

WESTERN AUSTRALIA  
**PARLIAMENTARY DEBATES**

**(HANSARD)**

THIRTY-FOURTH PARLIAMENT



FOURTH SESSION  
1996

LEGISLATIVE COUNCIL

Thursday, 5 September 1996

# Legislative Council

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**THE PRESIDENT** (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

## **AUSTRALIAN FEDERAL POLICE - FBIS INTERNATIONAL PTY LTD**

### *Report Tabling*

On motion by Hon Peter Foss (Attorney General), resolved -

That the report, "An Investigation into Issues Raised by FBIS International Pty Ltd in Assessment Reports Provided to the Commissioner of the Western Australian Police Service", do lie upon the Table and be printed.

[See paper No 569.]

## **MOTION - URGENCY**

### *Subiaco Redevelopment Act Agreement*

**THE PRESIDENT** (Hon Clive Griffiths): I have today received the following letter -

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House, at its rising, adjourn until 9.00 am on 25 December 1996 in order to:

- draw to the attention of the House that an agreement reached between the City of Subiaco and the Minister for Planning, by way of a deed signed on April 12th 1996, appears to contravene the provisions of the Subiaco Redevelopment Act 1994 (WA) and if so is legally void; and
- express our concern at the Minister's apparent disregard for the law, Parliament and the integrity of community consultation by failing to table the agreement pursuant to his obligation under subsection 22(2) of the Subiaco Redevelopment Act 1994 (WA).

Yours sincerely

John Halden MLC  
Member for South Metropolitan Region

In order to discuss this matter, it will be necessary for at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [2.35 pm]: I move -

That the House at its rising adjourn until 9.00 am on 25 December.

Again this Parliament is witnessing the extravagance of a Minister renowned for his arrogance during the term of this Government. This episode is clear evidence of the Minister's arrogance and contempt for the law, Parliament and community consultation process which he instigated under the Act and funded by taxpayers. The Subiaco issue has its origins in the 1980s, and people then and now are concerned about the impact of the redevelopment, principally in terms of heavy traffic.

The Opposition will detail to the House how the Minister for Planning agreed on 3 July to a community consultative process. He did so under powers granted to him under section 33(4) of the Subiaco Redevelopment Act, which reads -

The Minister may . . .

- (b) consent to such public notification subject to modifications being made to the scheme, as directed by the Minister.

The Minister for Planning did not have to follow that procedure, but he did. He opened up the process for a minimum of 60 days' consultation. Section 35 of the Subiaco Redevelopment Act reads -

- (1) Written submissions on the proposed redevelopment scheme may be made by any person -
  - (a) within a period determine by the Authority that is not less than 60 days. . . .
- (2) The Authority may modify the proposed redevelopment scheme as it thinks fit to give effect to any submission so received by it.

That is a fairly obvious process established by the Minister. Basically, it states that the community can make submissions and the redevelopment authority and the Minister will consider them and see whether they want to modify the town planning scheme.

On 12 April, two and a half months earlier than the submission date, the Minister for Planning made an agreement with the City of Subiaco in which he made it clear that the proposed development would go ahead under certain conditions: Principally, that the railway line in the area of the Subiaco Redevelopment Authority as detailed in schedule 1 of the Act would be sunk. This is the most controversial issue in the entire redevelopment proposal; that is, \$44m of the total \$94m in the redevelopment will be spent on sinking the railway line.

The agreement, which I will table at the conclusion of my comments, contains another predetermined arrangement. In relation to the central issue facing the redevelopment authority, two months before the Minister goes to the public consultation process, he makes an agreement that the proposal will occur - no, ifs, buts or maybes; regardless of whether the community wants it or not, the Minister has made an agreement. This typifies this Minister's action regarding planning, local government authorities and individuals, as has been well documented in the other place more than here.

In consideration of section 35, which I just quoted, how will consideration be given to any submission received about the railway line when an agreement has been made to sink it? The same applies with the roads so affected. It is a nonsense and a sham and so is the Minister for Planning. To make matters worse, I will quote from the minutes of the Environmental Services Agenda of 13 August 1996. It was within the 60 day period of consultation and I presume the Government was trying to adhere to the provisions of the Act. It states -

The Subiaco Redevelopment Authority (SRA) has lodged an application for planning approval for the construction of the railway tunnel and station within the Subiaco Redevelopment Area.

. . . The railway relocation, lowering and new station structure is one of the first stages in the redevelopment of the area. Once these works are completed, the land over and adjacent to the lowered railway, will be subdivided and sold for development purposes in accordance with the Redevelopment Scheme.

The SRA has short listed four companies to prepare tenders for the railway and station project. The preferred tender will be selected and commissioner by the end of 1996.

Therefore, a process has been established and it is to be completed by the end of 1996, regardless of the result of the public consultation. To continue -

It is anticipated that with the approval in place, works will commence early in the new year. It is estimated that construction works for tunnel and new station would take at least 30 months. The tunnel work would be completed by early to mid 1999.

Further on in the same document it states -

The proposed undergrounding of the railway and development of a new railway station is in accordance with Council's agreement -

A nice little secret agreement from which I quoted earlier -

- with the State Government for the transfer of land to the SRA. Council, in the agreement, required that the railway line between Haydn Buntun Drive and Hay Street was undergrounded.

. . . The proposal for the railway tunnel and station are in accordance with the draft Subiaco Redevelopment Scheme and Concept Plans currently on exhibition. The sinking of the railway and the railway station facilitate the implementation of the Subiaco Redevelopment Scheme.

That is prior to the closure of the period of public comment. We have an agreement in which the City of Subiaco is saying that it will undertake this work, and it is signed by the Minister for Planning, and an application for the development approval. These two things occurred before the closure of the period of public consultation. It is a breach of section 35 of the Act.

Hon Peter Foss: How does it do that?

Hon JOHN HALDEN: It cannot be modified after an agreement has been reached.

Hon Peter Foss: Why?

Hon JOHN HALDEN: It is a binding deed.

Hon Peter Foss: It is a legal point, but I don't think it has any effect.

Hon JOHN HALDEN: The Attorney General will have his opportunity to contribute to this debate.

The document states that the authority may modify the proposed redevelopment scheme as it thinks fit to give effect to any submission so received. How could it possibly modify it in regard to the railway line? It could not. The factor creating the greatest concern about this whole issue cannot be considered for any modification. An agreement has been entered into.

Hon Peter Foss: Are you saying that as a matter of law?

Hon JOHN HALDEN: No. It cannot be done.

Hon Peter Foss: It can.

Hon JOHN HALDEN: An agreement has been entered into to sink the railway line and how could it possibly not be done? It is obvious it cannot be done.

Hon Peter Foss: Even though the Act says it can.

Hon JOHN HALDEN: The Act does not say that. It does not end there. The period of public consultation was from 3 July to 31 August - 60 days, which is the minimum period under the Act. The Minister was committed to convenance on 12 April. The Minister consented to the 60 day period beginning 3 July knowing full well that portions of the scheme could not be changed. The covenant is unequivocal and it is as follows -

The City and the Minister covenant and agree with each other to use their respective best endeavours to implement the Project. The Project must include the sinking of the railway line.

Hon Peter Foss: Are you saying it overrules the Act?

Hon JOHN HALDEN: I suggest it might and that there has been an attempt to camouflage this agreement. It has preempted the Act. There is no validity to the period of community consultation. The most significant issue has been wound up and put aside. Clearly, there is no good intention on the Minister's part to look at this matter fairly. The Opposition also knows that the powers of the Subiaco Redevelopment Authority have been breached with regard to section 21(2).

Hon Peter Foss: It does not say what you say it says.

Hon JOHN HALDEN: The Minister will have his chance. He can try to defend the indefensible. Section 21(2) reads -

Without limiting the generality of subsection (1), the Authority may -

- (a) acquire, hold, manage and dispose of land but, in the case of an acquisition or disposal of land that, in the opinion of the Authority, exceeds \$1 000 000 in value, only with the approval of the Minister and subject to any conditions attached to the approval;

Section 22(2) states -

When the Minister gives any approval under section 21, or the Governor gives any approval under subsection (1), the text of that approval is to be laid before each House of Parliament within 28 sitting days of that House after the day on which the approval is given.

Clearly, there is an agreement between the City of Subiaco and the Minister for Planning, and it was signed on 12 April. It should have been tabled by last Tuesday, but it has not been tabled in either House.

Hon Kim Chance: The Minister said it was tabled 10 minutes ago.

Hon JOHN HALDEN: How convenient. After I gave notice of this motion the agreement was tabled.

Hon Peter Foss: I have not tabled the agreement; it was the approval.

Hon JOHN HALDEN: I am sorry. The Minister has not complied with the requirements of the Act. More importantly, the Government has tried to suggest the railway line is not part of the Subiaco Redevelopment Authority

area as defined in schedule 1 of the legislation. I have an enlarged copy of the plan in that schedule and it is quite clear that the railway line is within a confined area. However, a paid advertisement titled, "Centro Corner" clearly states -

There still exists some confusion about the sinking of the railway, the major infrastructure project which allows for the Subi Centro Project to go ahead. While people's views on the issues to do with the Subi Centro are of course welcome, it's important to note that the sinking of the railway is an issue entirely separate to that of the Subiaco Redevelopment Draft Scheme, which is central to this current public consultation process.

Public moneys have been used to suggest that the railway line contained within the boundary is not within the boundary. It is like dealing with the Fisheries Department - it is double speak. For example, a boat is a piece of paper and a railway line clearly within the area of the Subiaco Redevelopment Authority is not within that area.

Hon Peter Foss: What is that document?

Hon JOHN HALDEN: It is the map from schedule 1. It gives a clear indication of the area.

This is a situation where the Minister has clearly entered into an agreement for the sinking of the railway line. He entered a process of consultation knowing full well that the matter had been resolved. The Minister has not complied with the requirements of the Act to table the agreement in this place.

**HON KIM CHANCE** (Agricultural) [2.50 pm]: The fundamental issue is that the Minister has entered into an agreement with the City of Subiaco by way of a deed of agreement signed on 12 April 1996 which contains certain binding undertakings. One of those binding undertakings is to proceed with the sinking of the railway. That was some two months before the period for public consultation started on 3 July. That agreement made on 12 April 1996 in effect pre-empted any public consultation, which, in any case, had not even begun at the time the agreement was entered into. Our contention is that in doing that the Minister pre-empted the provisions of section 35 of the Subiaco Redevelopment Act. Our contention is that, having done that, a case exists to argue that the agreement containing those provisions which pre-empted the Act may be legally void.

The Leader of the Opposition asked whether the powers of the Subiaco Redevelopment Authority had been breached. The Leader of the Opposition read section 21(2)(a) of the Act which limits to \$1m the power of the authority to transfer funds. A different aspect of this matter is raised in clause 6 of the agreement under the heading "City's Contribution", which states -

The transfer of the land to SRA will satisfy the City's obligation to contribute the previously agreed amount of \$14 million towards the Project.

Section 21(2)(a) of the Act defines an amount of \$1m, and the agreement refers to a previously agreed contribution of \$14m arising from the transfer of land to the Subiaco Redevelopment Authority. That seems to be contrary to both the spirit and the letter of the Subiaco Redevelopment Act, in particular to section 21(2)(a). Additionally, as the Leader of the Opposition said, the Minister should by now - that is, within 28 days after its signing - have laid the text of the agreement before the House.

Hon Peter Foss interjected.

Hon KIM CHANCE: The Attorney General picked me up on that. The reason that we have continually referred to the requirement for the Minister to table the agreement is that it is our view that approval for that act, which is more precisely what the Minister must table, is contained within the agreement. We have no evidence of the existence of any other form of approval. However, the approval, if not the agreement, must be tabled within 28 sitting days of its signing.

Hon Peter Foss: It is incorrect to say the agreement.

