



WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1997

LEGISLATIVE COUNCIL

Wednesday, 19 November 1997

Legislative Council

Wednesday, 19 November 1997

THE PRESIDENT (Hon George Cash) took the Chair at 4.00 pm, and read prayers.

PETITION - COCKBURN ROAD

Hon J.A. Scott presented a petition, by delivery to the Clerk, from 51 people requesting that plans for upgrading and re-aligning Cockburn Road be abandoned and other options, including rail, be explored.

[See paper No 1055.]

MOTION - GOVERNMENT INSTRUMENTALITIES

Privatisation

Resumed from 13 November.

HON BOB THOMAS (South West) [4.06 pm]: I will continue my remarks by referring members to paragraph (9) of this motion, which reads -

The extent to which current tendering practices ensure that -

- (a) the process is open and fair;
- (b) proper procedures are followed; and
- (c) mechanisms are in place to check the qualifications, credentials and financial backgrounds of those seeking contracts.

This part of the motion relates to the recent sale of the white silos in Bunbury about which I have a number of concerns. Some very good arguments can be mounted for the retention of those silos. The Western Australian community has fought to retain this State's stately homes and grand hotels, but it has done very little to retain its industrial heritage. Whether members agree or disagree with the retention of the silos, they must be concerned about the procedure followed in the sale of the silos.

Members must be concerned that a consortium of five well-known Liberals in the south west have been sold this property, which is prime waterfront land in the middle of Bunbury, for a price which is very much lower than the value of surrounding commercial land. Members must be concerned about the probity of the Minister for Regional Development and Deputy Premier's answers to various questions asked in Parliament and the apparent conflict of interest of one of the consortium, Councillor Rob Nicholson, when council dealt with this issue on 14 June this year. Members should question the accuracy of the valuations that have been received.

I advise members that the white silos were among several silos which were built in Bunbury in the 1930s. The silos to which I refer were built in 1937 and they were white - the reason they are referred to as the white silos. These silos are unique because not only were they the first vertical grain storage facilities built in Western Australia, but also they were man-made and the concrete used in their construction was barrowed up inclines and ramps.

The white silos have been important to the economy of Bunbury for many years, even though they are not used because grain is no longer exported from Bunbury. They were interim listed on the heritage register in 1992. The silos were taken over by the South West Development Authority in 1989 and there has been a debate in Bunbury on whether they should be retained.

Some of the other silos in Bunbury were knocked down. I think they were demolished in 1991 or 1992 by the then Labor Government. These were the only silos that were reprieved. About 70 per cent of people in Bunbury prefer to see these silos demolished; however, there have been some very strong arguments for their retention. As I said before, the major argument is that we tend not to save our industrial heritage.

In 1995 the South West Development Commission advertised the sale of those silos by public tender. Depending on whom we listen to, there were between two and eight expressions of interest. They were not sold in 1995 and negotiations with those tenderers fell away. Nothing further happened until earlier this year. We know there have been negotiations during this year. On Tuesday, 14 October 1997 the member for Bunbury asked the Minister for Regional Development what progress the SWDC had made in fulfilling the Government's 1993 election commitment to demolish the Bunbury silos. The Minister's response was that very little had been done. He acknowledged that the silos had been interim listed in 1994, and that as a consequence of that decision it was not possible for the commission to demolish those silos.

The Minister indicated that negotiations had begun and that the SWDC had advertised for people to indicate whether they had an alternative use for the silos. Although two companies had indicated an interest, by May of this year there had been no formal application for an alternative use of the silos. The Minister was saying that tenders had been called and two people had expressed interest. I read a transcript of a radio interview with Stuart Morgan, the head of SWDC, in which he indicated that up to eight people had been interested in this proposal. This contradicts what the Minister said in his answer to a question asked in Parliament; that is, that only two people had expressed an interest and that by May of this year there had been no formal applications.

On 12 November I put a question to him, through the Leader of the House, which asks -

With regard to the South West Development Commission's accepting a price of \$900 000 for the wheat silos and 1.4 hectares of surrounding prime waterfront land in Bunbury -

- (1) When was the Minister for Regional Development informed of the deal?
- (2) Did he approve the process by which this sale was negotiated?
- (3) Will he table the valuations obtained by the SWDC on the site?

The answer was that the Minister was first informed of the deal on 17 September 1997. However, as I have just indicated, on 14 October the Minister indicated in another place that as of May this year there had been no formal applications. When the Minister answered the question put to him on 14 October he was aware that a deal had been done with this consortium to sell this prime waterfront land and the silos for \$900 000.

The PRESIDENT: Order! We are dealing with this motion and the member has referred to paragraph (9) of it. He cannot launch into a discussion about a substantive motion on the sale, or otherwise, of the silo. I assume the member is raising this issue because it is one of the reasons he believes these matters should be referred.

Hon BOB THOMAS: It is one of four. I am saying that the process was not fair and open. One reason is that the Minister for Regional Development gave the impression on 14 October that he was not aware that negotiations were taking place.

The PRESIDENT: Order! That is what I am saying.

Hon BOB THOMAS: A deal was done on 30 October. If others had been aware negotiations were taking place, they, too, may have submitted another bid.

The PRESIDENT: Order! Is that the reason the member is raising it in connection with this motion?

Hon BOB THOMAS: Yes.

The PRESIDENT: Order! I just do not want a substantive debate on this part of the motion.

Hon BOB THOMAS: I had almost completed my remarks in that respect. As I was saying, had other parties been aware, they, too, may have bid for these silos. It is highly likely that they would have bid a higher price and this State could have received more. Another concern expressed by the people of Bunbury is that the valuations do not appear to be accurate. People there tell me that other prime land in the Marlston Hill development around the silos is selling for between \$188 and \$322 per square metre. An area of 1.4 hectares of land is attached to the silo deal. It was sold for \$64 a square metre. We are particularly concerned about the valuations that have been received.

As I indicated earlier, in the question I asked in this place I sought to have tabled the valuations obtained by the SWDC of the site. The Government has refused to do that. We do not know whether the low valuation for those properties came about because of some restrictions on the use of the land or because it included the cost of demolishing the silos; however, we do know that other land adjacent to this development is selling for between three and five times as much as that which was received in this deal.

