVE FOREST — BIOMASS FUELS

164. Hon GIZ WATSON to the minister representing the Minister for Forestry:

I refer to the recent defeat of a disallowance motion in the federal Parliament that would have allowed native forest to be used as fuel for biomass power.

- (1) Does the minister agree with the position of his federal colleague Tony Crook, MP, to support the use of native forest as fuels for biomass?
- (2) If yes to (1), does the minister support the establishment of the proposed 40-megawatt biomass plant at Diamond Mill between Manjimup and Pemberton?
- (3) If yes to (2), what exactly does he support being used as a fuel in this power plant?

Hon DONNA FARAGHER replied:

On behalf of the Minister for Child Protection, I thank the member for some notice of this question. On behalf of the Minister for Forestry, I provide the following response —

The member is incorrect in her assertion that the disallowance motion in federal Parliament would have allowed native forest biomass to be used as a power source, or that its defeat has prevented native forest biomass being used for such a purpose. The disallowance motion sought to prevent native forest biomass being excluded as an eligible fuel under the renewable energy target regulations. Residues from managed native forests continue to be able to be used as a source of energy and power, only without the benefit of being able to receive renewable energy certificates.

- (1) The minister supports the improved utilisation of native forest residues, as referred to in the forest management plan.
- (2) Yes; the minister supports the proposal.
- (3) The proponents for the Manjimup biomass power plant have only sought to use plantation residues as fuel for their plant, and, as recommended by the Environmental Protection Authority, they only have approval for the use of residues from eucalyptus globulus and pinus radiata plantations in their plant.

RETAIL TRADING — OPERATING EXPENSES

165. Hon PHIL EDMAN to the Minister for Commerce:

Are there protections for retail tenants in shopping centres against being charged for operating expenses outside of standard trading hours?

Hon SIMON O'BRIEN replied:

I am glad this question has been raised because it is extraordinarily providential. The perspicacity of this member is growing in leaps and bounds and I compliment him on his foresight.

It was only today that a motion was debated in which—towards the end of the debate when there was not an opportunity to clarify the matter—it was raised in this house that retail tenants in shopping centres will be at a parlous disadvantage because in the future they will have no discretion as to when they open, and that they will have to meet the outgoings of the shopping centre even if they do not want to open and do not open. The question asked by Hon Phil Edman gives me a chance to address this question, because that premise, in fact, is completely wrong—completely wrong. It makes me wonder how much else of this and the related debate is being fuelled by false assertions, but when they are raised in the Parliament there is a need to correct them.

The fact of the matter is that the Commercial Tenancy (Retail Shops) Agreements Act specifically provides that a provision in a retail shop lease that requires a tenant to open at any particular hour is void. Furthermore, there are other protections in the same act. That act sets out standard trading hours and defines them for the purposes of allocating operating expenses—also known as outgoings or variable outgoings. They are 8.00 am to 6.00 pm on Monday, Tuesday, Wednesday and Friday; 8.00 am to 9.00 pm on Thursday; and 8.00 am to 5.00 pm on Saturday. They are the standard trading hours. If a retailer opens within those hours, then obviously they can be required to pay the centre's outgoings, and if they choose not to open during those hours, they can be required to pay the centre's outgoings. But if—this is the proposition—a retailer chooses not to open outside of those standard hours, a number of provisions apply. Firstly, they cannot be required to contribute to the operating expenses of the centre if they do not open outside of those standard trading hours. I want to make that absolutely clear, because this is a misconception that has been repeated again and again and I want to nip it in the bud now. Obviously, if they do open, a calculation of expenses based only on their lettable floor area can be applied, and rightly so. I thank the honourable member for the opportunity to correct the misunderstanding that was exhibited by someone involved in a debate earlier today.

The PRESIDENT: I was listening to hear what “perspicacity” meant.

DRAFT MENTAL HEALTH BILL 2011 — TRANSPORT ORDERS

166. Hon JON FORD to the Minister for Mental Health:

I refer to the draft mental health bill 2011, which states that a transport order currently carried out by police authorises a police officer or a person prescribed by regulations to apprehend, transport and detain a person to whom a transport order applies.

- (1) Who does the minister consider are candidates for “a person prescribed by regulations”? For example, has the minister met with any potential contractors in the past 12 months; and, if so, which ones?
- (2) Given the overwhelming number of public submissions objecting to the possible privatisation of the transport of vulnerable patients, can the minister give a guarantee that private operators will not be performing this function; and, if not, why not?

The PRESIDENT: There are aspects of that question that border on seeking an opinion, but there are aspects that are clearly contained within the minister’s portfolio. Minister for Mental Health.

Hon HELEN MORTON replied:

Once again, because it is without notice and I do not have it in front of me, I may not cover one or two of the points.

- (1)–(2) In terms of the reason, for a start, that the transport orders are changing in the mental health bill, it is so that people other than police will be enabled to provide authorised transport for mentally ill people, especially from hospital to hospital, which happens at the moment, and sometimes from the community to the hospital.

There are times when the police will still have to provide that service. For example, if a person became extremely unwell in a regional town such as Narrogin, or somewhere like that, and needed transportation to the metropolitan area to an authorised facility, it is most likely that the police will be asked to continue to provide that service. An existing service is already operating, which I have had some discussions with, at the forensic mental health unit. That is a government-run service; the forensic mental health unit actually has a transportation service that operates specifically for that service.

I have not had any discussion with any other provider, but I say quite clearly that it is not my intention to be so prescriptive as to preclude options that may be considered suitable in this arrangement. At this stage, there are opportunities for us to develop. St John Ambulance, for example, is a private operator. I think that St John Ambulance does a pretty good job. The Royal Flying Doctor Service of Australia is another private organisation that transports mentally ill people from remote areas of the state to Perth. I think it does a fantastic job too. I will not be so prescriptive that we cannot include organisations such as that to gain a contract to provide a secure ambulance service, if that is the way we go. We are looking at opportunities to make sure that the legislation does not preclude services that could be better used.

GEOFF BARKLA — WORKERS’ COMPENSATION CASE

167. Hon LJILJANNA RAVLICH to the Minister for Commerce:

I refer to question on notice 4580 asked on 29 September 2011 regarding the workers’ compensation case for Mr Geoff Barkla. Given that under the Workers’ Compensation and Injury Management Act 1981 the insurer has an obligation to lodge a regulation form 3B insurer’s notice that liability is disputed when the insurer says that there is a dispute, I ask —

- (1) Is the minister aware that Mr Barkla’s insurer has admitted that it has not lodged the regulation form 3B, thereby failing to comply with the act and the regulations?
- (2) What action, if any, will the minister take to address this matter?

Hon SIMON O’BRIEN replied:

I thank the honourable member for notice of the question. I know that she has an ongoing interest in this matter and that we have both received a lot of correspondence about it.

- (1)–(2) I am advised that this specific issue was the subject of interlocutory proceedings before the arbitration service and is now before the District Court on appeal. As such, it would be inappropriate to comment further.