Hon KIM CHANCE: I said "the approval, if not the agreement". Both the Leader of the Opposition and I used the word "agreement" because of our assumption that the approval is implicit in the agreement and we were not aware of the instrument that contained the approval.

Hon Peter Foss: The Act requires the approval to be tabled.

Hon KIM CHANCE: Yes, but if the approval is contained within the agreement the agreement must be tabled. In any case, whether it is necessary for the agreement or the approval to be tabled within 28 days of being entered into, there is no circumstance under which that approval could have been made on a date later than the signing of the agreement.

Hon Peter Foss: That is not necessarily correct.

Hon KIM CHANCE: I will not argue that with the Attorney; he can do that in his own time. Both Houses of Parliament should have had tabled before them the approval which is referred to in the agreement. That has not been tabled and those 28 sitting days expired on 3 September - Tuesday last. That requirement in section 22(2) of the Act has not been complied with, and we are not even sure whether the approval has been tabled today. In any case, the final date for its tabling was Tuesday last.

Hon John Halden: Do not forget that the land has been transferred.

Hon KIM CHANCE: Yes. The Subiaco Redevelopment Authority has argued that the sinking of the railway is a separate matter from the Subiaco redevelopment draft scheme. The Leader of the Opposition referred to an August 1996 newsletter known as "Centro Corner" which made that contention. That is just not so. The definition of "project" in this agreement is "the development and redevelopment of the area referred to in Section 4(1) of the Act by the SRA in accordance with the functions and powers contained in the Act". Clause 2 of the agreement defines "The Project" to be -

The City and the Minister covenant and agree with each other to use their respective best endeavours to implement the Project.

However, the next sentence is telling. It states -

The Project must include the sinking of the railway line.

There is no way on earth that the Subiaco Redevelopment Authority can argue that the sinking of the railway line and the project are separate and distinct from each other. As the Leader of the Opposition has already said, the map in schedule 1 of the Act does not exclude the railway reserve from the scheme. Additionally, it becomes clear in clause 13 of the agreement that the project is irrevocable upon the letting of the contract for the sinking of the railway. That is something of a concern.

Hon Peter Foss: What about the approvals tabled on 26 January and 5 September?

Hon KIM CHANCE: I cannot answer that.

Hon Peter Foss: Were they relevant to this?

Hon KIM CHANCE: I do not know. Clause 13 reads in part -

For the purpose of this Clause 13 the word "proceed" means the letting of the contract for the sinking of the railway and associated works.

In effect the agreement becomes irrevocable on the letting of contracts to sink the railway. Once that has been entered into there is no way on earth we can separate the sinking of the railway from the project. The agreement made on 12 April this year that the railway must be sunk has taken away from the people of Subiaco and Western Australia the capacity to comment in the time provided by the Act.

Hon Peter Foss: Are you saying that the contract to sink has been let?

Hon KIM CHANCE: No; however, the project becomes irrevocable upon the letting of the contract. Once that is let -

Hon Peter Foss: But it is not let.

Hon KIM CHANCE: The point I am finding very hard to get across to the Attorney General is that an agreement was made between the City of Subiaco and the Minister that the project must include the sinking of the railway. In clause 13 of the same agreement the project effectively becomes irrevocable upon the letting of the contract to sink the railway. The SRA is arguing that the sinking of the railway is a separate matter from the scheme. It is not and it cannot be argued that the two issues are separate. They are linked and clearly so in the agreement itself.

**HON PETER FOSS** (East Metropolitan - Attorney General) [3.00 pm]: I am at a disadvantage in this debate because, with the very short notice, given I have been able to obtain only sketchy instructions on this matter and we are dealing with complicated areas of law and contract. Therefore, to some extent, I shall be obliged to raise points of query rather than answer questions. A matter of this complexity should be debated on a more substantive motion so that we have an opportunity to deal with it more appropriately. There appears to be some haste on the part of the Opposition, because its position has changed during the debate. First, it said that the deed is void because it contravenes the Subiaco Redevelopment Act. As the argument developed the Opposition seemed to suggest that the deed is valid and, therefore, it precludes action under the Act. As far as I am concerned, the Opposition was closer

to the mark with the motion, if that is correct, than it is in its argument today. It is not possible for an agreement to prevent something from happening if the Act states that it may happen. If the Act provides that the authority can change the scheme, the authority may change the scheme.

Hon Kim Chance: It is hardly likely to.

Hon PETER FOSS: That is a different matter altogether. Members opposite shifted to political terms after the debate started but they put the motion in legal terms. Let us deal with the legalities. They started with the broad statement that the Minister is behaving illegally, and they now say that he is behaving arrogantly, which is slightly different from the original statement.

Hon John Halden: I said it but not in that context.

Hon PETER FOSS: I believe the Opposition's argument is that the agreement has constrained the capacity to act. I do not believe that is the case. If the scheme were changed, it would probably frustrate the agreement. I do not have the two agreements referred to, but it appears quite possible that unless an agreement to sink the railway line takes place, up to that time the agreement is revocable. If that is the case, it appears it has been carefully structured so that the authority can go one way or the other. However, if it goes ahead with the railway line, the whole matter will be in place. The railway line is not a new idea. I remind members that this was considered by members opposite when they were in government, and the sinking of the railway line was definitely a part of the proposal. The second reading speech on the Subiaco Redevelopment Bill stated that "The proposal involved a number of significant elements of which the following are the most important".

More importantly, the sinking of the railway is already possible under the Jolimont special area scheme. The Subiaco Redevelopment Act is unusual in that it has the capacity to overrule local planning authorities. Currently at law under the existing town planning scheme the sinking of the railway is already possible. It is not a matter of needing to change the scheme to permit that, because it is currently permitted. The Subiaco Redevelopment Act could possibly be changed to prevent it. Obviously, if it were decided to go ahead, it would be made consistent with that scheme. It appears that already at law it is capable of being sunk because that is provided for in the local town planning scheme, and nothing in this agreement would prevent that. It is obviously a much more complicated legal situation than members opposite have suggested. It may sound very simple but I understand that is not the case. The Minister for Planning has made it clear that there is no predetermined outcome, and he is on record as indicating that if the community does not want the railway sunk, the project will not go ahead.

Some errors were made in the argument put forward by members opposite. They said that the agreement must be tabled, but in fact the approval must be tabled. This is not the way to deal with a complicated legal argument, especially as I did not have the opportunity to consider it in detail and I do not have copies of the agreement. I noted a shift in the argument presented by members opposite and some incorrect statements with regard to the effect of the Act. I understand from the Minister that he believes it is already permitted under the local scheme, and he has said it will not go ahead if the community opposes it. I understand it has been legally set up so that it is possible. It is hard to go further than that.

As far as the approvals are concerned, I understand two approvals have been tabled - one on 26 January 1996 and one on 5 September 1996. Unfortunately, my notes are not clear on the subject. I understand the words in them but not their relativity to the agreement currently being dealt with. Members opposite are correct in saying that the approval for this agreement should have been tabled last Tuesday. However, it was tabled today.

Hon John Halden: Only after I gave notice of the urgency motion. That was the only thing that caused it to be tabled.

Hon PETER FOSS: The Leader of the Opposition could be right.

Hon John Halden: I am totally right.

Hon PETER FOSS: Two previous approvals were tabled but I do not know precisely what they dealt with. That approval has now been tabled and it appears it was late. Again, that does not in any way change the effectiveness of the approval.

Hon Kim Chance: Just being ultra vires the Act does not make it ineffective?

Hon PETER FOSS: It is not ultra vires the Act. The member has bandied around all these wonderful words which are a little outside his area. He said the agreement must be tabled but, as I pointed out, the approval must be tabled.

Hon Kim Chance: The Attorney General did not seem to understand the point I was making.

Hon PETER FOSS: Hon Kim Chance was using his terms imprecisely. He has come up with the words ultra vires. The tabling of the approval is not a condition precedent to the approval being valid, although failure to table it is

wrong. First the Opposition queried whether the agreement would be illegal then it suggested it would stop the authority from exercising its power. Members opposite do not know-

Hon Kim Chance: That 28 days means 30 days?

Hon PETER FOSS: The words the members opposite are bandying around and the legal effects to which they refer in many cases are wrong. In the context of the information presently before the House it is difficult to draw any conclusions. I understand from the information before me that opposition members have an incomplete set of facts with regard to the legalities and the proposals made in the past. Much of what they are presupposing as the basis for their criticism is wrong.

Hon Kim Chance: You have not proved that.

Hon PETER FOSS: Opposition members have not proved anything. Hon Kim Chance argued the opposite of the first paragraph of the motion and admitted that the second paragraph was wrong.

Hon Kim Chance: No, I did not. Are you saying the Minister did not disregard the law?

Hon PETER FOSS: The Minister does not appear to have tabled the approval on time.

Hon Kim Chance: Then we were right.

Hon PETER FOSS: Members opposite were wrong about the tabling of the document.

The PRESIDENT: Order! While members are interjecting they are all wrong.

Hon PETER FOSS: Members opposite may also be wrong because two earlier approvals were tabled and I do not know the extent to which they relate to this contract. They should do their homework more thoroughly and if they want to raise this matter in the House, they should give more notice. I have pointed out that the first paragraph is wrong, based on the wrong assumption as to the legality of sinking the railway line. The Opposition's assumption that the Minister would not make any changes is incorrect. I would like to see a copy of the agreement to know what the consequences would be of a change to the scheme. Of all the things opposition members have said, it appears that the only point with any basis was that the approval was tabled five days too late. That is the only matter that is correct. The rest is not quite right in law or in fact. Perhaps if we had a little more notice of such a matter we could deal with it in a way to enable it to be properly worked out, and have a fuller understanding for this House and the public, rather than a broad statement by the Opposition which is not backed up either by law or the facts.

**HON J.A. COWDELL** (South West) [3.10 pm]: I agree with the Attorney General that this matter must be considered on a further occasion. We have become bogged down in some of the legalities of the situation, and the Attorney has indicated he was not able to give a considered response in that regard. However, we still have the significant issues of Minister Lewis' showing contempt for the local citizens in instituting a sham period of public consultation when the decisions had already been made by virtue of an agreement with the City of Subiaco. We have this contempt for Parliament shown by a failure to gain approval within 28 days as required by the Act.

Hon Peter Foss: I have had a look at the agreement, and some approvals were lodged in time.

Hon J.A. COWDELL: Some of them!

Hon Peter Foss: I will find the others.

Hon J.A. COWDELL: We have this contempt for the Subiaco Redevelopment Authority and its processes. As previous speakers have pointed out, Minister Lewis entered into a deed of agreement with the Subiaco Council on 12 April 1996 which contained binding undertakings, including that of the sinking of the railway - a rather fundamental determination. After that, a period of 60 days, from 3 July to 31 August, was provided for public consultation.

Hon Peter Foss: Where is that in the agreement?

Hon J.A. COWDELL: The situation is another example of Executive abuse, that this current Government criticised so highly in the previous Administration; and the abuse is by a Minister who has become renowned for overriding local authorities and making arbitrary Executive determinations.

The Attorney pointed out that there is a mix here in the question before us of whether we are looking at the illegal behaviour of Minister Lewis or just the arrogant behaviour of Minister Lewis. Both are matters that need further scrutiny and they should be raised before this Parliament. It is a matter of considerable concern that this Minister should show the degree of contempt he has for the public consultation process, for the Parliament, and for the Subiaco



Redevelopment Authority and its processes as envisaged by the Act. These are serious matters of concern, and the Minister has a case to answer.

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [3.14 pm]: We must give the Attorney General some marks for trying.

Hon Peter Foss: I got it right.

Hon JOHN HALDEN: The Attorney did not get it right. He tried to tell us that the law is not the law regarding the requirement to table the document. Suddenly he agreed with us.

I turn to the agreement which states -

The City and the Minister covenant and agree with each other to use their respective best endeavours to implement the Project. The Project must include the sinking of the railway line.