We also know that the consortium comprises five prominent Liberals from the south west. It is headed by Councillor Rob Nicholson, the architect used by Geoff Prosser, a well known Liberal. It also involves Steve Prosser, the brother and business partner of Geoff Prosser, also a well known Liberal; Tom Cottee, who is associated with the Bunbury Health Campus, which is an initiative of the Liberal Party; Ian Gordon, who is the managing director of Health Solutions (WA) Pty Ltd, which has received numerous contracts under this Government; and Edwin Abdo, who is Geoff Prosser's lawyer. These prominent Liberals have received a very generous deal which was not available to other people who may have been interested.

Stuart Morgan from the SWDC said during the radio interview that in the same way as when an auction fails to receive the minimum price, negotiations continue with interested parties, that has happened here.

The consortium did not make a bid when the site was initially advertised in 1995 and negotiations with the other groups ceased two years ago. This bid came from nowhere. The Opposition would like to know the circumstances that led to this offer being presented and, if an offer was received, why the market was not tested to see whether the Government could receive more for such a valuable asset.

I do not want to sound as though I am criticising the fact that the silos have been sold. The concept that the consortium is presenting is good. It will do something that has not been done in WA before; that is, use the silos as part of a hotel development. Some of the apartments will be in the silos, something that has been done successfully elsewhere in Australia.

I am concerned that the tender process was not fair and open and that other parties were not given an opportunity to make an offer on the property. It is prime waterfront land and a lot of pricey development is occurring around Marlston Hill. The market has changed. I am sure that the Government would have received much more for this property had it tested the market again.

My other concern relates to the principal of this consortium, Rob Nicholson, a councillor on the Bunbury City Council.

The PRESIDENT: Order! We are talking about the requirement for the Standing Committee on Public Administration to inquire into privatisation and contracting of public services and other matters listed in the motion.

Hon W.N. Stretch: It might be better to make innuendos outside the House.

Hon BOB THOMAS: I am not making any innuendos.

The PRESIDENT: Members cannot have a substantive debate on whether the silos were sold.

Hon BOB THOMAS: With due respect, Mr President, I need to explain what has happened so that I can relate my comments.

The PRESIDENT: If Hon Bob Thomas would be good enough to mention the motion every few minutes I will understand that that is what he is talking about. At the moment he is holding a substantive debate on an issue.

Hon BOB THOMAS: I appreciate that, Mr President. My last remark was about to refer to point (9)(c) of the motion, which is -

mechanisms are in place to check the qualifications, credentials and financial backgrounds of those seeking contracts.

Councillor Rob Nicholson has a conflict of interest here. On 14 June he participated in a Bunbury City Council meeting at which it dealt with a motion about the destruction of those silos.

Hon Barry House interjected.

Hon BOB THOMAS: Rob Nicholson voted against it even though he was negotiating with the Government previously as part of the consortium to purchase the silos.

Hon Barry House: I suggest you write to the Minister, as I did.

Hon BOB THOMAS: Hon Barry House can get up and have his own say. This deal has not been fair or open. Serious questions have arisen about it; therefore, the Standing Committee on Public Administration might want to examine it after this motion has been passed.

HON MAX EVANS (North Metropolitan - Minister for Finance) [4.23 pm]: The proposed inquiry will simply serve to affirm the net benefits delivered by the Government's competition based reform agenda. The completion of the inquiry in the format proposed will, however, require very considerable administrative resources. No public sector agency has been funded to support such a wide ranging investigation. Additional resources would need to be allocated in order to proceed. It should also be noted that the scope of the proposed inquiry largely duplicates work already completed on a national basis by the 1996 Industry Commission report on competitive tendering and contracting by public sector agencies. Serious consideration should be given to the doubtful additional benefits which can be expected, given the high cost of the proposed inquiry.

The following points respond to the specific inquiry proposals: First, the extent to which state government enterprises have been privatised since February 1993. In April 1994 the Government privatised the State Government Insurance Office. This was a unique privatisation because the SGIO had almost no staff. It established a new corporation headed by a chairman and offered people in the State Government Insurance Corporation a chance to transfer. Only a limited number took up that offer, the balance of the staff being recruited from outside. I suggested to Rob Lubeck

and Paul Aslam at the time that the Civil Service Association was trying to stop people transferring and I thought that they were making a big mistake. It would have been greatly in the interests of the employees to transfer to the SGIO because they would have been working in a very vibrant, growing organisation. It was a successful sale for the Government. When the privatisation process began it looked as though it would fetch about \$65m. The price eventually reached \$145m and it was recapitalised by about \$25m. Ultimately, we received about \$120m for the SGIO, which originally cost the Government \$100m. That was partly due to the timing. The previous Government set the bank's privatisation in motion, but it was implemented by this Government. Much more money was received than originally expected, mainly as a result of changes in legislation and market improvement. We received far more than it cost.

Radio 6PR was sold by the Totalisator Agency Board in December 1994. One of my first aims was to sell 6PR because of the conflict about whether it should broadcast TAB or public interest programs. It was difficult for the TAB, which owned 100 per cent of 6PR, not to be able to get its races on air. That was sold for \$4.5m. It was not a very good price considering that the previous Government helped pay \$10m for 6PR when it bought out one of the racing codes. The amount of \$5m showed on the books of 6PR and \$5m eventually showed up on the books of, I think, the WA Development Corporation. The Government received \$4.5m, which was a good price considering what the market was like for an AM station.

The TAB also owns Fairplay Print, which is very close to being sold. A third each is owned by the Western Australian Turf Club, the Western Australian Trotting Association and the TAB. Fairplay has been trading at a loss for some years and has taken up much of the TAB executive's time. It sold the building which housed Fairplay Print and expects to sell the company within the next few weeks. It is not a business in which the TAB needs a \$500 000 investment.

The commercial operation of State Print - a very big printing business in Perth - was sold in January 1995. It had been bogged down over the years by work practices that did not allow it to operate as the efficient, effective printer it should have been.

The R & I Bank Ltd was privatised in December 1995. That was a far more successful way of dealing with the R & I Bank than before the 1993 election when the previous Government decided it would merge it with Challenge Bank Ltd without reference to anyone. If that merger had taken place both operations would have been downsized by thousands of staff and outlets. The Lawrence Labor Government paid dearly in the election because a few people had not been consulted prior to that great proposed merger of the R & I Bank and Challenge Bank.