190 STATION STREET, EAST CANNINGTON — REMOVAL OF ASBESTOS

168. Hon LYNN MacLAREN to the minister representing the Minister for Health:

This question was directed to the Minister for Environment, but I understand that it was redirected to the Minister for Health. I refer to the building site at 190 Station Street, East Cannington, at which asbestos was found in late February 2012.

- (1) What steps have been taken to remove the asbestos?
- (2) Were dust samples taken from the surrounding area after the removal to analyse the extent of asbestos pollution in the community?
- (3) If no to (2), why not?
- (4) If yes to (2), what was the result of the analysis?
- (5) Has the building site been re-inspected to ensure that no asbestos remains at the building site?
- (6) Has WorkSafe been notified of the incident?
- (7) If no to (6), why not?

Hon HELEN MORTON replied:

I thank the member for some notice of this question. The answer does not make sense. It states —

- (1)–(7) The Department of Health was not aware of the issue and what steps have been taken. The department is advised that the matter is being handled by the City of Canning.

I am not happy with that answer because I think it is a bit confusing as to whether the department was aware or was not aware.

DRAFT MENTAL HEALTH BILL 2011 — INFORMED CONSENT TO STERILISATION —
12-YEAR-OLDS

169. Hon MATT BENSON-LIDHOLM to the Minister for Mental Health:

I refer to the draft mental health bill 2011, which allows for 12-year-olds to give informed consent to sterilisation.

- (1) Can the minister explain under which circumstances a 12-year-old would need to be sterilised to achieve a mental health treatment outcome?
- (2) Will the minister support the recommendation of the Commissioner for Children and Young People that all references to sterilisation in the draft mental health bill 2011 be deleted?

Hon HELEN MORTON replied:

- (1)–(2) I am particularly pleased to hear the level of interest in the draft mental health bill; I think it is fantastic. I have missed the opportunity to say on a couple of occasions why the age of 12 years features in the draft mental health bill. People might not be aware that the concept of mature minor or competent minor does not have an age limit. Under the common law that applies at the moment in Western Australia, and in every other jurisdiction in Australia, the concept of mature minor or competent minor enables children to make decisions about these sorts of issues as long as a general practitioner considers them to have the attributes that I mentioned earlier in my response to the question of Hon Sally Talbot. For the first time in Western Australia, the draft mental health bill has sought to indicate that from at least the age of 12 years, regardless of whether somebody can be deemed to be a mature or competent minor, the person would not be able to consent to a variety of treatments. However, the reason that reference is made to sterilisation in the bill—I am one of those people who believe it could be removed and it would not make one jot of difference—is to make absolutely certain that under no circumstances can the Chief Psychiatrist approve sterilisation for anybody. That is why it is in the bill. However, when I first saw it, I asked why it was in the bill. I understood that it was a recommendation of the Minister for Health in the previous government that it be in the bill. I was prepared to let it run the course of the community consultation process, but I truly have not yet found a legitimate reason for it to be in the bill. It is not written in the legislation that the Chief Psychiatrist can approve sterilisation, so why not take it out altogether? That is certainly some consideration that is taking place at the moment.

COUNCIL OF OFFICIAL VISITORS — RENAMING

170. Hon ED DERMER to the Minister for Mental Health:

I am very pleased that the Minister for Mental Health is welcoming questions today because I have a question without notice for her. I refer to the draft mental health bill 2011, which will replace the Council of Official Visitors with mental health advocates who will have the right to advocate on behalf of mental patients but will not have the powers of inspection of psychiatric hospitals and hostels.

Hon Helen Morton: I am sorry, but I missed that. Someone coughed and I could not hear you.

The PRESIDENT: Order, members! It is difficult when questions without notice are being asked. Can Hon Ed Dermer start from the top?

Hon ED DERMER: I will, and I will reduce the pace. I refer to the draft mental health bill 2011, which will replace the Council of Official Visitors with mental health advocates who will have the right to advocate on behalf of mental patients but who will not have the powers of inspection of psychiatric hospitals and hostels. Given the many public submissions objecting to the withdrawal of this function, will the minister give a guarantee to the house that these powers will be reinstated; and, if the minister will not give such a guarantee, why not?

Hon HELEN MORTON replied:

I thank Hon Ed Dermer for the question and for repeating it, because I did miss a critical part of it. This seems to be a little like a committee discussion, but without the bill in front of me. However, I am pleased to once again have the opportunity to talk about this draft bill.

I have obviously met with the Council of Official Visitors on a number of occasions. I meet with the council regularly, particularly the head of the council, Debora Colvin, who is a fantastic operator in that position. The reason that the name of the Council of Official Visitors will be changed to the mental health advocacy service is that no-one on the street knows what the Council of Official Visitors is, but they would have an immediate understanding of a mental health advocacy service. The change of name is particularly important. It was recommended by a lot of people, and I do not think the council has a concern about that either.

Regarding the issue around inspection of the facilities and the fact that the council does not have people employed who are qualified inspectors of facilities, we do not want people assuming that the council can go into a facility and assume that it knows how to inspect a facility. There are another two bodies with some responsibility for inspection of facilities for appropriateness. Through the standards licensing process they inspect facilities to ensure, for example, that facilities are engineered appropriately or have the right fire extinguishers in place; I cannot go through all the things that they inspect before they license a facility. The Chief Psychiatrist also has a role in inspection of facilities.

We heard that previously we were not able to authorise the Rockingham facility for a month or two because the fence was not high enough for the security of the patients, and that was on the basis of the assessment done by the Chief Psychiatrist. Therefore, there are two bodies required to have people who are qualified in inspecting facilities. I have made it clear to the Council of Official Visitors, through the head, Debora Colvin, about the inspection role it provides in being able to go into a bathroom, for example, to see if mould is growing on the tiles or to go into a kitchen to see whether the air conditioning is working or to see whether there is a window broken that should have been fixed six weeks ago—things that anyone would be quite capable of observing; they are the sorts of inspections and facility issues that the council is involved with. I believe it is able to do that under the definition of what it is able to do in advocating for the people of a mental health facility. However, I also indicated to the head of the Council of Official Visitors that if in fact things need to be tweaked a little bit to make it absolutely clear, I am not averse to doing that.

BENZENE, TOLUENE, ETHYLBENZENE AND XYLENE — HYDRAULIC FRACTURING

171. Hon ALISON XAMON to the Minister for Mines and Petroleum:

I refer to BTEX—Benzene, Toluene, Ethylbenzene and Xylene—chemicals.

- (1) Has the minister approved the use of BTEX chemicals as an additive for hydraulic fracturing?
- (2) If yes to (1), can the minister please specify which wells have been fraced using these chemicals, and for each well —
 - (a) what volume of BTEX chemicals was approved for use;
 - (b) what volume of BTEX chemicals was actually used; and
 - (c) when the well was fraced with BTEX chemicals?
- (3) Will the minister commit to refusing the use of BTEX chemicals for the purposes of additives in hydraulic fracturing operations?

Hon NORMAN MOORE replied:

I thank the member for some notice of this question.