The agenda of the environmental services committee of the City of Subiaco states -

The proposed undergrounding of the railway and development of a new railway station is in accordance with Council's agreement with the State Government for the transfer of land to the SRA. Council, in the agreement, required that the railway line between Haydn Bunton Drive and Hay Street was undergrounded.

We are not talking about make-believe. This is an agreement, and there is now a development application before the council to implement. The agenda continues -

The proposal for the railway tunnel and station are in accordance with the draft Subiaco Redevelopment Scheme and Concept Plans currently on exhibition.

Currently some 800 submissions have been made by the public, many of them objecting to or indicating concern about this matter, but the Government has entered an agreement with the City of Subiaco; it has applied for a development approval from the City of Subiaco. Who has been aware of all that? The people in the City of Subiaco are in the process of consultation - an exhaustive process, I am advised - with meeting after meeting to talk about the options available -

Hon Kim Chance: All of which is pointless.

Hon JOHN HALDEN: Yes, because a predetermined course has been undertaken, otherwise why would this process be undertaken? Why would an agreement be entered into by the Minister for Planning and the City of Subiaco if this was not going to happen? Why would a development approval be sought from the City of Subiaco? They would not waste their time. They would go through the legitimate process to which the Minister agreed. That was to consult with the community for 60 days, consider the concerns, and if need be, modify the plan. There was no opportunity to modify the plan, once the agreement was entered and once it was decided to apply for a development approval. Surely, the Attorney will not suggest that the Minister for Planning will suddenly see a bolt of light and decide not to sink the railway line. After all this effort, that will not happen. This has been a sham perpetrated on the people of Subiaco, with considerable expense for the taxpayers - all with no purpose to it. The most significant issue of the railway line had been resolved as far as the Minister for Planning was concerned. He had no intention of adhering to the Act within the 28 day requirement. The Minister for Planning has been prompted by my urgency motion today. The deception by the Minister would continue. No doubt again he was playing fast and free with the law, this Parliament and the process of community consultation which was required. It is unbelievable that all we have heard is a nitpicking, legalistic argument by the Attorney General. The Act is not being adhered to. The Attorney accepted that, in part, when he gracefully accepted that the Minister did not concur with the 28 day requirement.

Hon Peter Foss: On only one approval.

Hon JOHN HALDEN: It was the most significant approval for the sinking of the railway line, before the community consultation process had concluded. It is a fairly significant issue which has been kept from the people of Western Australia, this Parliament and particularly the people affected by the proposed redevelopment. The issue is that the agreement states that if it does not proceed at any point, the land will be returned to the City of Subiaco.

[The motion lapsed, pursuant to Standing Order No 72.]

#### **MINISTERIAL STATEMENT - MINISTER FOR THE ENVIRONMENT**

##### *Intractable Waste Disposal Facility*

**HON PETER FOSS** (East Metropolitan - Minister for the Environment) [3.20 pm] - by leave: Today I tabled a report on the intractable waste disposal facility. The IWDF was initially approved for establishment in 1988 as an

integrated hazardous waste facility, including both aboveground secure storage and a high temperature incinerator. Although neither of these proposals has come to pass, and is not likely to, the IWDF has still become a very important part of the State's waste management infrastructure.

The ministerial conditions implemented under the Environmental Protection Act in 1988, which established the site, included a commitment to an annual report to the Parliament. This did not eventuate because the proposed incinerator did not proceed; however, the Department of Environmental Protection has now prepared for me a report to the Parliament on the IWDF and its operations. The report has been tabled for the information of the Parliament. The report was prepared from material that is already publicly available in one form or another, but consolidates the information in a way that I trust will be of interest to members and their constituents.

The IWDF is particularly important to Western Australia because of its capacity to dispose of difficult and intractable wastes, but this also requires the Government to have in place long term management strategies for the site. These are well detailed in the report, but in essence the site's management rests on the following principles: Long term government ownership and control; extension and ongoing monitoring and reporting; transparency of management to ensure that information about the site is freely available, with effective community consultation processes; a commitment by the Government to recover all disposal and long term monitoring costs for the waste, from the waste generators; ongoing independent regulation of the site by the relevant statutory bodies; and a strict adherence to waste minimisation, recycling and re-use as prior alternatives to disposal.

## VOCATIONAL EDUCATION AND TRAINING BILL

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon N.F. Moore (Minister for Employment and Training), read a first time.

### *Second Reading*

**HON N.F. MOORE** (Mining and Pastoral - Minister for Employment and Training) [3.23 pm]: I move -

That the Bill be now read a second time.

This Bill is the central element in the process to modernise and unify the vocational education and training system in Western Australia. It brings the four state Acts regulating the operations of the VET sector into one piece of legislation. The changes within the sector, along with the growing diversity and competition in the training market, mean that new arrangements must be put in place if public VET providers are to remain relevant and viable. These facts were reflected in the findings of "The Review of Education and Training" carried out in 1993 under the chairmanship of Dr Bob Vickery; and "The Review of Public Sector Finances" chaired by Mr Les McCarrey published in August 1993.

The Bill creates a state training board which is to advise the Minister on the vocational education and training needs of industry. The board will have executive responsibility for the preparation of the state training profile, which is an aggregation of industry's view of the State's training needs. The board will be supported in its role of providing advice to the Minister by industry training advisory bodies, including industry training councils.

The state training board will also oversee the development of policies for registration of training providers and accreditation of training. To this end it will work closely with the training accreditation council in framing policies that the board will recommend to the Minister for endorsement. The training accreditation council will consist of technical experts in training accreditation and registration matters. Membership will be on a nonrepresentational basis. The council will accredit courses and skills training programs that conform to designated standards and criteria. It will also register training providers for the purpose of providing accredited courses or skills training programs.

A central plank in the reform of the VET sector is the establishment of autonomous colleges that are locally managed and responsive to the needs of their communities and enterprises. This major initiative was formally enunciated in October 1994 through the release of my ministerial statement titled "An Autonomous College Network for Western Australia; Local Control - Statewide Quality". I will now highlight a number of the important issues dealt with by the Bill.

Ministerial powers: Part 2 of the Bill outlines the powers and functions of the Minister for Employment and Training. These powers have been drafted to allow operational flexibility to colleges without compromising ultimate control and direction of these bodies. The sum effect of these powers over colleges and the VET system is not as great or prescriptive as those currently found in the Colleges Act and the Education Act. The Bill also provides for the

Minister to be a body corporate, as was the case for the State Employment and Skills Development Authority under the SESDA Act.

**Autonomous colleges:** The Bill provides for the existing technical and further education colleges to become autonomous. They will be established with powers and functions modelled on the independent colleges and the provisions in the Colleges Act. As a result the changes to the operations of the existing independent colleges will be minimal. The administrative structures of the Department of Training and TAFE colleges will be formally separated under this Bill. This allows the colleges to manage their affairs and the department to purchase training from colleges and other training providers.

**Regulation:** The regulatory regime under this legislation will be minimal. The focus of the Bill is to allow training providers to get on with the business of delivering vocational education and training. The legislation allows the managers to manage. Colleges will be responsible for their program development, human and financial resources.

**Business dealings:** The strength of the VET sector is the direct and productive relevance it has to industry and the workplace. For many years it has been hamstrung by the lack of ability to develop the type of dynamic and structured relationships required by the industry of today. Joint ventures and strategic alliances are becoming the preferred means of project development, delivery and management of industry training. Such cooperative arrangements directly expose the colleges and their staff to the needs of industry and the changing nature of technology in the workplace. This Bill provides the wherewithal, along with the appropriate checks and balances, for the VET system and colleges to remain relevant and in touch with the needs of industry. The business arrangements and commercial activities outlined are confined to the core business of the training system - the delivery of vocational education and training.

In the development of this Bill, there has been close consultation with the State Supply Commission to ensure that business arrangements adhere strictly to government policies and procedures. The Department of Training has put in place processes for the purchase of training places that are consistent with those of the State Supply Commission, and that has been assessed by Bureau Veritas Quality International to Australian Standard ISO 9002.

**Responsiveness to industry:** The Bill focuses on making the colleges and system more responsive to industry by providing a framework that allows them to deliver the services that industry requires unencumbered by conflicting agendas. The Government does not accept the view that industry responsiveness results only from advisory structures that have tripartite arrangements cemented into them. Industry and the community as a whole are best served through efficient, effective and timely training delivered by training providers that deal directly with their customers and provide the services they require. The industry training councils, however, will continue to be a primary source of advice to the State Training Board which, as stated earlier, is charged with advising the Government on the State's training needs.

**Standards:** The VET system operating under the auspices of this Bill will place far greater emphasis on standards. The system will be underpinned by a quality standards framework that will focus on client needs, the integration of quality improvement processes across the spectrum of operations undertaken in the sector, and incorporating access and participation principles into all aspects of the system.

**Training schemes:** The other important aspect of this Bill is training schemes. This primarily refers to on the job training arrangements such as apprenticeships and traineeships, but also covers related aspects of off the job training. This Government is committed to the development of a quality training system that provides appropriate safeguards for young apprentices and trainees. In 1994, state and territory Ministers for Education, Employment, Training and Youth Affairs agreed to the implementation of a more unified training system that would result in translating apprenticeships and traineeships into more diverse and flexible training arrangements with wider application. The State Government is taking this opportunity to incrementally move towards more modern apprenticeship and traineeship arrangements. This will happen by first amending the Industrial Training Act to provide greater flexibility and applicability of existing apprenticeship and traineeship arrangements. Then, when this transitional phase is no longer necessary, the Industrial Training Act will be repealed and apprenticeships and traineeships will be administered under the provisions of part 7 of the Bill.

Part 7 of the Vocational Education and Training Bill is to be proclaimed at a later stage than the body of the legislation. As such, schedule 3 amends section 37 of the existing Industrial Training Act to allow for the initial stages of the expansion of traineeships, and the development of modern apprenticeships and traineeships. Schedule 2 covers any transitional arrangements relating to apprenticeships and traineeships in existence at the time part 7 is proclaimed and which has the effect of repealing the Industrial Training Act. Part 7 of the Bill, training schemes, captures the general powers of the Industrial Training Act and allows the Minister for Employment and Training to establish and implement a range of training schemes.

Conclusion: The Vocational Education and Training Bill captures this Government's commitment to a modern and responsive training system. The Bill contains important initiatives to improve the management and accountability of the public VET system and provide expanded opportunities for young people to undertake apprenticeship and traineeship training that will improve their employment prospects. This Bill will take vocational education and training in this State into a new era. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

**CRIMINAL CODE AMENDMENT BILL (No 2)**

*Committee*

The Deputy Chairman of Committees (Hon Derrick Tomlinson) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

**Clause 1: Short title -**

Hon N.D. GRIFFITHS: I will not make many observations in Committee as the principles contained in the Bill have been dealt with adequately in the second reading debate. However, I will point out a few matters in dealing with the short title and make a few brief observations on parts of other clauses.

First, I have placed no amendments on the Supplementary Notice Paper. I have not done so because I am concerned, insofar as we are dealing with matters of overall principle, that this be seen substantially as a bipartisan measure. Like the Government and notwithstanding what others might say, we are not engaged in a bidding process, and I trust that a bidding process will not occur. If it does, that will be to the eternal shame of those who engage in it. We are not doing so and we set out what we proposed to do some months ago.

The Bill is important because it seeks to allay community concerns about an area of crime that is unfortunately very prevalent.

**Clause put and passed.**

**Clause 2: Commencement -**

Hon N.D. GRIFFITHS: This clause provides that this Act comes into operation on such day as is fixed by proclamation. Why does the clause not provide that this Act comes into operation on the day on which it receives royal assent? Why must we have it coming into operation at a time suitable to the Executive Council?

Hon Reg Davies: In case there is intense lobbying.

Hon N.D. GRIFFITHS: Who knows? Why can it not come into operation when it receives royal assent?

Hon Peter Foss: Sit down and I will tell you the answer.

Hon N.D. GRIFFITHS: I am looking forward to that.