This Government proceeded with the sale of BankWest with the important proviso that it be retained in Western Australia. It had the largest number of deposits in Western Australia. A satisfactory deal was negotiated with the Royal Bank of Scotland. One of the reasons I supported the sale of BankWest was that at all times the Government was the underwriting body. Tricontinental Bank, owned by the Bank of Victoria, had huge debts which wiped out all the bank's capital. Ultimately the State Government of Victoria had to pick up those debts, which ran to only about \$2 000m or \$3 000m! The State Bank of South Australia went down the same path and its shareholders had to pick up the debts of, again, around \$2 000m or \$3 000m. Therefore, a state owned bank is in a precarious position. It can be good in good times. However, under prudential standards the Government had capital of about 4 per cent in the total loans going out, whereas private banks have 8 per cent. If the Government had allowed the R & I Bank to continue trading, it would have had to find another \$400m or \$500m of capital, with very little extra return going to the Government on its money. So, in two ways it was good to sell BankWest. It removed any future liabilities which the parent body would have to look after if the bank collapsed. Big banks overseas have collapsed; so it can happen. It also saved putting another \$400m or \$500m capital into BankWest. We are very proud of that sale, because we reduced our debt by about \$1b.

The next item is the sale of the Government's passenger and light commercial fleet in July 1996. This deal took roughly \$200m debt off the books following the privatisation of the ownership of the government cars and commercial vehicles.

Hon Ljiljanna Ravlich: If you sell everything, you won't have any debt!

Hon MAX EVANS: When the member grows a little older she will find that it is not a bad thing to be free of debt!

Hon Tom Stephens: Does the Minister propose to sell everything now that he is old?

Hon Ljiljanna Ravlich: He will sell his family next!

The PRESIDENT: Order! The Minister is outlining matters that have been disposed of to date. It is relevant to the motion.

Hon MAX EVANS: Obviously the member was not listening. There is a good reason for selling each item. The

changes in the SGIO did not reduce state debt. It reduced the problems for the SGIC, which were caused by the previous Labor Government. I will not go into the \$450m loss by the SGIO. However, we did help reduce that loss which we can attribute to the previous Government. The sale of Radio 6PR did not reduce state debt; it just strengthened the position of the TAB, which had 100 per cent ownership -

Hon Tom Stephens: On the basis of that logic you should sell the Tourism Commission because it has been losing money at a rate of knots as well, with the various contracts in which it has been engaged.

The PRESIDENT: Order!

Hon MAX EVANS: Mr President, I am not allowed to answer stupid questions, am I?

The PRESIDENT: I ask members not to interject, so that the Minister can get on with his comments on the motion.

Hon MAX EVANS: We sold the management and operation of the south west irrigation system through a transfer of business and assets from the Water Corporation to a farmer cooperative in June of the financial year 1996-97. The Government is well advanced in the process of privatising the Dampier to Bunbury natural gas pipeline. The legislation passed through the other House last night, and will be introduced in this place today. It is expected that the sale will occur before the end of 1997.

The Government is also progressing the sale and leaseback of the Transperth bus fleet. In addition to the privatisation of these agencies, the Government's microeconomic reform program has involved the corporatisation of the State's energy and water utilities, and the commercialisation of Westrail and the Fremantle and Bunbury Port Authorities. The privatisation, sale and leaseback of vehicles have been done in a very responsible way. In 1986-87 in a speech here I said that Victoria had followed New South Wales with the sale and leaseback of ferries, trains and buses. The sale was in foreign currency, and the State faced a huge debt afterwards. The money from the sale was applied to the running costs of the Government. The revenue raised here from such sales has been used to replace assets or to reduce debt; it has not been applied to the running costs of government.

For the benefit of Hon Ljiljanna Ravlich, the previous Labor Government sold for about \$258m some of our best prime land, and all it did with that revenue was pay wages and cut lawns. When we have sold assets, we have tried to be responsible about where the money was applied.

The second point is the economic and social impact of transferring state-owned enterprises to the private sector. That impact includes improved efficiency of allocation of resources within the State's economy; that is, resources are allocated to areas where they can be used more productively. These gains arise from private enterprise operating in a competitive market, motivated by profit and subject to the performance monitoring disciplines imposed by Australian capital markets. The impact includes also the elimination of commercial risks which can have a major impact on state finances. That was the point of my comment relating to BankWest. There was always a commercial risk in being involved in banking, because at the end of the day a lot of money went out. Loans totalled about \$16b. A couple of big loans can knock out the capital which is equivalent to only 8 per cent of the total loans. The improved efficiency of the SGIO will result in a more flexible business following the takeover by SGIC. The public has benefited from that.

The impact includes the reallocation of scarce public resources away from non-core activities towards the provision of social services that are the primary responsibility of government, and the opportunity for wide ownership of shares by employees and the community, which can result in employees being more motivated to ensure its success. Employees of the SGIO and BankWest had the opportunity to take up shares. The proceeds from privatisation can be used to reduce the Government's gross public debt, and this was the case with the sale of BankWest.

It is important that privatisation take place in a competitive market environment to ensure that a public monopoly is not replaced by a private monopoly. There need be no adverse social impact from the privatisation of a state owned enterprise. If such an enterprise were providing social services prior to its privatisation, the Government could ensure the maintenance of the services post-privatisation by contracting with the privatised organisation for their continued delivery.

The third point is the cost and quality outcomes of privatisation for the level of savings or additional costs that have resulted from the provision of services by private contractors instead of by the Government.

Hon Ljiljanna Ravlich: The Minister should go on the committee. He has all the answers.

Hon MAX EVANS: I have been contributing to the solution. I do not want to give all the answers away. I have made a major contribution to the solution. Therefore I will not go on the committee. The committee would be a waste of time. I could give the committee all the answers now to save all that time, money and effort.

Cost savings from competitive tendering and contracting and sale proceeds from privatisation have contributed to an estimated reduction of \$1.6b, or 19.3 per cent, in total state public sector net debt between 30 June 1993 and 30 June 1998; net debt as a share of the State's output is expected to fall from 19.9 per cent at 30 June 1993 to 10.8 per cent at 30 June 1998; and a decline in general government sector revenue as a share of gross state product from 14.6 per cent in 1992-93 to an estimated 12.8 per cent in 1997-98, its lowest level on record.

Three independent surveys of competitive tendering and contracting activity across the Western Australian public sector have been carried out by Professor Simon Domberger, head of the graduate school of business at the University of Sydney, covering the financial years 1993-94, 1994-95 and 1995-96. The surveys have consistently demonstrated that, where functions previously carried out in-house by public sector employees have been contracted to private sector service providers, savings have averaged between 20 per cent and 24 per cent; and in about 90 per cent of cases, agencies report that contracting has been either successful or very successful in regard to the efficiency and effectiveness of service delivery.