- (1) BTEX has not been approved as an additive.
- (2) Not applicable.
- (3) Yes, as the Department of Mines and Petroleum will not approve the use of BTEX chemicals as an additive in the hydraulic fracing process.

DRAFT MENTAL HEALTH BILL 2011 — CHIEF PSYCHIATRIST

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

I refer to the draft mental health bill 2011 in which it is proposed that the appointment of the Chief Psychiatrist be made by the Minister for Mental Health on the recommendation of the CEO of the Mental Health Commission and that the Chief Psychiatrist be based in the Mental Health Commission rather than in the Department of Health.

- (1) How can the Chief Psychiatrist exercise his responsibilities related to area health services when he is effectively based in an agency outside the Department of Health?
- (2) To which minister will the Chief Psychiatrist report?

Hon HELEN MORTON replied:

I thank the member very much.

Hon Norman Moore interjected.

It is very difficult to answer very shortly, because the questions are quite considered. Let me answer the question in this way.

- (1)–(2) The Chief Psychiatrist has a responsibility across the entire mental health system. The Department of Health is but one provider; there are a variety of other providers that the Chief Psychiatrist needs to have jurisdiction across. The place to have that Chief Psychiatrist exercising those responsibilities is within the Mental Health Commission. Members will find that over the years the Department of Health is providing a lesser proportion of services and there will be other organisations such as the non-government organisations at the moment. Ramsay Health Care provides all the mental health services in Joondalup and St John of God will provide all the mental health services at the new Midland health campus. The Chief Psychiatrist is not in the right position to be inside one of those organisations. The Chief Psychiatrist needs to be at the Mental Health Commission so the Chief Psychiatrist has a role across all organisations.

DRAFT MENTAL HEALTH BILL 2011 — COSTINGS

173. Hon HELEN BULLOCK to the Minister for Mental Health:

I refer to the high number of submissions on the draft mental health bill 2011 expressing concern that provisions in the draft bill will lead to an increase in workload for nursing and other specialist staff at mental health sites.

- (1) Has the bill been costed; and, if not, why not?
- (2) If the answer to (1) is no, will the minister undertake to have the bill fully costed prior to its introduction into the Parliament; and, if not, why not?

Hon HELEN MORTON replied:

I thank the member very much, and I appreciate the questioning; it is fantastic.

- (1)–(2) Yes; the bill has been fully costed. Hopefully, we will start to see some of those costs starting to come through in the next budget, but the implementation of the bill has been fully costed and the government's commitment to implement the bill is the government's commitment to also resource it.

QUESTION ON NOTICE 5036

Paper Tabled

A paper relating to an answer to question on notice 5036 was tabled by **Hon Norman Moore (Leader of the House)**.

RESERVES (WANJARRI NATURE RESERVE) BILL 2011

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Wendy Duncan (Parliamentary Secretary) in charge of the bill.

Clause 3: Reserve 30897 amended —

Committee was interrupted after the amendment moved by Hon Robin Chapple had been partly considered.

Hon ROBIN CHAPPLE: I was making a point in relation to the rationale behind supporting the amendment standing in my name. I think one of the other issues we need to deal with is that when we actually look at the

amount of money that is to be provided, we are initially talking about \$500 000 and potentially a further \$2 million by 2017. My view is that if we are talking about 2017, and the minister has only identified the fact that this money is to help facilitate that negotiation, we might not actually be doing anything about the amalgamation of the new area into Wanjarri Nature Reserve until 2017. Therefore, I hope this amendment will actually help facilitate some speed and direction to the Department of Environment and Conservation, BHP and the native title parties to get this exchange of land dealt with as quickly as possible. I think that support for the amendment in my name would enable or facilitate the earlier entry of this area into the Wanjarri Nature Reserve.

Hon SALLY TALBOT: I will now say what I attempted to say during discussion on clause 2, which was the wrong place to say it. The parliamentary secretary has indicated the government will not support the amendment moved by Hon Robin Chapple. Could the parliamentary secretary indicate whether she agrees with the substance of what Hon Robin Chapple is trying to do? It seems there is a problem with the way that he is trying to do it, but the intent is one that I heartily endorse. Could the parliamentary secretary indicate to the chamber whether she is prepared to contemplate an alternative amendment that would have the effect of doing what Hon Robin Chapple is seeking to do; that is, to contrive a mechanism whereby we do not end up with uncertainty about the swapping element of this measure, which is essentially a land swap?

Hon WENDY DUNCAN: The amendment is inconsistent with the agreement that has been signed. If this amendment was passed, there is no guarantee that we would get the money from BHP or that the process would go through. I have already indicated, in my response to the second reading debate, that the government will not support this amendment. I do not think I really need to say much more on that.

Hon SALLY TALBOT: Although the parliamentary secretary has addressed in some length the question of perceived lack of consultation with the traditional owners, I understood her to say in her wrap-up of the second reading debate that the minister had indeed received a letter from Kado Muir and the other TOs but a response had not yet been made to the TOs. I absolutely do not want to call into question at all the parliamentary secretary's commitment to this process.

What I am about to say should not be taken as any reflection on her intent personally. I know from my engagement with the parliamentary secretary over the years since she has been a member of this chamber that she has that kind of connection to country that puts her in a position in which she speaks about matters to do with country with some authority and experience, which will be respected by the Indigenous population in those areas. I put it to her that we cannot guarantee that this will continue to be the case. People with carriage over the implementation of this measure may not have the same knowledge, experience and understanding of these crucial matters as she does. I do not expect the parliamentary secretary to address that—at least not without blushing!—but I am really not casting any aspersions over her integrity in this matter. Sadly, history has borne out facts that illustrate we cannot legislate on the basis of assumed goodwill into the future. If the parliamentary secretary retains a position of some influence over these things—which I desperately hope is not the case; again, that is nothing personal—she would act with integrity. That is not necessarily the case.

Hon Robin Chapple has been very careful not to create the impression that people are desperately unhappy or fiercely opposing these measures; that is not the case. As I understand it, and as others have reported to the committee, the TOs are reasonably satisfied with the proposed arrangement, except in this one crucial area of nailing down this very last piece of certainty about whether it will happen. That is not a trivial point. I agree, and I have already put on record the fact, that the opposition does not think Hon Robin Chapple's proposed amendment is an ideal way to resolve this situation; nevertheless, the opposition will support the amendment in light of the government's failure to come up with a better way to solve what we all agree is a problem.

Hon ROBIN CHAPPLE: I am going to stand; I found it most peculiar sitting! I get used to standing to make statements; something about being grandiose or whatever.

I thank Hon Sally Talbot for her support of the proposed amendment. I again reiterate to the parliamentary secretary that this amendment will provide some surety about what is proposed. As I originally pointed out, there is nothing within the proposed legislation that identifies there will be a land swap. It is in the agreement and it is stated in the explanatory memorandum, but, as we have already heard from the Department of Environment and Conservation's in-house briefing, and from BHP, it may not happen. If it "may not happen", then unfortunately I am concerned. Having said that, I would like to thank Hon Sally Talbot for her support of the amendment. If the parliamentary secretary can come up with another way, I am not precious. If she could come up with something that would make it a surety, I would be more than happy to drop my amendment and hear what the parliamentary secretary may or may not come up with.