Hon Peter Foss: It is a very simple question and there is a very simple answer.

The DEPUTY CHAIRMAN: If the honourable member gets his question out then the Minister will be able to answer it. We will allow the member to ask his question.

Hon Peter Foss: I have heard the question and I am ready to answer.

Hon N.D. GRIFFITHS: I am looking forward to the answer and I trust that it will be worthwhile.

Hon PETER FOSS: Mr Chairman, you might recall that this is a question that I asked of Hon Joe Berinson in relation to similar measures, and the answer is exactly the same.

The DEPUTY CHAIRMAN: I remember it well.

Hon PETER FOSS: It relates -

Hon Reg Davies: Did you accept it without question?

Hon PETER FOSS: I did. It relates to the fact that the courts like to have time in which to advise everyone.

Hon N.D. Griffiths interjected.

Hon PETER FOSS: Wait until I finish, because there is a particular need in this case. The courts like to have time to advise everyone of the change so they know that on a particular day the law will come into effect, and from that

day they must give effect to it. It is particularly the case with this legislation because it affects those people who have committed relevant offences. For a period between 1991 and 1996, the offence of home burglary did not exist. Therefore, through research of not only the indictment but also the hand-up brief, it will be necessary for it to be proved that there was an element of home invasion. Some system will need to be put in place for people who are coming up on a charge under section 401 so that information about that person's record will be able to be brought forward.

The answer is the same as that given by Hon Joe Berinson: This has been included to ensure that the courts are in a position to know the particular date and to be ready for it, and everyone can be notified. In this case there is another reason; that is, we hope that there will be some deterrent effect as a result of the "three strikes and you are in" approach. There will be no deterrent effect if potential criminals are not aware of the legislation. I am sure that Hon Nick Griffiths will agree that if we are to get any deterrent effect it is appropriate that the people who may find themselves incarcerated as a result of this section are warned so that, rather than finding themselves incarcerated, they decide against a life of crime.

Hon N.D. GRIFFITHS: The courts do not advise people of changes to the law.

Hon Peter Foss: We will.

Hon N.D. GRIFFITHS: The Attorney General said that the courts like to advise everyone of change. They do not and they never have. We are often told in our system of jurisprudence that ignorance is no excuse.

Hon Peter Foss: They must advise their own staff.

Hon N.D. GRIFFITHS: So they must advise their own staff, not everyone - just their own staff. Surely the Ministry of Justice would have ensured that the Bill had been passed on before it got to the Governor's door. A competent Minister for Justice would have ensured that the staff knew.

Hon Peter Foss: Do not reflect on Hon Joe Berinson.

Hon N.D. GRIFFITHS: The Minister for Justice does not have to tell everybody and the courts do not have to advise everybody, because they do not advise anybody. People find out when they get there. If the Minister for Justice cannot advise the Public Service that works for him - or is it the contractors these days - that he has a program and that they had better get everything ready, it does not say very much for his administration. With respect to the Minister for Justice's second point, he is pointing out the difficulties that arise when legislation has retrospective application. The Minister had better get his house in order. That is not a very good answer. Frankly, the questions he says he asked of Hon Joe Berinson seem perfectly reasonable. Unless there is very good reason, when Parliament has gone to the trouble of considering a matter as important as this, which relates to the liberty of a subject, surely Parliament's ultimate consideration is that a Bill should come into operation as an Act on the day it receives the Royal assent. To do otherwise indicates shoddy administration.

Hon PETER FOSS: I do not know why Hon Nick Griffiths cannot understand plain English. The answer remains the same as it was with Hon Joe Berinson. In any good administration one passes legislation in an orderly manner; that is, the Act is passed and then the Ministry of Justice will ensure that all those people concerned with the administration of the law are aware of the change. That is how it was done under Hon Joe Berinson's administration and that is how it will be done under my administration - in an orderly, timely fashion. The second point is that Hon Nick Griffiths showed the nonsense of his argument by saying that ignorance of the law is no excuse. People can go before the courts and be penalised under this clause from the moment it becomes law. Therefore, I thought he would support telling potential criminals what they face in the future, not only because it seems to be a good idea but also it may have a beneficial effect and prevent people from committing a crime because they appreciate they face more serious penalties. I am sure that the community as a whole prefer crime not to occur than for criminals to receive severe punishment after a crime has occurred. One of the benefits of this legislation is that hopefully it will have some effect on criminals. We must take every opportunity to make certain that we get out of this legislation any deterrent effect.

Hon N.D. GRIFFITHS: I understand plain English. I cannot understand why this Government cannot get its house in order and the Minister cannot address the Committee in a broad manner. First, he said that the courts like to advise everybody of the change and then he moved along and said that really he is anxious for those involved in the administration of justice to be informed. I think we should be ready to go now with this legislation.

Hon Peter Foss: We might never pass it, the rate you are going.

Hon N.D. GRIFFITHS: It will be passed because it has bipartisan support. It was only two weeks ago the Minister made the second reading speech and then went out to the media and made a big song and dance about what his Government is doing. He received a lot of publicity. The Minister has his publicity machine going.

Hon Peter Foss: They sought me out.

Hon N.D. GRIFFITHS: He is now planning on delaying the matter so that he can announce that it has come into law no doubt at a convenient time. I suspect the Minister is engaged in a very cynical exercise.

Hon Peter Foss: Look at the previous amendments by your Attorney General.

Hon N.D. GRIFFITHS: I intend to scrutinise this Minister's Criminal Code amendments, because that is my duty. What is proposed is not good enough.

*Sitting suspended from 3.45 to 4.00 pm*

**[Questions without notice taken.]**

**Clause put and passed.**

**Clause 3 put and passed.**

**Clause 4: Section 400 amended -**

Hon N.D. GRIFFITHS: Clause 4 deals with some matters of definition and I shall make an observation on circumstances of aggravation. A number of a circumstances of aggravation are listed. I make particular reference to those set out in paragraph (a); namely, that a person is or pretends to be armed with a dangerous or offensive weapon, and in company of another person or other persons, does bodily harm to any person. Paragraph (b) states that immediately before the commission of the offence, it is circumstances of aggravation if the person knew or ought to have known that another person other than a co-offender was in the place. I bring this aspect to the attention of the Committee because in many cases those circumstances can be fairly minor. In that context, they may be worthy of consideration in dealing with the question of summary conviction penalties, which is dealt with in clause 5.

Hon PETER FOSS: These matters were considered. With regard to what they are seeking to achieve, each of the circumstances of aggravation is likely to lead to personal confrontation, involving bodily harm or killing a person. Also, if one is with company, one has a greater chance of overpowering another person. It is like being armed. The fact that somebody is inside the premises at the time of the offence is a material fact. If it is known that a person is in the premises, the action taken is likely to lead to confrontation. These are circumstances of aggravation, and that is the reason for their inclusion.

Hon DERRICK TOMLINSON: I seek clarification regarding subclause (3). After the Crime (Serious and Repeat Offenders) Sentencing Bill was debated, and following its enactment, critics raised concern about the timing of the sequence of repeat offences. For example, it was argued that it was characteristic for offenders to commit a series of burglaries on the same night, and the offender could be arrested and charged on one offence. Some time later, he could be arrested on a subsequent offence which occurred on the same night. The hearing of the first charge, and committal of that charge, even though occurring on the same night, could precede the committal hearing on the second charge even though the two offences occurred in a relatively short period - it could be on the same evening - and even though they were two separate offences. They could be dealt with as two separate offences at two separate times and with two separate convictions recorded. Alternatively, the person could be charged with a sequence of events and heard and convicted in one hearing. The concern was that inadvertently or deliberately the law could be manipulated to the disadvantage of the criminal. The alternative possibility raised by critics of the Crime (Serious and Repeat Offenders) Sentencing Act was that a person might be convicted of an offence, serve time in prison, leave the State or for some reason not be caught offending for some considerable time. For example, the person might be charged and convicted as a juvenile and years later be charged and convicted of a subsequent offence. Under that legislation the person would face the possibility of an indeterminate sentencing. Under this Bill, which contains a provision with similar wording, the person will face an automatic term in prison. My concern is compounded by subclause (3), which states -

To avoid doubt it is declared that section 400(3) of the Criminal Code as enacted by this Act applies in respect of offences committed at any time and to convictions recorded at any time.

I ask the Attorney General for his assurance that the valid concerns raised by the Legislation Committee in its report on the Crime (Serious and Repeat Offenders) Sentencing Bill do not apply in this case.

Hon PETER FOSS: The first point the member raised is specifically directed at that. Proposed subsection (3)(b) states that it is subsequent to that conviction. Therefore, the offence must happen after the conviction and then the person must again be convicted. It means the person has two opportunities from the court and on the third occasion he does not get another opportunity. The last point raised by the member can be addressed only if a conviction has been made.

**Clause put and passed.****Clause 5: Section 401 repealed and a section substituted -**

Hon N.D. GRIFFITHS: I will make three observations on this clause. The first follows from my observations made on clause 4. I do not disagree with the points the Attorney General made in answer to my observations. However, it appears to be good policy that if the offence to be dealt with is something that can properly be dealt with in a court of summary jurisdiction, that is exactly what should happen. It is the case that in circumstances defined as “circumstances of aggravation”, particularly of the kind I referred to in dealing with clause 4, many instances of offence can properly be seen to be minor and can properly be dealt with in a summary manner. In that context, I note that the provision for a summary conviction penalty applies only in respect of proposed paragraphs (b) and (c). It is appropriate that members note what a summary conviction penalty involves. Section 5 of the Criminal Code is fairly clear about the protection afforded the community and it is as follows -

The words “**Summary conviction penalty**” appearing after a provision of this Code mean that where a person is charged before a court of petty sessions with an offence under that provision and the court, having regard to the nature and particulars of the offence, and to such particulars of the circumstances relating to the charge and the antecedents of the person charged as the court may require from the prosecutor, considers that the charge can be adequately dealt with summarily, the charge may be dealt with summarily at the election of the person charged, and the person is liable on summary conviction to the penalty set out after the words “Summary conviction penalty”.

If all circumstances of aggravation, as defined in clause 4, are excluded from the capacity to be dealt with summarily in accordance with the restrictions faced in section 5 of the Criminal Code, we could be enacting bad policy.

My second observation is in respect of proposed subsection (3), which reads -

If the offence committed in the place is an offence against property and the value of the property is more than \$10 000 the offence is not to be dealt with summarily.

In that context, I note that the amount which currently applies is \$4 000. Therefore, this is an expansion of summary disposition.

My third observation concerns proposed subsection (5). Perhaps my copy of the Young Offenders Act and other copies I have looked at are wrong because I cannot find section 118(4). I would be obliged if the Attorney General would refer me to that section so I could do my duty and scrutinise it.

Hon PETER FOSS: I understand what the member said about summary offences. We dealt with this subject when we debated the criminal law legislation recently by making some matters capable of being dealt with by summary jurisdiction. Already we have a regime under the Criminal Code where a degree of seriousness is required to be tried upon indictment. As the member said, one of those things is whether the value is over a certain amount. We are liberalising that by extending the amount. It is felt that where there are circumstances of aggravation, in terms not only of money but also the person, it should not be available for summary jurisdiction.

I looked at section 118(4) of the Young Offenders Act before I came into the Chamber. I will have to find a copy of the Young Offenders Act.

Hon N.D. GRIFFITHS: It may be an oversight on my part, but I have looked at the Bills which have been passed recently and I could not find it. I would hate this Chamber to send to the other place a Bill which is wrong.

Hon PETER FOSS: I have read section 118(4)(a) of the Young Offenders Act, and it is part of the briefing notes, but I cannot find it. Mr Chairman, I ask that you report progress.

Progress reported.

[Continued next page.]

## **TELECOMMUNICATIONS (INTERCEPTION) WESTERN AUSTRALIA BILL**

### *Second Reading*

Resumed from 27 August.