The Auditor General for Western Australia has also reported on independent analyses conducted by his office into contracting for services, through the examination of specific contracts let by the Department of Transport, Agriculture Western Australia, and the Department of Land Administration. The Auditor General's reports confirmed that savings of up to 20 per cent have been realised as a result of competitive tendering, without any adverse effect on the quality of services provided.

The Federal Government's Industry Commission has undertaken extensive research into the application of competitive tendering and contracting in public sectors throughout Australia. In its final report dated 24 January 1996 the Industry Commission indicated that, when done well, competitive tendering and contracting can lead to significant improvements in accountability, quality and cost effectiveness of services - providing benefits to clients, taxpayers and the broader community.

Point of Order

Hon LJILJANNA RAVLICH: I have been sitting here for 15 minutes listening to the Minister read page after page rather than make a significant contribution to debate on whether the terms of reference should be directed to the Standing Committee on Public Administration.

The PRESIDENT: The Minister is in order, and he is more in order than some other speakers, because, as I understand it, he is addressing the extent to which state government enterprises have been privatised since February 1993.

By way of interjection, the member said to the Minister something along the lines of, "If you have all the answers, you should be on the committee." It seems that the Minister is now advising the House just what matters have been privatised since 1993. That is clearly relevant to the motion and, given the dissertation, I would think helpful to the committee.

Hon LJILJANNA RAVLICH: My point of order related to the fact that the Minister is reading his speech.

The PRESIDENT: Order! If that is the case, it is a separate point of order. Standing Order No 83 clearly indicates that members are not to read speeches. However, Hon Ljiljanna Ravlich would be aware that members are entitled to refer to copious notes. I assume that that is what the Minister is doing.

Debate Resumed

Hon MAX EVANS: Hansard will confirm that a lot of what I have said is not in my speech notes, and the reporters will have the problem of sorting it out. We could wait to get the proofs of my speech to prove the point, or carry on.

Savings have been made through competitive tendering in many ways. Problems have arisen with workplace agreements - as Hon Ljiljanna Ravlich would agree - with hourly rates, hours performed, and overtime rates. Moving outside government eliminated many of those difficulties.

CTCs have not resulted in any reduction in service quality. For example, one can refer to the P & O or ancillary services contracts in hospital food provision. Rather than delivering wrapped frozen food, they take trolleys along and serve freshly cooked meals to each patient. It is a huge benefit derived from competitive tendering.

I am sorry, Mr President, that I might spend a while on this subject. As you know, by nature I am normally better controlled.

Regarding orderly services at hospitals, professional and nursing staff find it better to have professional staff come in and perform the orderly services tasks as compared to the previous situation. That is a benefit with CTCs at hospitals.

Hon Kim Chance: I do not know how many nurses told you that, as it is not the case at Sir Charles Gairdner.

Hon MAX EVANS: My wife told me that - all right! Sir Charles Gairdner does not have CTC staff as government staff carry out that work. The patient support group is still within government, although I was previously not sure whether it was a private sector group. The meals are still cooked under the old frozen system because the Sir Charles Gairdner Hospital is so big. I referred in earlier comments to Royal Perth Hospital and the facility at Shenton Park. I did not learn about this from a nurse, but from my wife who is quite an authority on the situation.

The motion has 15 points and I must acknowledge them all. Paragraph (4) reads -

The extent to which State Government contracts or tenders have since February 1993 been awarded to -

- (a) Western Australian companies or businesses;
- (b) other Australian companies or businesses;
- (c) foreign owned or controlled companies or businesses; and
- (d) regionally based businesses.

One wonders who wrote this motion.

Hon Ljiljanna Ravlich: I did.

Hon MAX EVANS: The member had her three days' say on this matter - I want only two days.

The member wants to know the shareholders of the companies involved. P & O, an English company, took over the hospital service operations, and many other companies have special contracts. The shareholders, trustees or nominees are not relevant. The operation was sold for a price for someone else to run it, and the relevance is not ownership, but whether the service is provided properly. One would need a super sleuth at Corporate Affairs to check all shareholders and owners of the companies, and I am not sure what purpose it would serve.

The buying wisely policy ensures local firms have open access to all contracts. The regional purchasing policy applies a 10 per cent preference for regional bids. We changed that policy to apply to substantially increased contracts; that is, \$20 000 to \$500 000 contracts. CTC has made a lot of opportunities, and many more opportunities are available, given the success of what has been done.

However, we must be very careful not to open up some of these things to a monopoly. Britain and the USA had problems as they sold off all gas, power and water suppliers, and needed a regulator to check prices to protect the public. Those regulators have maintained control and stopped a couple of attempted takeovers of these enterprises.

Hon Kim Chance: That process has been a complete failure in Britain.

Hon MAX EVANS: Some yes, and some no.

Hon Kim Chance: Water has been a total failure.

Hon MAX EVANS: We are not selling water. As Hon Kim Chance was on the Board of the Water Corporation, it is a well run business. We do not need to sell off that very liquid company which makes a lot of money. We thank Hon Kim Chance for his great contribution.

Hon Kim Chance: You're a hard man to pick up, Max!

Hon MAX EVANS: Part (5) of the motion reads -

The extent to which risk is transferred from the public sector to the private sector and to which Government companies or businesses are given Government guarantees before agreeing to invest in large scale public sector projects.

The Government's buying wisely policy emphasises that the aim of risk management should be to allocate risk. We get that all the time. Many government initiatives have put risk into the private sector, which can insure against things going wrong. CEOs are required to ensure that all costs and options are assessed objectively. Agencies have only a limited budget; therefore, they cannot allow a CTC which will cost more than performing the work in-house. If not, CEOs will not get increases in their budgets and they will suffer accordingly.

Some examples of risk transfer to the private sector are mainframe outsourcing. The BDMW contract - a joint contract involving four agencies - transfers the following risks: Capital investment risk for mainframe equipment; service delivery on computers; and all the normal insurable risks are covered by the contracts, not by the Government - these include public liability, workers' compensation and professional indemnity.

When one is running a big computer, one has big risks. The Water Corporation, Western Power, AlintaGas, the Totalisator Agency Board and the Lotteries Commission are examples. It has been decided to put the risk over to the private sector, which has the backup staff to ensure that the system does not fall over. I have made sure that I will not tack the TAB and Lotto computers onto other systems as those businesses are just too big. The risk assessments are made at the time of the deal. I believe that many more such contracts will be made for computer mainframes. We are doing one at the State Revenue Department, which is likely, when finished, to be sold to somebody else to manage. In a big computer operation, one needs standby technical people. After a while in-house people stand by that system for so long that it becomes out of date; however, a big computing corporation has different levels of expertise, and contracting out takes away the government department's risk in running a big computer system. It is very important. Also, it can reduce the cost of those operations.