Hon WENDY DUNCAN: I reiterate: there is a legally binding agreement. In this state and nation of ours I believe that we should have faith in such things.

Amendments put and a division taken with the following result —

Ayes (12)

Hon Matt Benson-Lidholm
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Jon Ford
Hon Lynn MacLaren

Hon Ljiljanna Ravlich
Hon Linda Savage
Hon Sally Talbot

Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman

Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett
Hon Alyssa Hayden

Hon Col Holt
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Adele Farina
Hon Ken Travers
Hon Helen Bullock

Hon Brian Ellis
Hon Robyn McSweeney
Hon Peter Collier

Amendments thus negated.

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

RESERVES (WANJARRI NATURE RESERVE) BILL 2011*Standing Orders Suspension — Motion*

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.22 pm]: I move —

That standing orders be suspended so far as to enable the house to sit beyond 5.20 pm for the purpose of completing order of the day 13, Reserves (Wanjarri Nature Reserve) Bill 2011.

Question put and passed with an absolute majority.

As to Committee Stage

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.23 pm]: I move —

That resumption of the debate in committee of the Reserves (Wanjarri Nature Reserve) Bill 2011 be taken forthwith.

Question put and passed.

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Matt Benson-Lidholm) in the chair; Hon Wendy Duncan (Parliamentary Secretary) in charge of the bill.

The CHAIR: Members, we return to Reserves (Wanjarri Nature Reserve) Bill 2011. Hon Robin Chapple, the rest of your amendment at clause 3 now falls away.

Clause 3 put and passed.**Title put and passed.***Report*

Bill reported, without amendment, and the report adopted.

Third Reading

Bill read a third time, on motion by **Hon Wendy Duncan (Parliamentary Secretary)**, and passed.

ASBESTOS DISEASES — FUNDRAISING*Statement*

HON JON FORD (Mining and Pastoral) [5.27 pm]: I rise tonight to bring something to the attention of the house. A good friend of mine, Maggie Lewis, who is the manager of the Newman Women's Shelter, is participating in a worthwhile walk to raise money and awareness of asbestos and the people who have been unfortunately touched by asbestos diseases. I will read from her letter to me, to give members the thrust of what she is doing. The letter reads, in part —

In May 2012, along with 21 other members of her family, Maggie Lewis, Manager of the Newman Women's Shelter will be walking from Perth to Kalgoorlie to raise funds towards research for the Asbestos Diseases Society of Australia. They will also be joined by other families whose lives have been affected in some way by asbestos.

...
The ADSA raises funds for lifesaving research and treatment and provides valuable service to West Australians on all issues arising from exposure to asbestos.

I hope you will be able to get behind Maggie and sponsor her on this walk; she is a tireless worker in her role as Shelter Manager and has made a huge contribution to her local community in improving the lives of woman and aboriginal people throughout the Pilbara. For her family it will be more than just a walk of a million steps or so. It is something they will accomplish to honour deceased family members and for those West Australians who are yet to have their lives turned upside down by their association with asbestos, as they know first-hand the distress to them and their family when their lives are cut short. We also know how important having a society that can provide information and support is.

There are contact details included in the letter. If any members would like to help Maggie in her quest, she has a fundraising target of \$250 000, which is very admirable, and I commend her and her family for their effort, and commend the cause to the house.

GASCOYNE FLOODS AND BUSHFIRES

Statement

HON KEN BASTON (Mining and Pastoral) [5.29 pm]: I want to touch on the Gascoyne bushfires that occurred in late December and January. After a long drought in the Gascoyne and Murchison, those areas received record rains and then floods. In fact, 19 December 2011 was the anniversary of the Carnarvon floods. With those record rains came an abundance of vegetable matter, and because there was very little stock on the scene as a result of the drought, it ended up creating a fire hazard. This last happened some 50 years ago and does not occur regularly; therefore, the preparations were, I guess, probably not as good as they could have been.

On 27 December 2011, the first fire started as a result of a lightning strike at Mooka Station, which is about 120 kilometres north of Carnarvon on the Gascoyne Junction road. This property is owned by the Department of Environment and Conservation, and the fire was known as the Mooka fire from then on. From 28 December to 30 December the fire was monitored and between 31 December 2011 and 5 January 2012 bulldozers and fire crew were sent in to build containment lines. However, the fire continued to burn in some fairly tough country in the back of places like Mardathuna. The fire burnt down through Jimba, Binthalya, Mardathuna, Hill Springs, Cooralya, Booloogooro and Manberry stations. Cooralya was the worst hit of those properties north of the Gascoyne River, with more than 80 per cent of the property burnt. Multiple lightning strikes on 19 and 20 January 2012 started some seven fires south of the Gascoyne River at Meedo, Yalbalgo, Doorawarrah, Callagiddy, Ella Valla, Edaggee, Marron, Wahroonga, Winderie and all properties south east of Carnarvon. Of all those properties, Yalbalgo lost the most with some 90 per cent of the property burnt. It is the burning of not only the feed, but also the fences, troughs and tanks. One pastoralist told me that a fibreglass tank that had been burnt but that appeared to be okay shattered when he put his hand against it.

On 24 January, I visited Carnarvon and received a personal briefing from a DEC fire control officer, who was from Manjimup. I attended one of the regular briefings being held at five o'clock each afternoon and attended by the police, the Fire and Emergency Services Authority, State Emergency Service and Department of Water personnel, as well as any other agencies involved, and the pastoralists. On 25 January I was able to fly over some of the southern Gascoyne fires in a helicopter. During this time, the North West Coastal Highway was closed due to the Edaggee fire. During these few days, I wanted to charter a plane to fly out to a pastoral property, but thunderstorms made it too wet. Despite the rain, the dry areas were still burning, creating havoc for the firefighting effort as vehicles became bogged and trucks lost control and rolled on slippery dirt roads.

During the fires, I received a number of complaints as a result, it seems, of the lack of consultation with local pastoralists. I have followed up on that and on 12 and 13 March I visited the area, driving out as far south as Gascoyne Junction. I met with individual pastoralists to listen to their views of the event and to hear how we could do better. I also met with the Upper Gascoyne and Carnarvon Shires. I travelled with the local bushfire control officer, a gentleman called Dennis Bumback from the Gascoyne, and it was, I have to say, of immense value to hear him explain the unfolding events during these fires. I will express to the appropriate ministers the pastoralists' views on what we can do better next time because there is certainly room for improvement.

Interestingly, the southern firefighting efforts of FESA were highly praised; especially the efforts in fighting the Meedo and Wahroonga fires. Locals could not speak highly enough of FESA efforts. However, there were numerous complaints about the DEC fire office.