**HON N.D. GRIFFITHS** (East Metropolitan) [4.58 pm]: The Australian Labor Party in this House supports the Bill being read a second time. We have a number of concerns about the Bill, but essentially we are dealing with a commonwealth regime, and the regulation of telecommunications interception can be dealt with adequately only at the commonwealth level. Notwithstanding that, I will point out some matters: First, this Bill seeks to satisfy the

requirements of section 35 of the Telecommunications Interception Act of the Commonwealth to enable the Western Australia Police Service to become a declared agency pursuant to section 34 of that Act.

[Leave granted for speech to be continued.]

Debate thus adjourned.

[Continued below.]

### **CRIMINAL CODE AMENDMENT BILL (No 2)**

#### *Committee*

Resumed from an earlier stage of the sitting. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

#### **Clause 5: Section 401 repealed and a section substituted -**

Progress was reported after the clause had been partly considered.

Hon PETER FOSS: I knew I had read this clause but I could not work out where it was. We have some balls in the air at the moment! The Sentencing (Consequential Provisions) Act 1995 in section 148 provides that section 118 of the principal Act, in this case the Young Offenders Act, is repealed and the following sections are substituted. The problem is that although the Act has been assented to, it has not been proclaimed because it is dependent on the Criminal Law Amendment Bill being passed before the Sentencing (Consequential Provisions) Act can be proclaimed.

Hon N.D. GRIFFITHS: I am pleased we have found the missing link. The Minister's outline was accurate when he said the Government has some balls in the air. It certainly does have some balls in the air and it is because the management of its legislative program leaves much to be desired.

#### **Clause 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 Peter Foss (Attorney General), and transmitted to the Assembly.

### **TELECOMMUNICATIONS (INTERCEPTION) WESTERN AUSTRALIA BILL**

#### *Second Reading*

Resumed from an earlier stage of the sitting.

**HON N.D. GRIFFITHS** (East Metropolitan) [5.05 pm]: As the Minister said in his second reading speech, we should read the commonwealth Act in conjunction with this Bill to make sense of it. He referred to sections 34 and 35 of the commonwealth Act. Section 34 provides that, subject to section 35, the Minister may, at the request of the Premier of a State, declare ineligible an authority of that State to be an agency for the purposes of that Act. Section 35 sets out the preconditions for such a declaration. This Bill seeks to meet those preconditions.

I could go through them one by one or the matters in the Bill one by one, but I do not propose to do that. The Bill in its wording does that and the Minister dealt with the matters in the Bill to a degree in his second reading speech. This Bill came from the other place so its aspects have been dealt with substantially. However, if this Bill leads to the Western Australian Police Force being a declared agency it will enable police officers to apply for warrants to engage in telecommunication interception in two categories of offences. One category of more serious offences has a lower degree of requirement than the second category dealing with relatively less serious offences.

The safeguards covering this power are set out in short form in the Minister's second reading speech. However, one aspect of the commonwealth legislation causes me concern; that is, the sanction for misbehaviour on the part of law enforcement officers is very small. It is a maximum term of six months' imprisonment; that is, illegal, intrusive behaviour on the part of what may be renegade law enforcement officers will attract a modest six months' maximum imprisonment. I do not think that is appropriate. However, it is something that the Commonwealth Parliament should examine and rectify. The capacity to engage in telecommunications interception involves the use of great power and deprivation of privacy; it is very intrusive. If the abuse of that power attracts a maximum term of only six months'



imprisonment in the context of 1996 and the very large penalties we have talked about for other areas of offending, this maximum term of imprisonment of six months is grossly inadequate. It is a matter that must be dealt with by the Commonwealth Parliament. However, it is pertinent to the policy of this Bill. When the Bill becomes law, officers of the Western Australia Police Force, as it is legally known, will finally be able to legally intercept telecommunications. I am sure they will be very pleased -

Hon I.D. MacLean interjected.

Hon N.D. GRIFFITHS: Is Hon Iain MacLean accusing the Western Australian police of something?

Hon I.D. MacLean interjected.

The DEPUTY PRESIDENT: Order!

Hon N.D. GRIFFITHS: It is disgraceful that anyone should cast a slur on the Western Australia Police Force.

I am sure all responsible members of the community will be very pleased that soon the Western Australian Police Force will legally be able to intercept telephone and other communications. However, we do not know, because of the contents of clause 2, which I will not deal with at this stage because it would be most inappropriate. Depending on the degree to which this power will be utilised by the WA Police Force, it may require substantial resources. In that context, I wish to know what resources are envisaged to be employed, and what increase in the Police budget is envisaged. It may be that this aspect is being accommodated in the current Budget, but I wish to know if further allocations are envisaged for the Police budget. Will more police officers be engaged to deal with this new area of activity for the Police Force? Perhaps it might lead to the Minister for Police eventually honouring his promise to put more police officers on the streets, and provide the magic 800 figure which is supposed to solve all problems.

The scheme of the Bill is adequately summarised by reference to the heading. I do not want to go into that. There is a deficiency with respect to the principal inspector. Which office holder is to be the principal inspector? That is not designated by the legislation, and that is its weakness. That point has been raised by others and I do not allude any further to it. However, I understand the principal inspector is envisaged to be the Parliamentary Commissioner for Administrative Investigations. I suggest that he is under-resourced. He has great responsibilities. What further resources will be allocated to the office of the Parliamentary Commissioner for Administrative Investigations? These are matters which require a prompt answer when the Minister responds, because I note this measure will come into operation on a date to be fixed by proclamation, and it is appropriate that we know when it will come into operation.

Hon Reg Davies: The Ombudsman's report states that he is under-staffed.

Hon N.D. GRIFFITHS: Hon Reg Davies reminds the House again of the lack of resources that the Parliamentary Commissioner for Administrative Investigation says he now has. I agree with him.

Finally, the regulation of these awesome powers of interception is deficient both at the commonwealth and state levels. There is not in operation a standing committee of either Parliament which is dealing with or capable of dealing with an oversight of these matters. That matter should be taken up by this House, I hope in the very near future.

Debate adjourned, on motion by Hon Reg Davies.

### **RESERVES BILL**

*Returned*

Bill returned from the Assembly without amendment.

### **WESTPAC BANKING CORPORATION (CHALLENGE BANK) BILL**

*Second Reading*

Resumed from 29 August.

**HON JOHN HALDEN** (South Metropolitan - Leader of the Opposition) [5.15 pm]: Members opposite need feel no trepidation. The Opposition supports the Bill.

Hon Peter Foss: Does Hon Kim Chance support it? We hope not!

Hon JOHN HALDEN: He does!

As explained in the second reading speech, the purpose of the Bill is to transfer the banking business of Challenge Bank to the Westpac Banking Corporation. I was a little concerned that there may be a situation here for other

revenue Bills where perhaps there was an opportunity for the appropriate duty not to be paid on this transfer. However, the Minister for Finance has looked into the matter and has assured me that is not the case. He has explained why. I accept that explanation, and I thank him for his efforts in clarifying the situation.

Perhaps, from the State's perspective it is a little sad that Challenge Bank, which was originally the Perth Building Society, has been absorbed into Westpac. Basically, the last of our state-based banking institutions has disappeared. This will result in some ramifications for service delivery and employment. That should not go unnoticed when considering the general policy on banking in this State and around this country. As banks amalgamate and there is less competition, it is likely that a significant number of rural banks and smaller suburban branches of banks will close. As a result, jobs will be lost. In addition, electronic and computer processes for banking will result in the loss of more jobs. These figures are not exact, but I gather that since the beginning of this decade 20 000 to 30 000 jobs have been lost in the banking sector Australia-wide. At the same time, there has been far more access to banking after hours with its consequential downside.

It is interesting that the community no longer wishes to have state-based banks, and that is probably because we have not recently legislated on the purpose of state-based banks. The R & I Bank, now BankWest, had a specifically Western Australian focus -

Hon Max Evans: That was the old Agriculture Bank.

Hon JOHN HALDEN: The focus was to assist the agriculture sector and to provide home loans in Western Australia specifically. However, now all of that has been lost and subsumed into commercial banking, not only in Australia but internationally. We should have a general concern about that: Having lost the ability to focus on capitalisation at the state level - legislatively driven - we must compete in the international market for capital, not just Australia-wide. Competition for capital is driven by the market, and that is appropriate, but a range of social and marginally economic benefits can be gained from a bank with a focus on a particular sector. As I said earlier, that has now gone. As a result, Australia's ability to direct money into those social and economic areas has been reduced enormously.

Every project must compete internationally for capital, and Australia is at the mercy of fluctuations in capital. The price of capital will not escalate enormously in the next five years. I do not believe there will be a spectacular rise in the inflation rate. However, there is a need to look at what occurs in Japan, with its enormous trade surplus. If the Americans decide to reduce their trade deficit and the Japanese must reduce their trade surplus, there may be a significant impact on the requirements on capital. The capital will be controlled very much by those two countries. It will most definitely have an impact in the Asia region. We are a little more fortunate than most in the Asia region because our trading situation with Japan is healthy and we do not run an enormous trade deficit; in fact, there is a marginal surplus. There is some cushioning of the withdrawal of capital because of those problems. However, Australia's domestic economy is now far more dependent on international circumstances. Its ability to buffer itself from international circumstances is now far reduced.

It goes without saying that even our once Australian banks are now realistically international banks and are all caught up in the international banking and monetary situation. I can understand why Westpac, for example, bought into Challenge Bank to increase its portfolio. I can understand why it would want to centralise its banking processes for the economies of scale advantages. I can understand that to survive in the international banking market as a small fish is a difficult proposition. Australian banks are trying to insulate themselves both internationally and locally against competition and to secure their own sectors of markets. I do not mean this as a political comment: Western Australia has lost the ability to promote and buffer itself through banking institutions at the state level. Anyone listening to this should not think that I am proffering the nationalisation of the banks. We have had that debate and it is well and truly over.

Hon Kim Chance: Who won?

Hon JOHN HALDEN: The High Court won, as was its wont. It is unfortunate that occurred. It will have some consequences. At the same time, positives will result from this move. It will allow for the amalgamation of these banks. This legislation is not unique: What it proposes has been done a number of times before. It will assist in the process of the State, supporting and making easier the amalgamation. I see no reason to frustrate that process.

It is appropriate that the Opposition should support this Bill. I raise the other matters only by way of general concern. I do not know that the State Government would want to, or could, do anything in that regard; however, the State has lost some opportunities along the way. We must always be aware of the rising tide of difficulty to influence our own economy and should not significantly depend on the circumstances that impact on the international financial market. The Opposition supports the Bill.

**HON MAX EVANS** (North Metropolitan - Minister for Finance) [5.24 pm]: I thank the Opposition for its support of the Bill. I have put a suggestion to the banking organisations for common automatic teller machines. In Hong

Kong people can use their credit cards through all ATMs. Apparently some years ago there were two separate operations in Australia; for example, MasterCard used the Commonwealth Bank and Westpac. If one credit card were used for the lot, Australia Post in country towns could handle the transactions. I am approaching this matter with my Racing and Gaming hat on. The Totalisator Agency Board swipes the cards and, irrespective of the bank accounts, it handles the lot.

Australia Post is outsourcing most of its operations in country towns to private operators. They would be able to build up their businesses and turnover. Motor vehicle licences, for example, are now processed at Australia Post. That builds up the business of Australia Post and makes it more viable in country towns. It also makes it easier for the Government. Australia Post gets \$1 or \$2 off the top. It would be better to have all four major banks able to be used through Australia Post. Banking technology is so simple these days and that sort of thing can be done on computer.

One of the problems with having a state bank owned by a State Government was that the Government had about only half the capital requirements under the prudential standards; that is, about 4.25 per cent compared with 8.5 per cent. The Government continued for much longer and would have had to lift its capital by about \$400m or \$500m. It was not going to earn the Government any more money, apart from some interest. That was one of the problems that caused the crashes of the state banks in Victoria and South Australia which wanted to lift the prudentials - and they should have, too.