Part (6) of the motion reads -

The extent to which policies have been introduced to guarantee the Western Australian public against financial default by private contractors.

As far as possible, the Government has built no-risk provisions into contracts. The previous NSW Labor Government entered into toll contracts on tunnels and freeways, but the Government was underwriting the amount of money to be made from the operations. One is better off owning and running the facility. We made it clear that we would not have any toll highways or bridges in this State. Many people wanted to handle the Burswood Bridge in that way. However, if one guarantees a return to the private sector - Victoria is trying to turn around such a situation - a risk is involved. Most of our deals involve no risk, and I have been praised in that regard in the deals done.

Hon N.D. Griffiths: Did you say that you were thinking of putting a toll on the Burswood Bridge?

Hon MAX EVANS: No. People came to us wanting to put a toll on the Burswood Bridge, and I said, "No way at all." It did not work in New South Wales. Laurie Brereton provided contracts but the private companies wanted returns for their money, irrespective of traffic volumes. They do not work.

Hon Kim Chance: They are cost-plus contracts - like the one at Joondalup hospital will not work.

Hon MAX EVANS: I do not agree. We have the Murdoch Hilton and the Parmelia Hotel of the Hilton group. The opportunity exists for many more companies to come into hospital management. Sixty to 70 per cent of a hospital involves hotel-like services - the management of food, cleaning, and the maintenance involved with a big building. The other groups come in on a management fee. As members know, I brought the Nationwide Food Service to Western Australia in 1964.

The PRESIDENT: Order! Members will recall that I asked Hon Bob Thomas not to deal in a substantive way with the Bunbury silos; he was to deal with the direction to the committee to inquire into various matters that related to privatisation. The same goes for the Minister for Finance on hospitals. There is no need for members to have a substantive debate on what does or does not occur in hospitals. We want to hear about the motion.

Hon MAX EVANS: I told members they would be a lot safer if they let me stick to the script.

Hon Tom Stephens: Would you like your speech to be incorporated in *Hansard*?

Hon MAX EVANS: No. I will table it afterwards. There can be the mark 1 version and the mark 2 version.

When one goes to tender, one must consider the financial position of the people carrying out the work. That is important. They undertake due diligence in what they take over. A question I will answer in question time today addresses the financial position of these people. In all the cases I have seen, the Government has checked on this. The Government was going to help Imtech Industries, the rubber company, but it fell over; it could not raise its own finance. We must look at all competitive tendering. Any financial default by private contractors falls back onto government. To pick up a business in liquidation, when buildings or hotels are half completed, is an expensive operation. The Government has done a good job to date. To my knowledge, none of the operations the Government has put out to tender has fallen over. Some might be cheaper the next time around. We tried to get plenty of competition to ensure we got the best price. That is important. The Government has not let anything out to one operation, but has split it up. For example, in the competitive tendering for the cleaning of schools we spread the contracts over a large number of operations to protect the Government against one person having too many contracts, and also to spread the risk.

Much of this falls back onto the State Supply Commission. The commission includes many experts, including some good union representatives, who look at contracts that have been entered into by the Government. They stand up to close examination. When the Government sold the State Government Insurance Office, Bankers Trust Australia Limited advised it on what price to sell at and how to complete the documentation. I am not certain who the Minister

for Energy employed for the sale of the Dampier to Bunbury pipeline. He engaged line consultants to put a valuation on it and to approve a reasonable price for it.

The Public Sector Standards Commission and the State Supply Commission are currently circulating a draft best practice, due diligence guideline for comment from the private and public sectors. In addition, the State Supply Commission's soon to be released revised value for money policy clearly emphasises the critical importance of assessing tenderers' bids in respect of capability and risk.

Part (7) of the motion deals with the extent to which contracting out of state public service results in greater competition. The Government believes the contracting out of the State Government Insurance Office was beneficial to Western Australia. One of our members, who sits at the back of the Chamber, had SGIO shares. He sold them too early when their price came down. Their price has since increased and they would have been a good investment, as I expected, with my friend Ron Cohen running the organisation. Radio 6PR was bought by another eastern States company, Southern Cross Pty Ltd, which owns 6IX. It has done a good job. I do not think it got a good return on its money. State Print was sold to Mercury Press and has since been on sold to someone else. Mercury Press was owned by Coventry Group Ltd. Coventry had it for some time and then decided to get out of the printing business and back to doing a good job as the best spare parts dealer in Australia. I am not certain who owns the former state government printing service today.

The sale of the Hospital Laundry and Linen Service has resulted in markedly increased competition in its market environment. It was a problem for new members in this place that the hospital linen service was big enough to do the laundry of the private and public sector in Western Australia and the private sector in South Australia. It had been overbuilt. I helped to finish it off in the 1960s. I was a liquidator. It was a reasonable sized hospital linen service. John Tonkin was desperate to have it completed while he was in government and a lot of pressure was put on me to complete it. I would not complete it for a while. I was not getting paid for the work of a receiver. We had to finish it off so John Tonkin could say that he built something during his term in government. All he built was that hospital linen service. Later someone else came along and doubled, then trebled, the size of it.

Point of Order

Hon J.A. SCOTT: Will the Minister identify the document from which he is reading and will he table it at the conclusion of his speech?

The PRESIDENT: Order! The Minister is required to identify the document from which he is quoting.

Hon MAX EVANS: The document I have comprises copious notes that I require for my speech to handle a three or four day speech by Hon Ljiljana Ravlich. It contains 15 parts. I am up to only seven; therefore, I have eight to go. I have already offered to table it, providing both my earlier speech and this speech are included in *Hansard* to ensure a good record of all the things I have left out.

The PRESIDENT: Order! The document has been identified. Unless the Minister claims confidentiality, he must identify it. In due course Hon Jim Scott or any other member can seek to have the document tabled under certain conditions.

Hon MAX EVANS: I am only too pleased to table it. I would like a copy circulated to every member so they are better informed on the subject we are discussing today. I will ensure Hon Jim Scott sees it; whether he will understand it, I do not know.

The PRESIDENT: I thought you were going to seek to claim confidentiality.

Hon MAX EVANS: No, Sir. After all, I want to read the whole lot.

The PRESIDENT: Members, let us get on with the debate.