This incident is not covered by WANDRRA—that is, Western Australian natural disaster recovery and relief arrangements—funding because \$240 000 of public infrastructure must be affected to qualify for that assistance. Even though a massive area of some 900 000 hectares was burnt, that funding does not apply. I have seen some pictures of one of the properties that had sustained a lot of fire damage and had to reduce its stock numbers. I

was shown pictures of animals being loaded onto trucks. They were destroying about 10 per cent of the animals because their feet had been burnt and as they were loading them onto the vehicles their hooves were dropping off and the animals were dropping down and walking on their knees. Of course those animals had to be destroyed.

The firefighting effort utilised a massive amount of infrastructure. I do not doubt the minister's press release because the amount of machinery that I saw during the fires was quite amazing. I had never seen anything like it. I think these fires were as big as the fires in Dwellingup in the south west some 50-odd years ago. According to the minister's press release, there were 30 machines, including eight bulldozers, 14 graders and eight loaders; 316 people were involved including 175 DEC staff from the more than 25 DEC centres from Esperance to Kununurra employed in Carnarvon; FESA provided crews from Bunbury, Albany, Geraldton, Manjimup, the aerial operations branch, Northam, Narrogin and Perth; the State Emergency Service provided crews from Geraldton, Belmont, Kalbarri, Perth and Shark Bay; the Forest Products Commission sent up staff from Collie, Gnowangerup and the south west region; and bushfire brigades came from Gascoyne River, Gascoyne Junction, Irwin, Geraldton, Mingenew, Waggrakine and Carnarvon.

The cost of this effort ran close, I believe, to the \$2-million mark. I am still putting together my report, but what has become clear so far is that we do not need two agencies fighting fires in the same area because of the command post clashes that became obvious during these fires.

Rain is the most important thing the area can receive now. I know that it has had some rain, but the areas that have missed out are still a charred mass. Where there has been rain the grass is up as high as six or seven inches. Rain is the answer and I am sure that over time it will be proven that the damage done, although very hard now for those pastoralists to accept, will be beneficial to the grazing land.

HOMOPHOBIC BULLYING

Statement

HON LYNN MacLAREN (South Metropolitan) [5.37 pm]: I rise because today we debated something close to my heart and I want to thank members for their contributions to the debate on homophobic bullying. I thought that we achieved quite a bit in expressing our common concern about safe schools in Western Australia. In particular, I thank Hon Ljiljana Ravlich, Hon Donna Faragher, Hon Peter Collier, Hon Philip Gardiner, Hon Linda Savage and Hon Alison Xamon for their very intelligent contributions; many drew on personal life experiences that only add to the commitment to pursue change. I hope that was the beginning of a conversation and that we can continue to discuss how we can make Western Australian schools safer for all kids.

I will conclude with the quote that I wanted to put on the parliamentary record. It is a quote from Adrienne Rich, a fine poet, who died today. It is ironic that I could not use this quote to finish my earlier contribution because it is about being heard. To not be able to complete the quote was a really difficult time for me and I am pleased to have this time to now put on the parliamentary record these words —

When those who have power to name and to socially construct reality choose not to see you or hear you, whether you are dark-skinned, old, disabled, female, or speak with a different accent or dialect than theirs, when someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibrium, as if you looked in to a mirror and saw nothing. Yet you know you exist and others like you, that this is a game with mirrors. It takes some strength of soul—and not just individual strength, but collective understanding—to resist this void, this nonbeing, into which you are thrust, and to stand up, demanding to be seen and heard.

NORTHAM — HARRT — DOG RESCUE

Statement

HON MAX TRENORDEN (Agricultural) [5.40 pm]: I have a situation that has been grieving me and my office staff in Northam for some months or more now, and I find it very distressing. It is an issue over three dogs that have been picked up by a ranger and delivered to a local government compound. Those dogs have gone off to a group called HARRT—I cannot tell members what that means. The distressing part is that all these people are doing what they are doing with good intent. The ranger picks up the dogs because the dogs have escaped from the custody of the owners. One case, which is a particularly important case, involves a person called Wally McMillan. His dog—a dog cannot be charged—was accused of killing sheep. He was aware how serious that was, but he did not believe that his dog killed the sheep and there is no proof that his dog killed the sheep. However, his dog was seen in the vicinity of a sheep corpse—not a live sheep. The rangers did the right thing by picking up the dogs. In my part of the world, they are delivered to a central location which is Northam and which the Shire of Northam administers. The Northam shire hands these dogs on to this group called HARRT. The Northam shire hands these dogs on for the best of reasons. It has saved more than 400 dogs from being put down, because HARRT, which is also doing the right thing, is finding homes for those animals. However, the problem is that all that does not connect.

There are two of these dogs. One dog is worth about \$1 000 and the other dog is worth about \$900, but that is not the issue. Mr McMillan is an elderly person—I can say that because he is older than I—who lives alone in Beverley. He has lost his best friend and it has broken his heart. When I say that it has broken his heart, I mean exactly that. I cannot describe to members how aggrieved he is. He wants his dog back. The group HARRT, which, for all the right intentions, has the dog, does not want to give it back to Mr McMillan because it does not believe that he has the capacity to look after the dog. So HARRT has the dog's best interests in mind; Mr McMillan has his own best interests in mind because he loves his dog. Many city people have dogs, but nearly all country people have dogs. We have a passion for animals, Mr President, as you know. I have women in my office who are very aggrieved by this. I have not seen them as upset as they are now for some time.

There are two families. The other family is the Ferguson family in Bakers Hill. To say that they are upset is a major understatement. They are severely aggrieved. The Northam shire agrees that Mr McMillan and the Fergusons own their dogs. The shire wants the dogs back because it agrees that the dogs should be back with the people who love them dearly. But HARRT does not. HARRT is a voluntary group and it does not have any legal capacity in the argument. The Northam shire, in trying to rectify the situation it is in, has gone to the police and pointed out to the police that these people at HARRT have possession of property that they do not own. Surprise, surprise; the police do not want to get involved in the argument. I am not going to pick on the police for that either, because the police force in my region is way undermanned and the issue of dogs is not high on its agenda, and I cannot blame it for that. However, there are faults. The act says that the shire has to hold these animals for a period. I cannot absolutely guarantee this, but I suspect that the shire handed over these animals before the time had expired. On the other side of that argument, the shire did that for the right reasons. The group HARRT took possession of these animals for the right reasons and has found them a new home.

Some silly things are going on. We have been told that two of the dogs have run away and the other dog has been bitten by a snake and is dead. They are not credible statements. These dogs almost certainly are still alive. My office has hit a position in which there is no resolution. The only resolution that comes to my mind is that someone takes this to court, goes through all the expense of going to court, and has the court decide whose property these animals are. But that is not the way in which we are meant to deal with each other, and we do not want people going to our courts and clogging up our courts with an argument over an animal.

I just want to make the point, and make it as clearly as I can, that I have sympathy for the families. I know how much I love my dogs. I had to put down one of my own dogs several years ago because it had cancer of the nose. I gave it to my eldest son and said, "You take him in to the vet because I just can't do it."

Hon Wendy Duncan: The reason my husband lets me come to Parliament is that I got him a dog.

Hon MAX TRENORDEN: I am not going to get into that argument!