Not that many years ago there was no branch banking in America. If a drought occurred in a certain area, the bank would fall over. Some had branches within the State but not in other States. Hon Peter Foss and I think that that situation probably no longer exists, for the obvious reasons that technology has changed so much and economic circumstances brought about the demise of many of those banks. It is far better for the banking institutions to operate across the country. The Bank of America was big in California. However, most other States in America could not find it because of the non-interstate banking. There are now more conglomerates to get around that. Banking in only one State in one economy was a problem. This Government got away with that in the early days with the old Agricultural Bank, which was the one bank the Government guaranteed to get it off the ground. Things have changed since then: Now there are many sources of money.

Only a year or so before Westpac proposed to take on Challenge Bank the previous Premier thought that the Government might back Challenge Bank into BankWest. It was put to this Government at one stage that Challenge Bank should take over BankWest for shares. That would have been a financial disaster because its shares dropped; however, the situation may have been better had that occurred. Challenge Bank had a huge deposit base from its days as the old Perth Building Society. It had millions of accounts on deposit. BankWest looked at this proposition years ago, but it had some problems and did not go ahead with it. It knew that many of the accounts were duplicates; in other words, BankWest had many customers who had commercial accounts with BankWest and deposit accounts with Challenge Bank. If they were brought together there would be no more real money. It was also found that many people who had money in Challenge Bank would probably not go to the major banks, but to other building societies. A large amount of money would be lost. Challenge Bank had a reasonable share of the market. It just brought Westpac a lot closer to BankWest.

This is an important Bill. We put it to the ANZ, Town and Country and the State Bank of South Australia. It makes the paperwork much easier.

Question put and passed.

Bill read a second time, proceeded through remaining stages and passed.

#### **ADJOURNMENT OF THE HOUSE - SPECIAL**

On motion without notice by Hon N.F. Moore (Leader of the House), resolved -

That the House at its rising adjourn until Tuesday, 17 September 1996.

*House adjourned at 5.32 pm*

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**QUESTIONS ON NOTICE**

**FISHERIES DEPARTMENT - LEGAL ACTION AGAINST AUSTRALIAN TAX OFFICE**

551. Hon MARK NEVILL to the Minister for Transport representing the Minister for Fisheries:

Further to question 3644 of 5 September 1995, in respect of action taken by the Western Australian Fisheries Department against the Australian Taxation Office -

- (1) Has litigation been concluded?
- (2) If no, what litigation is still in progress?
- (3) How much money has been spent to date in relation to this legal action and to whom has it been paid?
- (4) What costs have been incurred by the Ministry of Justice?
- (5) Is it a criminal offence for a fisherman to furnish false information in a statutory catch return?
- (6) In respect of (5) above, has anyone been investigated?
- (7) In respect of (5) above, who has been -
  - (a) charged; and
  - (b) convicted?

Hon E.J. CHARLTON replied:

The Minister for Fisheries has provided the following response -

- (1) Yes.
- (2) Not applicable.
- (3) Costs awarded in the Federal Court and High Court amounted to \$80,000 and have been paid to the Commonwealth.
- (4) The question would be better addressed to the Minister with responsibility for Justice issues.
- (5) Yes.
- (6)(7) In 1993, a computerised recording system was installed to handle this type of data entry. There have been no reported breaches recorded during this period. Prior to 1993, the procedure was handled manually and would be both difficult and costly to research as a number of files would need to be examined.

**DISABILITY SERVICES COMMISSION - SCHOOL AGE THERAPY SERVICES (SATS)**

599. Hon KIM CHANCE to the Minister for Finance representing the Minister for Disability Services:

- (1) Are school age therapy services provided by the Department of Disability Services on the basis that they are complementary to, or exclusive of, speech, physio and occupational therapy services that are provided by the hospital system?
- (2) Does Mmmisterial and departmental policy acknowledge that some disabled people need more comprehensive access to various forms of therapy than does the general population?
- (3) If the answer to (1) or (2) above is yes, why are disabled children in Geraldton being denied access to both SATS and hospital based therapy services, apparently on the grounds that this would be "double dipping"?

Hon MAX EVANS replied:

The Minister for Disability Services has provided the following reply -

- (1) The funding of school age therapy services is on the basis that it is supplementary to local service provision which is primarily through the Health Department of Western Australia. Funding is used to extend the availability of services. This is achieved through the employment of contract therapy staff to provide services. Decisions on how funding is allocated are made by local management committees which have representation from the Disability Services Commission, HDWA, Education Department of WA and often consumer representation.

- (2) The DSC, through the provision of funding for SATS, acknowledges that some children with disabilities require comprehensive access to therapy services.
- (3) Children with disabilities in Geraldton are not being denied access to both SATS and hospital based therapy services on the grounds that this would be "double dipping". SATS funding is provided to extend services that are provided by the Geraldton Health Service. Through the referral process administered by the SATS management committee, GHS has identified 32 out of the current 40 referrals to be within their priorities and have accepted responsibility for the provision of therapy services.

SATS funding is available to enable GHS to support their programs with therapy assistants if required. The eight children identified as non GHS priority have had services arranged utilising SATS funding. It has been historically very difficult to locate and employ contract therapists in Geraldton. This has necessitated bringing therapists from Perth to provide services. The DSC has recently developed a service agreement with GHS towards the provision of more comprehensive speech pathology and therapy services. DSC and GHS are also in preliminary negotiation towards the development of a joint funded therapy position for school age children.

#### AGRICULTURE WESTERN AUSTRALIA - FUNDER-PURCHASER-PROVIDER MODEL FOR STAFF ALLOCATION

616. Hon KIM CHANCE to the Minister for Transport representing the Minister for Primary Industry:

- (1) Does Agriculture WA operate a purchaser model for the allocation of staff between its various programs and sections?
- (2) Who designed the system?
- (3) When was it introduced?
- (4) How many of the department's staff did not have their full 1.0 FTE purchased for the 1995-96 financial year?

Hon E.J. CHARLTON replied:

The Minister for Primary Industry has provided the following response:

- (1) Agriculture Western Australia has adopted the 'Funder-Purchaser-Provider' model. All scientific and technical staff are employed by program services, the provider within the agency, and allocated to work in projects which have been contracted with program managers, the purchasers.
- (2) The model adopted by AgricultureWA was developed by the Agriculture Portfolio Review in 1994.
- (3) I approved the Agriculture Portfolio Review recommendations in December 1994.
- (4) The allocation of staff to projects is currently being finalised.

#### PUBLIC SERVICE - CHIEF EXECUTIVE OFFICER POSITIONS, VACANCIES

618. Hon JOHN HALDEN to the Leader of the House representing the Premier:

- (1) How many chief executive officer positions were vacant in the Western Australian Public Service in 1995-96?
- (2) How many of these positions were advertised?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

- (1) For the period 1 July 1995 to 30 June 1996 CEO vacancies (for which the Minister for Public Sector Management is the employer) totalled 41 positions.
- (2) Of these positions 29 have been advertised. The remaining 12 positions are in the process of being filled, or have other arrangements.

#### PORT KENNEDY SCIENTIFIC PARK - DAMAGE

629. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

Is the Minister for Planning aware that the Port Kennedy Scientific Park has been badly damaged by fire, off road vehicles and feral animals since the Port Kennedy Land Conservation District Committee was removed from the site by the Government?

Hon PETER FOSS replied:

The Port Kennedy Land Conservation District Committee has not been removed from the site.

PORT KENNEDY SCIENTIFIC PARK - VERMIN PROOF FENCE

630. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

On what boundary has the already completed section of the vermin proof fence at Port Kennedy been built?

Hon PETER FOSS replied:

The existing feral proof fence follows the approximate boundary of the existing A class conservation reserve and the alignment of Port Kennedy Drive.

PORT KENNEDY MANAGEMENT BOARD - FUTURE

632. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

- (1) Will the Port Kennedy Management Board be abolished at the end of 1996, as recommended in the McGeogh report?
- (2) If not, why not?
- (3) Is the Minister for Planning aware that the Port Kennedy development is being advertised in Singapore as a residential seaside estate?
- (4) Is the Minister also aware that the Legislative Council's Standing Committee on Legislation requested that no permanent residential accommodation be provided at Port Kennedy?
- (5) If yes, why has he ignored its request?

Hon PETER FOSS replied:

- (1)-(2) There is an ongoing role for the board under the Port Kennedy Development Agreement Act 1992.
- (3) The Minister for Planning is aware that conditional sales have been made in Singapore.
- (4) Yes.
- (5) The project is being undertaken in accordance with the Port Kennedy Development Agreement Act 1992.

PORT KENNEDY SCIENTIFIC PARK - VERMIN PROOF FENCE

636. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:

- (1) Has a vermin proof fence been built to protect the Port Kennedy Scientific Park?
- (2) If not, why not?
- (3) If yes, when was it completed?
- (4) Was the fence completed within two years of the Government's election to office as promised by the coalition parties prior to the 1993 state election?
- (5) If not, why not?
- (6) Has the Port Kennedy Scientific Park been established as promised by the coalition parties in their 1993 policy document?
- (7) If not, why not?
- (8) Does the Minister intend to honour these election promises?
- (9) If not, why not?

Hon PETER FOSS replied:

- (1)-(5) A contract has been awarded by CALM for construction of the first stage of the fence.
- (6)-(7) Work is well progressed towards establishing the Port Kennedy Scientific Park.
- (8)-(9) Yes.

## CONSTRUCTION INDUSTRY LONG SERVICE LEAVE PROVISIONS - REPORT, RELEASE DATE

674. Hon A.J.G. MacTIERNAN to the Minister for Finance representing the Minister for Labour Relations:

The Minister for Labour Relations instigated a report into the construction industry long service leave provisions incorporated under the Act. The report has been completed and is with the Minister. Can the Minister inform the House what he intends to do with the report and whether the report will be made public?

Hon MAX EVANS replied:

The Minister for Labour Relations has provided the following reply -

I refer the member to my answer to question number 587.

## CREDIT CARDS - PREMIER'S OFFICE

721. Hon JOHN HALDEN to the Leader of the House representing the Premier:

- (1) Who has had the use of government credit cards in the Premier's office since 1994?
- (2) For what purposes can they be used?
- (3) Since 1994, have these government credit cards been used for purposes other than that allowed?
- (4) If so, would the Premier provide details of this?
- (5) Have all expenses recorded on these cards been ratified and paid for?

Hon N.F. MOORE replied:

- |     |   |  |
|-----|---|--|
| (1) | C.J. Cahill<br>R.F. Court<br>I.R. Fletcher<br>J.F. Gilleece<br>W. Ireland<br>J. Longton<br>R. Young | Senior Media Secretary<br>Premier<br>Chief of Staff<br>Executive Director<br>Principal Private Secretary<br>Director, Overseas Representation and Special Projects<br>Executive Officer (Administration) |
|-----|---|--|

- (2)-(5) The use of all government credit cards is subject to the provisions of Treasurer's Instruction 321 which specifies -

"The use of a credit card shall be for official purposes only, except for exceptional circumstances where the Accountable Officer or Authority may approve the use of the credit card for expenditure of a personal nature, in which case that personal expenditure shall become a debt due to the State or a statutory authority, and be recoverable from the officer concerned."

All credit card transactions within the Ministry of the Premier and Cabinet are subject to authorisation procedures as approved by the Accountable Officer. I would expect that these procedures are followed on every occasion.

## QUESTIONS WITHOUT NOTICE

## REAL ESTATE AND BUSINESS AGENTS ACT - SECTION 61A, PROCLAMATION REVOCATION

**743. Hon N.D. GRIFFITHS to the Attorney General:**

- (1) Did the Attorney General tender his advice to the Executive Council on the revocation of the proclamation with respect to section 61A of the Real Estate and Business Agents Act?
- (2) In framing that advice, did the Attorney General consider the propriety of the revocation of the proclamation, particularly in the light of the Carruthers inquiry into the deal between the Queensland Police Union and the current Queensland Government with respect to the Mundingburra by-election?