Debate Resumed

Hon MAX EVANS: The following figures are from an independent survey by Professor Simon Domberger from the University of Sydney into contracting for services in the Western Australian public sector in 1995-96. They provide an indication of the extent of contracting out of state public services. The reported expenditure on contracting for services in the public sector increased 59 per cent from \$691m in 1994-95 to \$1 099m in 1995-96. The 1994 figure based on contracts greater than \$50 000 was \$365m. In 1995-96, 912 new contracts valued at \$103m were awarded. Contracting for services accounted for 34 per cent of the Western Australian public sector's total service expenditure. Property services, equipment, maintenance and works related services, transport, research, scientific and technical services comprised the largest components of the total expenditure on contracting.

The eighth part of the motion covers the extent to which initiatives have been introduced to prohibit the practice of

private companies acting as cartels, rather than competitors, thereby combining resources to tackle large scale projects. A cartel is an informal association of manufacturers or suppliers aimed at maintaining prices at a high level and constricting open competition. The Government has been careful to ensure no cartels get together to maintain price and to ensure there are different owners and operators. A member asked earlier who owned many of these operations. That is a very good question. It seeks to ensure that no cartels or cross-ownership would influence prices. To date the Government has found no problem with this. When Hon Eric Charlton closed the Midland Workshops, much of the work had to go out to tender. I understand there is plenty of competition for railway work.

The Government cut out collusive tendering, which is prohibited under the Trade Practices Act. The Australian standards code of tendering - AS4120-1994 - also forbids this type of activity. It states that parties shall not engage in practices such as collusion on tenders, inflation of prices to compensate unsuccessful tenderers, secret commissions, or any other such improper arrangements. If members read yesterday's *The Australian Financial Review* they will see that some big institutions tried to talk down the price of Telstra shares.

Hon E.J. Charlton: As well as the Labor Party.

Hon MAX EVANS: At the end of the day the Labor Party talked it down, and those people did not get any shares. When Victoria was selling off TabCorp the Labor Party talked that down from \$835m to \$725m; it is now worth \$1.4b. For political reasons the Labor Party affects these sales by talking down the price.

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

ROAD TRAFFIC AMENDMENT BILL

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon E.J. Charlton (Minister for Transport) in charge of the Bill.

Clause 1: Short title -

Hon NORM KELLY: During my second reading contribution yesterday I alluded to the impact that this Bill will have not only on road safety but also on revenue. The Minister neglected to respond to my question. What increase in revenue does the State hope to gain as a result of the introduction of these new penalties?

Hon E.J. CHARLTON: There has been some speculation about this factor. So far this year we have had 40 fewer deaths and infringements have decreased. With increased penalties, it is likely that, while income will increase, it will not increase from a percentage point of view. It was estimated that, if this were implemented on a pro rata basis, we could see an increase of more than \$20m.

Hon NORM KELLY: Has the department made any estimates based on the current trends as to offences and so on and what pro rata percentage we can expect in penalties? I pointed out yesterday that the Government's agenda for legislation this session mentions revenue implications. I imagine there would be a more accurate costing.

Hon E.J. CHARLTON: First, one-third of any increase will go to the Office of Road Safety as part of the trauma trust fund.

Hon Norm Kelly: From all offences?

Hon E.J. CHARLTON: No, only from those relating to red lights and Multanovas; the balance goes to consolidated revenue. I cannot provide anything other than the broad figures that I have already given.

Clause put and passed.

Clause 2: Commencement -

Hon NORM KELLY: When does the Minister expect the increases to be implemented?

Hon E.J. CHARLTON: On 1 January 1998.

Clause put and passed.

Clauses 3 to 5 put and passed.

Clause 6: Section 64 amended -

Hon NORM KELLY: Page 4 of the Bill contains the new table of penalties for drink driving offences. I note that

the maximum penalty relates to less than 0.15 per cent blood alcohol content. Will any offences over that be automatically regarded as driving under the influence and therefore be in a different category? If that is the case, where is that specified?

Hon E.J. CHARLTON: Yes, that is correct. It comes under a different category under section 63.

Hon NORM KELLY: Are police directed that anything over 0.15 is regarded as driving under the influence?

Hon E.J. Charlton: Yes.

Clause put and passed.

Clause 7: Section 64AA amended -

Hon E.J. CHARLTON: Some concern was raised during the second reading debate last night. As a consequence I intend to move an amendment. I move -

Page 4, line 27 to page 5, line 20 - To delete the lines and substitute the following -

- “
- (2) If a court convicts a person of a first offence against this section the person is liable to a fine of not more than 4 PU.
 - (2a) If a court convicts a person of a second or subsequent offence against this section —
 - (a) the person is liable to the relevant penalty in the Table to this subsection; and
 - (b) the court shall order that the person be disqualified from holding or obtaining a driver’s licence for not less than the relevant minimum period of disqualification in the Table to this subsection.

Table

Percentage of alcohol in blood		Penalty
≥ 0.05% but < 0.06%	Min: Max: Disq:	5 PU 10 PU 3 months
≥ 0.06% but < 0.07%	Min: Max: Disq:	6 PU 10 PU 3 months
≥ 0.07% but < 0.08%	Min: Max: Disq:	7 PU 10 PU 3 months

Note: ≥ signifies greater than or equal to
< signifies less than ”.

The thrust of this amendment is to clarify the position. The thrust of the Bill now is that an infringement notice will be issued for a first offence and carry a fine of \$100. That will be the straight penalty contained in that infringement notice. If a person decides to take the case to court and is subsequently found guilty of the offence, the penalty will be \$200. The position for subsequent offences is self-explanatory, but if anybody has a question I will be happy to answer it. The amendment takes away any belief that there may not be consistency for the police having the option of giving an infringement notice or delivering a summons to somebody to appear in court. The amendment takes away any impediment and stipulates that the offence will be an infringement. It will be up to the recipient of that infringement notice to decide whether to go to court.

Hon TOM STEPHENS: I appreciate the response of the Minister to the concerns I raised on behalf of the Opposition during my reply to the Minister's second reading speech and also his amendment, which successfully allays the concerns I articulated last night. The specific concern dealt with some of the attachments to the clause notes that were provided to the Committee. The notes indicate that the provision is not included in this clause and that the Western Australia Police Service confirms that this procedure will be carried out administratively. A memo from Assistant Commissioner Hay to the manager of legislative and legal services reads that he confirms that his police officers will be instructed that first offenders under section 64AA, other than probationary drivers who have held a driver's licence for less than three years, will be dealt with by way of infringement notices, with second or subsequent offenders being

dealt with by way of court brief. I take it that the Minister has accepted our commentary that there is not really an opportunity for instructing police officers in that way and that the police officer is left with the responsibility of making those decisions. That decision cannot be made for a police officer by way of a direction from the officer's superiors. In that circumstance this amendment has been necessary. It removes the need for this type of commentary and explanation on the clause.