I understand the passion of Mr McMillan. He is severely aggrieved. He lives alone and his dog—it is a cattle dog—is very important to him. The damage this is doing to Mr McMillan cannot be overstated. He is an elderly man and the love of his life has been taken away from him. We know that that dog is somewhere not too far away from him and is with someone who has very good intentions to look after it. They will probably love the dog as much as Mr McMillan does, but Mr McMillan wants that dog back because it is a big slice of his life. The situation is no different for the Ferguson family.

I am at a loss as to where I take this matter. The HARRT people are going to come and see me on Monday. I repeat that I have no argument with the intent of the HARRT people. The fact that they are saving animals is a very good thing. On the other hand, if one dog is owned by the Fergusons and the other dog is owned by Mr McMillan, they should be able to get their property back, particularly in Mr McMillan's case. Most of us who live in the country will understand the really serious issue of dogs killing sheep. It is not so much about the farmer losing the asset; it is the fact that the sheep dies badly. That is not something we want to promote. The other thing in a country context is that, almost certainly, if a dog kills one sheep, other sheep are in the firing line. So it is important. To his credit, Mr McMillan handed his dog over because he knew that issue was important, but he had an expectation that if he could clear his dog, he would get it back, and that is not the case.

I have one of those strange dilemmas in which a range of people, including in the Northam shire, have operated in a manner that was for the very best, but it has not worked out. Personally, I think these dogs should be returned. I will repeat that: I believe these dogs should be returned to their owners. The pain that those owners are feeling is more than worth considering. I just do not think an individual has the right to decide from a distance, regarding the welfare of the dog, whether a person is a good or a bad owner, and that is what is occurring.

WARRUP FOREST TRAMWAY

Statement

HON SALLY TALBOT (South West) [5.50 pm]: I want to bring to the attention of Parliament some serious questions about the way the Forest Products Commission is handling the logging of the forest around the historic

Warrup forest tramway. This was brought to my attention by an article on page 5 of the *Donnybrook–Bridgetown Mail* on Tuesday, 27 March, headed “FPC decision sparks protest”. I will share the contents of this short piece with honourable members. It reads —

The Doreen Mackman motion upheld by the Bridgetown–Greenbushes council asking the Forest Products Commission (FPC) to preserve forest settings around the tramway through the Warrup has been considered by the FPC.

The FPC have told the shire it is prepared to preserve the forest setting of the tramway between the northern end of the embankment and Miller Road.

However, Bridgetown–Greenbushes Friends of the Forest (BGFF) president Richard Wittenoom said they still intended to log on both sides of the tramway along the full length of the embankment with only a narrow buffer strip on each side.

“We regard the preservation of this forest setting as non-negotiable and need the support of the community to make this point clear to the FPC, to the Department of Environment and Conservation (DEC) and the government,” he said.

The BGFF has organised another peaceful rally to support the forest environment of the historic Warrup forest tramway.

A recent protest picnic was attended by 90 residents and supporters.

The rally is scheduled for tomorrow with anyone wishing to attend to meet at the Bridgetown railway station at 9.30am for car pooling.

BGFF believes the Warrup tramway offers significant opportunities for future local tourism in the Jarrah forest.

I want to put on the record tonight that we in WA Labor fully support the arguments of the Bridgetown–Greenbushes Friends of the Forest that the forest setting along the tramway should be preserved. It is my view, and that of others on this side of the house, that BGFF has done a great job by getting the FPC to admit that the forest setting is worth preserving. Mr President, you, like me, are a member for South West Region, and you may well have walked that tramway reserve in Bridgetown. It is a beautiful area, and we certainly cannot walk it without being aware that we are walking through a very beautiful forest. If the FPC thinks that retaining the forest setting means just leaving a thin ribbon of trees along the tramway, then that is a complete betrayal on its part. It has given an undertaking that the forest setting will be preserved, and yet it appears that it thinks that the objective of preserving the forest setting is being achieved by just leaving a thin buffer strip either side of the tramway.

I ask you, Mr President, to visualise what this might mean. People will be walking down this track and they will obviously be able to see through the thin layer of trees to an area of native forest that has been logged. That is not what retaining the forest setting means. Retaining the forest setting clearly means that when people walk that track, or however they care to use it, they are entering a forest area. It is of great concern to me, and it is of great concern to local community members who showed how much they care about protecting the tramway when, as I have just shared with the house and as reported in the local paper, 90 people turned up to that protest picnic.

I know that certainly some members opposite raise their eyebrows when they see people chaining themselves to large yellow machines—I personally have never endorsed that tactic as a first line of defence; I think it is always much better to argue and discuss to try to reach compromises than it is to take that kind of direct action. Equally, of course, I believe that the view of most people who end up doing that is that they have been pushed to a point of believing that other avenues have, effectively, been exhausted. But whatever members feel about that kind of protest, this is not what we are talking about in relation to this protest picnic about protecting the forest environment of the tramway. These were just ordinary local people who do not want to lose that amenity from their town. It is an amenity—an asset—that is valued by the whole community for its beauty. They actually enjoy going there—it is part of their hometown—and for people who live in and around the south west it is somewhere that they might care to visit or to take friends to on a Sunday afternoon walk. But also, of course, it is valued by the community for its tourist potential. That is something we need to consider much more seriously when we talk about the values of the forest in the south west. Nowhere is that better demonstrated than by the success of the treetops walk, which has attracted hundreds of thousands of visitors in the year it has been open. Our forests are a major tourist asset, and the people of Bridgetown want to see those assets protected.

Today I call on the Minister for Environment, Bill Marmion, and the Minister for Forestry, Terry Redman, to step in immediately. There cannot be delays here—we know how these things happen. We have, unfortunately, a sorry history of valuable conservation areas being destroyed and violated in this state because a contractor goes out without proper instructions. In fact, it makes me very sad that when I am taken around some of these coupes that are contentious areas, nine times out of 10 when DEC or FPC officers—who are trying to do a very difficult

job—actually turn up on site and see places where logs have been snigged in the wrong way so that they have altered watercourses, or habitat trees that have been clearly marked as being retained have been destroyed, they respond, “It’s the contractors; they don’t always understand what they’re supposed to be doing.” That is a very, very sorry situation. I can tell members that as an explanation for some of these mistakes that are being made, it does not make people feel any better if they know that the action was taken in error.

I call upon Ministers Marmion and Redman to step in right now to make sure that the FPC understands that preserving the forest setting of the tramway means that the tramway must remain surrounded by forest, not simply lined by a buffer zone that is supposed to keep the logged areas alongside the tramway out of sight.

HANSON RED HILL QUARRY

Statement

HON ALISON XAMON (East Metropolitan) [5.58 pm]: I rise tonight because, once again, I wish to draw the house’s attention to Hanson Red Hill quarry on the Darling Scarp. For those members who have not been following events, I will give a quick update of the situation.