**Hon PETER FOSS replied:**

- (1)-(2) Obviously, the whole purpose of Executive Council is to tender advice and, obviously, as a member of the Executive Council I tendered advice. Prior to doing so I assured myself from advice from the Crown Solicitor that it was correct. Not only that, I assured myself beyond all doubt.

I have no idea what the Carruthers inquiry is about. I obviously did not have regard to it because I had no knowledge of it and it does not fall within my portfolio.

## WESTRAIL TENDER No 18685

**744. Hon KIM CHANCE to the Minister for Transport:**

Further to my question to the Minister on 3 September in relation to Westrail tender No 18685 -

- (1) Was the Geraldton component of the tender such that it could be tendered for separately from the balance of the contract?
- (2) If so, what was the price per unit bid by the successful tenderer?
- (3) Were any bids for the Geraldton component of the tender lower than that of the successful tenderer?
- (4) If so, why was the contract not awarded to the lowest bidder?
- (5) What is the address of the base of the successful tenderer in the mid-west region?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) The successful tenderer did submit unit rates in his tender and, based on the estimated 12 month task at those rates, the tender price for the Geraldton component would have been \$42 334. The tendered unit rates for daily cleaning were: 42 seat road coach, \$56.37; 48 seat road coach, \$68; and 58 seat road coach, \$90.79. The tendered unit rates for trip turnaround cleaning were: 42 seat road coach, \$27.35; 48 seat road coach, \$31.90; and 58 seat road coach, \$36.45.

The successful tenderer, who at that point in the process was the preferred tenderer, was entitled to be awarded the contract for the reasons outlined in my answer to part (4) of this question. However, during negotiations with that tenderer, it was determined that a valid alternative tender, submitted by that same tenderer prior to the closing of tenders, would reduce the annual value of the Geraldton component to \$38 033 per annum.

- (3) Yes.
- (4) All tenderers were assessed, not only for price but also for their capability to perform the services. The successful tenderer demonstrated a significantly higher capability than the lowest tenderer for the Geraldton component of the services. In accordance with State Supply Commission policy, a value for money evaluation was made in favour of the successful tenderer. In addition, the successful tenderer tendered to provide cleaning services at all locations. Selection of a single contractor for all locations was stated as a Westrail preference in the tender documents.
- (5) The successful tenderer has a registered business at 5 James Street, Geraldton.

## WESTRAIL - PRODUCTIVITY IMPROVEMENTS

**745. Hon KIM CHANCE to the Minister for Transport:**

What productivity improvements have occurred in Westrail in the past three years?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question. This is a good question and I thank the member most sincerely for the opportunity to advise the House of the productivity improvements achieved by Westrail under this Government. The increased efficiency of operations at Westrail is reflected in the improvement in the organisation's financial performance, despite operating in an increasingly competitive and totally deregulated transport market. This year Westrail posted an operating profit of \$13.1m, representing an improvement of \$23.5m on the 1992-93 loss of \$10.4m achieved under the previous Government. The key productivity improvements achieved are -

Westrail has entered into a new section 41 industrial agreement with its locomotive operators providing for the introduction of extended shifts, cyclic rostering and extended duties for locomotive operators. The agreement has resulted in savings in crewing costs, increased administrative efficiency and a pay increase for locomotive operators. The efficiencies being achieved at Westrail have resulted in a significant decrease in the number of locomotive operators required. The work force has reduced from 4 771 in 1993 to 2 100 at present.



The closure of the Midland Railway Workshops and the modernisation program undertaken by Westrail have resulted in the majority of its rolling stock and infrastructure maintenance being outsourced to the private sector, with a saving of \$70m a year.

Net tonne kilometres per freight employee have risen from 1.4 million in 1993 to 4 million in 1996, resulting from the outsourcing of maintenance activities and a larger average load per train. Net tonne kilometres per locomotive have risen from 38 million in 1993 to 68 million in 1996, resulting in a reduction of locomotives from 107 in 1993 to 88 in 1996. The average load per train has increased through smarter use of rolling stock and concentration on bulk haul traffics rather than low load traffics.

Net tonne kilometres per wagon have risen from 1.2 million in 1993 to 2.2 million in 1996, resulting in a reduction in Westrail owned wagons - in revenue service - from 2 978 in 1993 to 1 955 in 1996. More loads per wagon have been achieved because of improved cycle times. Gross tonnes per track kilometre have risen from 1.8 million in 1993 to 2.7 million in 1996 because more business has been attracted to rail.

The savings to the grain and mining industries as a result of the decreases in freight rates is between \$35m and \$45m a year. Freight rates in 1993 averaged 5.5¢ per net tonne kilometre and in 1996 they averaged 3.5¢ per net tonne kilometre. That is a reduction of approximately 40 per cent. The efficiencies being introduced at Westrail will make our agricultural and mining industries more internationally competitive. In addition, there has been a basic 36 per cent increase in productivity as a consequence of these changes.

It will be noted from the annual report of Westrail that the turnaround in commercial profit is enormous. It is important to note that people can look forward to further reductions in freight rates, and I am looking forward soon to appointing a small group of people to go through the Westrail network and suggest other ways of attracting more freight and more people to the rail network.

#### ARGYLE DIAMONDS AFFAIR - AUSTRALIAN FEDERAL POLICE REPORT TBLING

#### **746. Hon REG DAVIES to the Attorney General representing the Minister for Police:**

I refer to the tabling of the Australian Federal Police report with regard to the Argyle Diamonds affair and ask -

- (1) Did the Minister for Police, in the interests of natural justice, allow those who were adversely reported upon in the AFP report the right of reply to the recommendations?
- (2) If yes, will the Minister table their responses, in particular those of police officers Gwilliam and Thoy?

#### **Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) No. The Solicitor General has advised that in his view the principles of procedural fairness have been complied with by the AFP investigators and natural justice was accorded to all individuals named in the report.
- (2) Not applicable.

#### EDUCATION DEPARTMENT - MEADOW SPRINGS, PRIMARY SCHOOL SITES

#### **747. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:**

- (1) Does the Government possess land in Meadow Springs for the designated purpose of a primary school?
- (2) If yes, when does the Government propose to build a primary school in Meadow Springs?

#### **Hon N.F. MOORE replied:**

I thank the member for some notice of this question. The Education Department has advised the Minister for Education in the following terms -

- (1) Two primary school sites have been identified in Meadow Springs - not government- owned. However, these have not yet been transferred to Education Department control.
- (2) The decision to build a school at Meadow Springs will depend largely on future pressures exerted on facilities at North Mandurah Primary School by the children attending from the locality of Meadow Springs. The Education Department will continue to monitor growth in the area so that planning for a future school can be undertaken at the appropriate time.

## CAPE PERON - DEVELOPMENT PLANS; HIGH RISE BUILDINGS PROPOSALS

**748. Hon J.A. SCOTT to the Attorney General representing the Minister for Planning:**

- (1) Has the Minister or his department been made aware of my proposals for high rise developments at Point Peron?
- (2) Will the Minister assure the House that a Court Government will not allow high rise buildings at Point Peron?
- (3) Does the Government have knowledge of any plans or proposals for the development of Point Peron; and, if so, what are they?
- (4) Can the Minister guarantee access to the current users of the Point Peron facilities, buildings and beaches if and when such plans and proposals are implemented?

**Hon PETER FOSS replied:**

- (1) No.
- (2) Any such proposal would require proper planning approval. Existing planning powers are in place to enable control over such development. The Western Australian Planning Commission's intended coastal planning and development policy, recently released as a draft for public comment, will further assist in this regard.
- (3) The Ministry for Planning is presently giving consideration to arrangements to provide a strategy for management of Cape Peron's future use and development, taking into account existing leases and activities. Government is also supportive in principle of the proposal for a marina facility on Mangles Bay to serve the subregion, which would require further assessment and would involve all normal environmental and planning approvals. Currently there are no known private sector proposals for the cape.
- (4) Any review or development would as a matter of course have full regard for public access and existing uses as well as conservation requirements.

## AQUATIC FACILITY - JOONDALUP PROPOSAL

**749. Hon I.D. MacLEAN to the Minister for Sport and Recreation:**

- (1) Is the Minister aware of the need for an aquatic facility in the Joondalup area?
- (2) If so, what plans does the Government have to meet this need?

**Hon N.F. MOORE replied:**

- (1) Yes.
- (2) The Western Australian Sports Centre Trust is currently examining the prospect of taking over the management of Joondalup Arena. This merger would not only enhance marketing opportunities but also achieve some economies of scale. The Western Australian Sports Centre Trust engaged the services of a consultant to prepare a feasibility study into the future development of the arena. This report has not been submitted to me as yet but I understand that it confirms the need for an aquatic facility and analyses the cost effectiveness of such a project. Such a facility would comprise a 50 metre pool, a 25 metre pool and aquatic recreational facilities. The Ministry of Sport and Recreation is also finalising a report on the maintenance issues with regard to key state sporting facilities. This report will recommend options for the more effective operation of these facilities, including the arena. Once these two reports are presented to me, I will analyse their findings and take steps to incorporate construction of an aquatic facility at the arena in a future capital works program, or commence discussions with the Wanneroo Council with regard to a community sporting and recreation facilities fund grant. Estimates put the capital cost at approximately \$9m.

## POLICE SERVICE- AUSTRALIND STATION, OPENING DATE

**750. Hon BOB THOMAS to the Attorney General representing the Minister for Police:**

- (1) What is the expected date on which the new Australind police station will open?
- (2) How many police will be stationed there and what will be their ranks?
- (3) From where will the officers be transferred?

- (4) What will be its hours?
- (5) What duties will be undertaken by the police and staff at Australind police station?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.. Under the current subdistrict proposal -

- (1) It is expected that the new police station in Australind will commence operation on 21 October 1996.
- (2) A total of nine staff will be stationed at Australind police station as follows: One sergeant; seven constable ranks; one unsworn customer service officer.
- (3) The positions have not yet been filled and as a consequence the origin of the successful applicants for the position is not known.
- (4) Specific hours of operation will depend upon community requirements and have not yet been decided. Notwithstanding, under normal circumstances a policing service will be provided within the station's subdistrict from staff stationed at the station 16 hours a day, seven days a week. After hours services will continue to be provided from the major station at Bunbury.
- (5) Staff at Australind Police Station will undertake all those duties necessary to provide a quality general policing service within the subdistrict. As is the case with all other smaller police stations, specialist support will be provided from within the district or relevant specialist portfolios.

**ENVIRONMENTAL PROTECTION AUTHORITY- MANGLES BAY MARINA PROPOSAL REPORT;  
APPEALS**

**751. Hon J.A. SCOTT to the Minister for the Environment:**

- (1) When did the Minister receive the Environmental Protection Authority report on the proposed Mangles Bay marina, near Rockingham?
- (2) How many appeals has the Government received on this report?
- (3) Has a position on these appeals yet been determined?
- (4) If not, why not; if yes, what is the position?

**Hon PETER FOSS replied:**

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

- (1) The Environmental Protection Authority report was released by me on 30 July 1993.
- (2) Five appeals on the report were received.
- (3) No.
- (4) I am still waiting on finalisation of the review of the Cape Peron plan.

**POLICE SERVICE - FISHERIES DEPARTMENT, PHILLIP KENDRICK AND DIXON AFFAIR INQUIRY**

**752. Hon MARK NEVILL to the Minister representing the Minister for Fisheries:**

- (1) Will the Minister request the police to investigate the legality of the actions of Mr Phillip Kendrick in respect of the Dixon affair?
- (2) If not, why not?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question.

- (1)-(2) This matter was previously referred to the Police Service in 1993. If the member is aware of any information which requires further investigation, this should be referred to the Western Australia Police Service. Furthermore, any complaints about the actions of police officers should be referred to the Ombudsman. I also invite the member to make them available to me.