Hon E.J. CHARLTON: That is exactly right. We were given an undertaking that the police would issue an infringement notice but it would be the responsibility of the superior officer to maintain that policy. This amendment takes away that procedure and indelibly inscribes that there will be an infringement notice and a \$100 infringement penalty.

Hon B.K. DONALDSON: I am pleased that the Minister acted swiftly to introduce this amendment. The legislation as it stands would cause a great deal of pain and uncertainty and an inconsistency, which we do not need. I understand that anybody caught with a blood alcohol content of over 0.05 and under 0.08 is subject to a \$100 fine and the loss of six demerit points. Is that correct?

A person cannot receive an infringement notice unless he has been tested by a breathalyser or at a booze bus. The first reading taken at the roadside is an indicator. In a court of law a lawyer could have a case based on a first reading thrown out of court because one could not guarantee an accurate reading. A person cannot drive away. He would have to be tested again at the booze bus or taken to the police station. No-one in his right mind would accept the roadside breathalyser unit reading because a court could overturn that procedure. I understand that if a case were proven, there would be a \$100 fine and six demerit points. The amendment says that if a court convicts a person of a first offence under section 64AA, the person is liable to a fine of not more than four penalty units. The Minister has indicated it would need to be two penalty units. I will be corrected about whether demerit points exist, but there will be no disqualification.

Hon E.J. Charlton: That is right for a first offence.

Hon B.K. DONALDSON: The second part of the amendment refers to proposed section 64(2a) dealing with second or subsequent offences and picks up a whole box of goodies that people have to go for. I want to know exactly what happens if I am pulled over and I record a blood alcohol reading of 0.06. Will I have to be breathalysed at an official breathalyser unit? I understand that an infringement notice would be issued and I would be fined and other penalties could apply. The second time I am apprehended is a different story. Is it correct that I would be issued with a summons to appear in court? Is it also correct that if it is a first offence I would not be required to appear in court?

Hon E.J. CHARLTON: The answer to all the questions the member raised is yes. Under this Bill the first offence will be by way of an infringement notice. If a person is apprehended he will be taken to an authorised reception point to have the test done. If it is a first offence the fine will be \$50 for each unit - in this instance two units are involved and the fine will be \$100 - and there will be no disqualification. Subsequent offences will be dealt with by the court pursuant to the list of demerit points.

I do not know what is the current situation with demerit points for a first offence. I do not have the information, but I will obtain it for Hon Bruce Donaldson.

Hon NORM KELLY: I have a fax from the Department of Transport which includes the draft regulations for demerit points. According to the schedule, if the blood alcohol is between 0.05 and 0.06 it is three demerit points; 0.06 to 0.07, four demerit points; and 0.07 to 0.08, five demerit points. I understand, in accordance with the provisions of this Bill, that will be the new schedule.

Hon E.J. CHARLTON: I thank the member for that information. I carried this information with me for three months and I knew the details off by heart. It has taken so long for this Bill to be debated in this Chamber that I have forgotten the details. The details have not changed since the initial drafting. The member outlined the number of demerit points that will apply under this clause.

Hon NORM KELLY: I refer to how the penalties relate to the seriousness of the offence. I acknowledge a cut off point is required. I am concerned that a driver with a blood alcohol reading of 0.079 will be subject to a \$100 fine only. It appears that the scale of penalties is deficient. Perhaps it would be better to have a graduating scale for even the first offence.

Hon E.J. CHARLTON: The question of whether the fine is relevant to the infringement will always arise. We have tried to keep the seriousness of the infringement in perspective. If it was scaled upwards there would be a valid argument that it was out of kilter with other offences that carry a similar financial penalty.

It is considered that a blood alcohol level of up to 0.08 does not seriously impair a person's ability to drive. Beyond 0.08 it becomes serious and that is the reason the penalties for such an offence are more severe. The question could

be asked: Is a blood alcohol level of 0.079 worse than driving at more than 30 kilometres an hour in a 30 kmh speed zone or traversing a double white line? A lot of things could be taken into account.

The important thing about this Bill is that by having the penalties identified in units of \$50, it is simple to increase that penalty without amending the Act.

Hon NORM KELLY: There may be room for a graduated scale up to 0.08. The Minister referred to keeping it relative to other offences. I will raise that when we deal with clause 13.

Hon E.J. CHARLTON: The Office of Road Safety will continue to monitor these penalties on an ongoing basis.

Hon B.K. DONALDSON: I would like to understand the difference between an infringement notice and a court conviction. The amendment states that if a court convicts a person of a first offence he is liable to a fine of more than four penalty units. What is the procedure for both an infringement notice and a court procedure?

Hon E.J. CHARLTON: From the advice I have received an infringement notice for a speeding fine or a similar offence is payable by remittance, whereas a court order means a summons and a requirement to appear in court. The consequence of a court order is considered more serious and the preparation and court costs are the reason for the additional penalty.

Hon B.K. DONALDSON: If that is the case is there ambiguity in that clause? The Minister talks about an infringement notice and then "if a court convicts".

Hon E.J. CHARLTON: If a person receives an infringement notice he has two options. In this case he is fined \$100 for a first offence, but if he chooses to go to court and is found guilty it will be \$200.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 8: Section 64A amended -

Hon TOM STEPHENS: I appreciate the Minister's amendment on the Supplementary Notice Paper. It deals with the Opposition's concern which was raised in the second reading debate. I am pleased the Minister has taken that concern on board and has come forward with an amendment the Opposition supports.

Hon E.J. CHARLTON: On that basis, I move -

Page 6, line 11 - To insert after the word "person" the following paragraphs -

- (c) is subject to an order disqualifying the person from holding or obtaining a driver's licence imposed for an offence against section 63 or 67, or for a second or subsequent offence against section 64, committed after the commencement of the *Road Traffic Amendment Act 1997*;
- (d) does not hold a driver's licence because it has been cancelled under section 75(2a) or (2b) as a result of an order disqualifying the person from holding or obtaining a driver's licence imposed on the person upon being convicted of an offence committed after the commencement of the *Road Traffic Amendment Act 1997*;

Amendment put and passed.

Sitting suspended from 6.00 to 7.30 pm

Hon E.J. CHARLTON: I move -

Page 6, line 11 - To insert before the word "holds" the expression "(e)".