In 2008, Hanson applied to extend the existing quarry footprint by 80 hectares, and a full public environmental review was carried out. Submissions opened on 23 June 2008 and closed on 18 August 2008; the proponents’ response to concerns raised were finalised on 13 July 2010. On 31 January 2011, the Environmental Protection Authority determined that the proposed quarry expansion could not be made environmentally acceptable, and Hanson appealed that decision. On 14 September 2011, the appeals convener determined that Hanson’s appeal could not be upheld on the grounds Hanson had provided, yet on 16 December 2011—just before Christmas—the minister upheld Hanson’s appeal anyway, and is now in the process of negotiating with other government agencies to try to find some conditions that will enable Hanson to expand this quarry. The main environmental concerns that the EPA believed could not be mitigated or managed were that the expansion would require the destruction of six significant Aboriginal heritage sites, including Gogomit—otherwise known as the owl stone; it would cause a substantial loss of a valued landscape and ecological functions; it would have a huge impact on the visual amenity of a number of properties to the north and west of the proposal site; and it would remove 80 hectares of regionally important fauna habitat. Issues of noise, dust, vibration and water quality of discharges to Susannah Brook were believed to be manageable, which was certainly a surprise to nearby residents, but the Environmental Protection Authority was so definite that the proposal should not be implemented that its suggestions for environmental conditions were not included in the EPA report. So it is of great concern that the minister has seen to override the advice of both the EPA and the Appeals Convenor on this matter. This practice of ignoring the recommendations of our regulators and pushing projects through anyway is one that we have already touched on this week. We talked about this yesterday during the discussion about the Roe 8 extension.

In relation to the Hanson Red Hill quarry, the EPA’s advice regarding the Aboriginal heritage sites in the area is very clear: there is a combination of sites in the area, and this is a really rare thing in the metropolitan area; the sites as a whole represent the culture and life of Aboriginal people; the impact of the proposal would be that sites that are used for the collection of traditional bush tucker and medicine would be cleared and destroyed; the likely impact of implementing the proposal would be the destruction of Aboriginal heritage sites; the proposal cannot be managed to ensure that changes to the biophysical environment do not adversely affect historical and cultural associations; and the quarry cannot be extended to the north if those sites are to be protected. The EPA is telling us very clearly that extending the quarry to the north cannot be managed in a way that protects the unique Aboriginal heritage in the area, yet the minister is out there at the moment trying to find a set of conditions that will enable the proposal to go ahead anyway. I have written to the minister on multiple occasions, but I have most recently written to the minister specifically to ask how long he will pursue working with the various agencies to try to get some form of this quarry extension and what will happen if the agencies that have already commented on this proposal and made their position clear continue to say that allowing this quarry to go ahead regardless of conditions will mean failing the people of Western Australia. I look forward to getting his response to those questions.

While I am talking about Hanson Red Hill quarry, I also point out that there has been a great deal of concern in the community that Hanson seems to find it easier to beg forgiveness than to ask permission, and I will explain what I mean by that. Some of the previous issues with the quarry at this site include ministerial conditions that were changed after they were found to be unenforceable, and they were found to be unenforceable only after complaints were made that the conditions were not being adhered to. Provisions regarding the visibility of the quarry were removed in 2004 as a result. The expansion of the west pit, which is currently the only pit, from a 20-acre quarry to a 40-acre quarry happened without an actual approval from the department. Approval was granted after the event through a section 45C application under the Environmental Protection Act. The history of planning approvals for the quarry is murky. Previous answers in Parliament from the Department of Planning have indicated that since 17 December 2009, Hanson has had approval to quarry only in a 5.4-hectare extension area, not in the main pit. I have been following up this issue recently in questions in this place and have found

that the matter is now with the State Solicitor's Office for clarification of what the history of planning approval at this site has meant for Hanson's activities since 17 December 2009.

I find it astonishing that the Minister for Environment has gone into bat for the extension of this quarry while such significant questions about the operation of this quarry remain unanswered. I think it is fair to say that given this history, it is not at all surprising that residents who live adjacent to the quarry and the traditional owners of the area remain concerned about how any future expansion will be undertaken or monitored. We are finally in a position in which the government departments have made a clear and decisive recommendation about this proposal and have found the expansion of the quarry to be completely unacceptable. I maintain that the minister's decision to go ahead in the face of this united opposition from the departments is an absolute disgrace.

House adjourned at 6.05 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

ELECTORATE OFFICE RELOCATIONS

5036. Hon Matt Benson–Lidholm to the Leader of the House representing the Premier

In response to answers to my question without notice asked on Tuesday, 22 November 2011 regarding electorate office relocations in the years 2009, 2010 and 2011 (year to date), I ask —

- (1) What was the date of the relocations mentioned in part (2)(b)?
- (2) What was the cost of the relocations mentioned in part (2)(b)?

Hon NORMAN MOORE replied:

(1)–(2) [See paper 4386.]

The relocation of the office of Hon Dr Sally Talbot MLC and the relocation of the office of Mr Vince Catania MLA in Karratha were incorrectly listed in the answer to the question without notice No. 1037 asked on 22 November 2011 as the relocations occurred in 2008.

OFFICE OF EARLY CHILDHOOD — GOVERNMENT PLAN

5047. Hon Alison Xamon to the Leader of the House representing the Premier

I refer to recommendation 32 of the Commissioner for Children and Young People’s Report on the Inquiry into the Mental Health and Wellbeing of Children and Young People from April this year, which refers to the need for a central Office of Early Childhood for coordinating and managing a Statewide plan for early childhood so as to address the needs of Western Australian families and children holistically, and I ask —

- (1) Does the Premier intend to create an Office of Early Childhood in Western Australia?
- (2) If no to (1), why not?

Hon NORMAN MOORE replied:

Department of the Premier and Cabinet advises:

- (1) The Office of Early Childhood Development and Learning was established three years ago in the Department of Education with a focus on closing the gap for Aboriginal children, better coordinating Kindergarten and Pre-primary programs with child care services, and working closely with parents to help with early learning in the home and the transition to school.

In addition, as indicated in the Premier’s statement to Parliament on 21 February 2012 outlining this Government’s agenda for this year, we will shortly provide details of our previously-announced plan to co-locate children and family services on school and other community sites, particularly in low socio-economic areas.

- (2) Not applicable.

MENTAL HEALTH SERVICES FOR YOUNG PEOPLE — 24-HOUR EMERGENCY CARE

5056. Hon Alison Xamon to the Minister for Mental Health

I refer to recommendation 40 of the Commissioner for Children and Young People’s Report on the Inquiry into the Mental Health and Wellbeing of Children and Young People from April this year, which calls for a specialised, Statewide, 24-hour emergency service for children and young people experiencing a mental health crisis. I refer especially to the finding that such a service would replace a need currently being met by the Western Australian police service, which has unnecessarily escalated some matters to criminal matters, and brought children suffering mental illness into contact with the criminal justice system, and I ask —

- (1) Will the Minister commit to developing the 24-hour emergency mental health service recommended?
- (2) If yes to (1), by when will this service be operating?
- (3) If yes to (1), did the Mental Health Department budget for this service in the 2011–12 Budget, and if so, how much?
- (4) If no to (3), will the department budget for this service in the 2012–13 Budget, and if so, how much?
- (5) If no to (1), why not?