TRANSPERTH - YANCHEP-TWO ROCKS BUS SERVICES CONTRACT

**753. Hon KIM CHANCE to the Minister for Transport:**

I refer the Minister to *The Coast News* of August 1996 which states that a private tenderer has won the contract for a new bus service to the Yanchep-Two Rocks area and ask -

- (1) Is it the case that this contractor must provide the existing level of services for six months, and then may renegotiate for an increase?

If so -

- (2) What are the criteria on which that renegotiation can be based?
- (3) Is the contractor able to negotiate for a decrease in services?
- (4) Can the Minister inform the House of the name of the tenderer who won this contract?
- (5) How often will this service be run?

**Hon E.J. CHARLTON replied:**

- (1)-(5) This is part of the new found competitive operations in government! I thank the member for some notice of this question. *The Coast News* article reports that a private contractor recently won a tender to provide a new service to Yanchep-Two Rocks. The Transperth bus services to Yanchep-Two Rocks are operated from the Joondalup north bus contract area. MetroBus, the government bus operator, won the competitive tender to operate these services. Services under the contract commenced on 1 November 1995. Extension or expansion of Transperth services is subject to anticipated patronage levels and availability of funding.

NURSING HOME - MT HENRY, TENDERS, DEADLINE EXTENSION

**754. Hon KIM CHANCE to the Attorney General representing the Minister for Health:**

- (1) Is it true that the time line for the tender process with regard to the new nursing home at Mt Henry has been extended?
- (2) If yes, why has this been done?
- (3) Is it because the prospective tenderers expressed dismay at the quality of the proposals developed by the Health Department?
- (4) When will tenders now close?
- (5) What, if any, are the revised terms and conditions of tender?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2)-(3) The proposed draft design issued with the request for approval was developed in collaboration with the Commonwealth and other stakeholders using current best practice guidelines. After representation and subsequent consultations with the proponents, the Health Department of Western Australia agreed to allow alternative design proposals in the absence of a complying bid - that is, the HDWA specified design - to be submitted with the proposals, and to an extension of the deadline to submit proposals.
- (4) The tenders will close at 12 noon western standard time on 4 October 1996.
- (5) The deadline for the submission for proposal has been extended and proponents can submit an alternative design, in the absence of a complying bid, provided it complies with all the other objectives and requirements of the request of proposal document, other than the original time line.

POLICE SERVICE- INNALOO STATION

*Staff; Hours; Vehicles*

**755. Hon TOM HELM, on behalf of Hon John Halden, to the Attorney General representing the Minister for Police:**

- (1) How many staff are at the Innaloo Police Station?

- (2) Is it projected that staff numbers will increase in the future?
- (3) What is that projection?
- (4) When will it occur?
- (5) During what hours is the Innaloo Police Station open?
- (6) How many vehicles are allocated to the police station?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) One officer is located at Innaloo Police Station.
- (2)-(3) Staff at the Innaloo police complex will increase to a total of 32 full time equivalents by transferring the Mirrabooka traffic office to this location. The main thrust of integrated control and command under the Delta program is that traffic officers will carry out all facets of policing as the need arises.
- (4) It will occur within the next few weeks.
- (5) The police station is open between 8.00 am and 4.00 pm on Monday to Friday. As the additional staff members are placed, it will be accessible as needs dictate.
- (6) One vehicle is allocated; however, with the abovementioned move, 14 vehicles will be available at this complex.

HOSPITALS - MT HENRY

*Nursing Home Entry Fee*

**756. Hon KIM CHANCE to the Attorney General representing the Minister for Health:**

- (1) Will patients currently at Mt Henry Hospital and transferring to the proposed new nursing home to be built on this site have to pay the entry fee outlined in the federal Budget?
- (2) Will these patients have to pay the new daily fee of up to \$34 a day should they fail the proposed means test?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) No.
- (2) The Commonwealth will require patients' income to be assessed to determine the level of commonwealth nursing home benefits which will apply to individual patients.

HOSPITALS - MT HENRY

*Patients Located to Nursing Homes*

**757. Hon KIM CHANCE to the Attorney General representing the Minister for Health:**

- (1) Are permanent care patients still being admitted to Mt Henry Hospital?
- (2) If not, where are these patients being located within the aged and extended care system in Western Australia?
- (3) Given that many of these patients cannot be satisfactorily located in the commonwealth funded nursing home sector, where are they going?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) No.
- (2) The patients are being located in both the private and the not-for-profit nursing home sectors.

- (3) The non-government sector manages residents with complex care needs. An additional care subsidy is being provided to the Homes of Peace (Inc) for the care of residents requiring significant additional care needs.

HOSPITALS - MT HENRY

*New Facilities for Services*

**758. Hon KIM CHANCE to the Attorney General representing the Minister for Health:**

When the Government announced its policy to close Mt Henry Hospital it made a commitment to provide new facilities for services, such as care awaiting placement, slow stream rehabilitation and palliative care. This being the case, will the Minister indicate what progress, if any, has been made in providing these services at alternative locations?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question, and I ask that this question be put on notice.

EDUCATION DEPARTMENT - FIVE YEAR OLD PREPRIMARY PROGRAM

**759. Hon JOHN HALDEN to the Leader of the House representing the Minister for Education:**

- (1) Is it the Minister's intention to extend the five year old preprimary program to full time; that is, to five full days per week?
- (2) If so, what is the additional cost of extending it to a full time program?
- (3) As from 1998, will the five year old preprimary program be universally available so that people will be able to enrol their children for the full time program at their local schools throughout the State?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question; however, I do not have an answer as yet. I ask that it be placed on notice. I have about half a dozen answers from the Minister for Education. The Leader of the Opposition keeps asking the wrong question.

FAMILY AND CHILDREN'S SERVICES- CHILD CARE CENTRES

*Exemptions to Licensing Regulations*

**760. Hon MARK NEVILL to the Minister representing the Minister for Family and Children's Services:**

How many child care centres have been given exemption to licensing regulations by Family and Children's Services?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question. At 30 June 1996, 107 long day care centres had exemptions regarding staff qualifications from a total of 353 long day care centres. Staff exemptions are granted for only limited periods when qualified staff are not available to fill a qualified position. At 11 June 1996 there were 45 part time relief workers with exemptions, who cover periods of illness, holidays, etc. Of those, 14 are studying for child care qualifications. Of the 72 full time workers with exemptions, 65 are studying and the remaining seven have related qualifications.

KEMERTON INDUSTRIAL PARK - EXPANSION PROPOSAL, INTERIM REPORT

**761. Hon TOM HELM to the Leader of the House representing the Minister for Resources Development:**

I ask this question on behalf of Hon Doug Wenn.

- (1) Will the Department of Resources Development be releasing an interim report on a proposal to expand Kemerton Industrial Park?
- (2) If so, when will the report be released?
- (3) Will the possibility of a port being constructed at Kemerton be included in the report?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question.

- (1) The study management team comprising LandCorp, the Department of Resources Development, the Ministry for Planning and the South West Development Commission will be releasing an interim report.
- (2) It was to be released in August or September 1996.
- (3) There is no proposal to construct a port at Kemerton.

EDUCATION DEPARTMENT - SCHOOL STARTING AGE BOOKLET

**762. Hon JOHN HALDEN to the Leader of the House representing the Minister for Education:**

Hopefully I will have some success with this question, given the strife I have had with others. I ask -

- (1) When was the information booklet on the school starting age, along with a form seeking submissions to the Education Department, first distributed to schools?
- (2) How wide was the distribution of this booklet?
- (3) What was the closing date for submissions?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. I just make the point that I have some questions that were asked on 20 August. I want to make it very clear to the Leader of the Opposition -

The PRESIDENT: Order! The questions are not asked until they are asked in this House.

Hon N.F. MOORE: I am simply making the point for the member, who is upset because I do not have answers to some questions he has given to me. I have many answers that are just sitting around waiting for someone to ask the questions.

The PRESIDENT: Order! My point is that no question is asked until it is asked in this House. The fact that members dropped a note to the Leader of the House three months earlier saying that they might ask a question does not mean it is a question asked in question time.

Hon N.F. MOORE: I have some very good answers to the very good questions I have received. However, on some occasions I get some very good questions from the Leader of the Opposition to which I do not have any answers, and for those he will just have to wait until they are available. The answer to this question is as follows -

- (1) Copies of the information booklet on the school starting age were dispatched on Thursday, 29 August 1996.
- (2) Aboriginal education preschools received one copy of the booklet; community preschools received one copy; students with more than 50 student enrolments received four copies; schools with less than 50 student enrolments received one copy; all presidents of parents and citizens' associations received one copy; and unions, tertiary institutions, early childhood associations and specialist agencies received one copy.

I seek leave to table a copy of a list relating to the unions, tertiary institutions, early childhood associations and specialist agencies.

Leave granted. [See paper No 570.]

Hon N.F. MOORE: A further 2 000 copies were also sent to Family and Children's Services for distribution through its supplementary programs and centres. Currently 10 000 are being printed for despatch later this week. These copies will be distributed to the 29 district education offices throughout the State. Further, 350 copies will be available through distributions in each of the 29 districts.

The public consultation process that has been put in place includes letters from the Minister for Education and the director general to all schools, community preschools, P & C organisations, playgroups and professional organisations requesting input into the debate; and the appointment of an officer in each of the 29 school districts to facilitate the consultation process, not only with schools and the parents of school age children, but also within the community; for example, playgroups and the parents of very young children. These officers are receiving training that targets the school starting age issues.

- (3) The close off date for public comment or submission is 27 September 1996, which is the end of school term; that is, term 3. A response sheet for completion by all interested parents, community groups, schools' staff, and P & C associations is at the back of the information booklet on starting age and can be returned to the office of the director general.

The PRESIDENT: Order! I want to elaborate on what I was saying about questions without notice. A question without notice is a question that a member proposes to ask on the day it is proposed. Frankly, I am very disturbed with what the Leader of the House has said and what appears to be happening. The fact of the matter is that if notice is given that a question will be asked, the notice is that it will be asked at the next sitting of the House. If a question is not asked on that day, it should be burned, thrown away, destroyed. It should not be proceeded with. If the member does not get the answer because he does not ask the question, he must do that repeatedly. That is the spirit of the procedure of question time. To send in 2 000 questions on the off chance that one of these days someone will get around to asking them is not the way that questions without notice should apply. It is a little late in the day for me to implement that today.

Hon John Halden: It does not work like that, Mr President.

The PRESIDENT: Order! The fact of the matter is that today is the day that the member asks the question. Members do not ask questions today from last week.

Hon John Halden: We do not.

The PRESIDENT: Order! That is done if one is putting questions on notice. In that case one gives notice ahead of time. Questions without notice are supposed to be questions that are asked of Ministers on the day.

Hon Tom Helm: Can we have an hour instead of half an hour?

The PRESIDENT: Order! I do not determine how long question time is.

Hon Tom Helm: Ask him a question without notice!

Hon N.F. Moore: There was never a time limit - you can thank Mr Berinson for that.

Several members interjected.

The PRESIDENT: Order! There is no time limit. I do not want an argument about that. This practice seems to be getting out of hand. It is quite unfair - the more I think about it - to members who do not have the facility to churn out a heap of questions. Standing orders do not take account or recognise parties or groups of people; they recognise individual, elected members of Parliament. I tell members that for what it is worth.

#### QUESTION ON NOTICE - 651, CORRECTION

Hon N.F. MOORE - by leave: I take the opportunity to briefly correct an answer to question on notice 651 provided to the House on Tuesday, 3 September. Due to inadvertent clerical error, the answer to part (8) incorrectly stated that there was no overlap of mining lease 26/131 with the Kalgoorlie-Boulder townsite boundary. The Minister for Mines has provided the following corrected answer -

- (8) No approval from the City of Kalgoorlie-Boulder was required for this drilling as the area close to Bulong Road in which the drilling took place is not within the townsite boundary.

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