Hon HELEN MORTON replied:

- (1) The Western Australian government is committed to developing additional emergency services for children and young people and has committed funds to the Department for Health Child and Adolescent Mental Health Services for the expansion of emergency services. Princess Margaret Hospital Emergency Department has always been available 24-hours 7 days for children with mental health issues.
- (2) The service will be operational in July 2012.
- (3) The Mental Health Commission committed \$1.6million recurrent funding in 2011/12.
- (4)–(5) Not applicable.

MENTAL HEALTH SERVICES FOR YOUNG PEOPLE — INFANTS

5058. Hon Alison Xamon to the Minister for Mental Health

I refer to recommendation 36 of the Commissioner for Children and Young People's Report on the Inquiry into the Mental Health and Wellbeing of Children and Young People from April this year, which notes the significant gap in mental health services for infants in Western Australia. I refer especially to the finding that the lack of adequate funding to the Infant, Child, Adolescent and Youth Mental Health Service (ICYAMHS) meant that it was unable to meet the needs of infants and young children, and I ask —

- (1) Will the Minister commit to developing a comprehensive, specialist infant mental health service that can provide early intervention and treatment services for very young children and their parents?
- (2) If no to (1), why not?

Hon HELEN MORTON replied:

- (1) Provision of appropriate specialist infant mental health services is acknowledged to be an important component of a comprehensive mental health service system.

The Mental Health Commission convenes an interagency Infant and Child Mental Health Planning Group through which short and long term strategies for addressing the mental health needs of infants and their families are being developed. The initial strategies being implemented include building the skills and capacity of the workforce to provide appropriate services to infants and their families, and developing an integrated services model for infants, very young children and their families that will incorporate early intervention supports and services through to intensive specialised intervention.

The Mental Health Commission has invested \$358,720 (GST excl) into funding of infant mental health scholarships that are being allocated in 2011–12, and has also allocated \$878,000 in 2011–12 for Advanced Child Psychiatry Training posts and has committed to invest \$1.1 million per annum thereafter to support five Advanced Child Psychiatry Training posts.

- (2) Not applicable.

MENTAL HEALTH SERVICES FOR YOUNG PEOPLE — BENTLEY ADOLESCENT UNIT

5061. Hon Alison Xamon to the Minister for Mental Health

I refer to recommendations 49 and 50 of the Commissioner for Children and Young People's Report on the Inquiry into the Mental Health and Wellbeing of Children and Young People from April this year, which refer to the urgent need to upgrade and replace the inadequate inpatient facilities at Bentley Adolescent Unit (BAU). I also refer to the Government's plan to relocate six of the current beds at BAU to the new children's hospital in Nedlands when it is finally built, maintaining six beds for adolescents at BAU, and I ask —

- (1) Will the Department contribute any funding for urgent upgrades to BAU to provide a more therapeutic service for children and young people at that site —
 - (a) while the new children's hospital in Nedlands is being planned and built; and
 - (b) for use by the six inpatients after the new children's hospital in Nedlands is built?
- (2) If no to (1), why not?
- (3) Has planning for the new children's hospital taken into account the need for comprehensive services for young people up to 25 years of age?
- (4) If yes to (3), how?
- (5) If no to (3), please indicate how the needs of young people up to 25 years of age with mental illness will be met.

Hon HELEN MORTON replied:

- (1) (a) In 2010/11, the Mental Health Commission provided \$337,000 to the Department of Health to undertake specific refurbishments to the BAU, which are now complete.
As part of the National Health Reform Partnership Agreement, the Federal Government provided the WA Department of Health with \$4.5 million to undertake a more substantial upgrade of bedrooms, bathrooms, outdoor areas and staff facilities at the BAU. These works are underway and are due for completion in December 2012.
- (b) Whilst the current upgrade and refurbishments will continue to apply after the new children's hospital in Nedlands is built, the future of the remaining 6 beds at the BAU is still to be determined.
- (2) The future of the remaining 6 beds at the BAU site will need to be considered in the planning of a new comprehensive youth mental health service model to be led by the Mental Health Commission.
- (3) No. The new children's hospital will provide inpatient services to children under the age of 16 years.
- (4) Not applicable.
- (5) The Mental Health Commission is planning a new comprehensive youth service model for young people.

ALCOA WAGERUP REFINERY — BUFFER ZONE

5211. Hon Giz Watson to the Minister for Mental Health representing the Minister for Planning

Referring to the Statement of Planning Policy No. 4.1 — State Industrial Buffer Policy of 1997 and the Guidance for the Assessment of Environmental Factors Western Australia (in accordance with the Environmental Protection Act 1986) of June 2005, I ask —

- (1) With regard to the current power generating facility at the Alcoa Wagerup Refinery, what buffer zone is considered to be consistent with the above mentioned policies?
- (2) Currently, what is the closest distance between residential housing and the Wagerup power generating facility?
- (3) Is that distance compliant with these policies?
- (4) If yes to (3), how does the Minister explain the demand from nearby residents for a buffer zone?
- (5) If no to (3), what strategies does the Minister have to address this non-compliance?
- (6) When was the Statement of Planning Policy No. 4.1 — State Industrial Buffer Policy last reviewed?
- (7) What was the outcome of the review?
- (8) If such review has not been undertaken or completed, does the Minister consider the current *State Industrial Buffer Policy* as adequate?

Hon HELEN MORTON replied:

- (1) Mandatory buffer distances are not specified in State Planning Policy No. 4.1 — State Industrial Buffer Policy (SPP 4.1). The Environmental Protection Authority (EPA) Guidance for the Assessment of Environmental Factors Western Australia, recommends a generic buffer of 3000–5000 metres for a power generation plant, depending on its size and location. The guidance statement enables lesser buffer distances to be considered where supported by satisfactory site-specific technical studies. In 2006 a consultant for the proponent prepared an Environmental Impact Statement (EIS) for the then proposed power generation plant, which concluded that existing residences in the area were adequately separated from the power generation plant site. The EPA examined the EIS as part of the environmental review of the proposal, and concluded that the power plant is capable of being managed in an environmentally acceptable manner.
- (2) The nearest residence is located about 1500m south–east of the power generation site.
- (3) Yes. Neither SPP 4.1 nor the EPA guidelines stipulate mandatory buffer requirements for a power generation plant.
- (4) The desire for a buffer zone appears to be based on perceived adverse environmental impacts (noise, air pollution and dust emissions) and perceived adverse economic impacts upon surrounding communities.
- (5) Not applicable.
- (6) A review of State Planning Policy No. 4.1 — State Industrial Buffer Policy was commenced and a revised draft policy released for public comment in 2009.

- (7) The review has not been finalised. Submissions received on the draft (2009) policy identified issues with its implementation. The Department of Planning is working to address these issues, in conjunction with the Department of Environment and Conservation, the Environmental Protection Authority, the Office of the Environmental Protection Authority and the Department of Health.
 - (8) The current gazetted policy (1997) and the draft policy (2009) are both considered relevant and are used in conjunction with each other when making planning decisions.
-