Page 6, line 11 - To insert after the word "or" the expression "(f)".

Page 6, line 24 - To insert after the figure "64" the words ", committed after the commencement of the *Road Traffic Amendment Act 1997*".

Amendments put and passed.

Clause, as amended, put and passed.

Clause 9 put and passed.

Clause 10: Section 88 repealed -

Hon NORM KELLY: Section 88 relates to advertising for passengers in private vehicles. I was just wondering whether the Minister has had any discussions with the taxi industry about the repeal of this section and, in particular, about possible abuses that may occur following its repeal.

Hon E.J. CHARLTON: The reason for this change is to enable car pooling to take place without contravening the current legislation. The issue regarding taxis is well covered within the Taxi Act, which does not allow this sort of thing to happen outside of the industry.

Hon TOM STEPHENS: My interest in this clause has been sparked by my colleague from the Australian Democrats. Was there any consultation with the taxi industry about the repeal of this section, which it appears was put in place in the early 1970s to protect the taxi industry, presumably with the support of the taxi industry?

Hon E.J. CHARLTON: Consultation has taken place with the Taxi Industry Board, which comprises representatives of the taxi industry and also the Department of Transport, the metropolitan division of which has responsibility for the coordination of the Taxi Act. The answer is yes. As I said earlier, the taxi industry will not be caught up in the crossover as a result of the change in this clause. This is to enable another operation to take place, which I think the community wants to see occur in an effort to reduce the number of private vehicles on our roads.

Hon NORM KELLY: In the absence from the Chamber of Hon Jim Scott at the moment, I indicate that the best form of car pooling is the use of public buses.

Clause put and passed.**Clauses 11 and 12 put and passed.****Clause 13: Other changes to penalties -**

Hon NORM KELLY: This clause relates to the doubling of penalties for various offences covered under the legislation. I draw attention to three, in particular, which give me some concern. As I read it, they do not relate to an increased risk of road trauma. The first relates to existing section 20(2) and the need to hand back licence plates if a cheque is dishonoured in payment for the licence. This penalty is doubled. In the second reading speech the Minister said that these increases in fines relate to reducing road trauma and providing a deterrent to serious offences. I fail to see how that relates to this offence.

Hon E.J. CHARLTON: That is not quite right. It is not directly related to road safety. The Road Traffic Act picks up a whole range of issues to do with the control of traffic, motor vehicles and drivers. Although it is a very low area of infringement by a number of people against whom action has been taken, there must be a penalty for those who do not comply with the requirements. The reason for the increase is simply to maintain a financial monetary reality with past penalties that have been in place since 1974; that is, 23 years. To make the penalty relevant to today's dollar valuation, the penalty has been increased. There must be a penalty for non-compliance with this part of the Act. Members will acknowledge that it is time for the penalty to be increased in line with the way in which the value of the dollar has increased in the past 23 years since this penalty was introduced.

Hon NORM KELLY: I have no doubt that this penalty should be included in the Act. However, the Minister made it clear that it is part of an overall increase across the board rather than directly aimed at road trauma. Section 86 relates to parking vehicles on land which is not a road unless authorised. On my reading it concerns the City of Perth parking facilities. Under the Act the first offence is \$20. This Bill provides that the new penalty will be \$250. That is more than a 1 000 per cent increase. Bearing in mind that the penalty for driving with a blood alcohol level of 0.079 per cent is \$100 it seems incongruous that a parking penalty will be \$250.

Hon E.J. CHARLTON: That is quite correct. It is a maximum penalty rather than a single figure. It is part of the Act. Infringement penalties under regulation will be lesser amounts depending on the severity of the infringement.

Hon NORM KELLY: Even so, the current maximum penalty is only \$40. It still represents a more than six-fold increase and is not relative to the other penalties in the Act.

Hon E.J. CHARLTON: The reason for the change is that the current maximum penalty would be less than the fine in the infringement. An infringement will always incur a lesser fine than the maximum penalty in the Act. It would be nonsensical to have an infringement of say \$50 compared with a maximum penalty of \$40 in the Act. Yes, it is a higher figure, but it is a maximum penalty obviously for a court to deal with. It is not simply for parking too long in a parking bay; that will be covered by infringement, which will be obviously far less than the maximum penalty.

Hon NORM KELLY: Section 89(2) relates to unauthorised use of vehicles. Again the Bill increases the penalty by more than 1 000 per cent. Under the Act a first offence incurs \$100, and subsequent offences \$200. Under the new

provisions a first offence will be \$1 000, a second offence will be \$2 000 and subsequent offences will be \$5 000. Given that "unauthorised use" does not really relate to high risk when it comes to motor vehicle accidents, although the way the car is then used can relate to that, I am concerned again about such a massive increase and the reality given the type of offenders who usually offend against this provision. An inability to pay \$5 000 can lead to incarceration and I wonder whether this is a good amendment.

Hon E.J. CHARLTON: This is one area which I consider to be a very relevant and important amendment to this Act. In this State a range of initiatives have been implemented to deal with car theft. In doing so something has been totally out of balance. In most cases the vehicles stolen are relatively new, sometimes worth as much as \$50 000, and in many instances when they are recovered they are found to be severely damaged. Although people are dealt with separately for their actions, it is important that a clear message be sent, backed up by a substantial penalty.

The Government would like to implement this. As I said earlier, the legislation is always under review in case changes are necessary. Nonetheless, a very clear message must be sent that people should not mess with other people's property, particularly motor vehicles. An object stolen from a house is not equal in value to a motor vehicle. As Hon Norm Kelly pointed out, in many cases a stolen vehicle ends up in a tragic accident for both the person who stole the vehicle and others on the road. It is time for a very clear message to be sent in this regard.

Hon NORM KELLY: I appreciate the Minister's comments. Nonetheless, the abuses following theft of a vehicle can be covered in other sections of the Act related to driving. Our system reflects the harsh way we penalise people for damaging and stealing property compared with penalties for crimes against the person.

Clause put and passed.

Title put and passed.

Bill reported with amendments.

[Leave granted to proceed through remaining stages.]

Bill proceeded through remaining stages without debate and transmitted to the Assembly.

SITTINGS OF THE HOUSE - EXTENDED AFTER 10.00 PM

Wednesday, 19 November

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [7.50 pm]: I move -

That the House continue to sit beyond 10.00 pm.

It is my intention that the House debate to conclusion Order of the Day No 12, Acts Amendment (Sexuality Discrimination) Bill, this evening. I give my assurance that it is not my intention to deal with any other business tonight, other than any messages that may come from the other place.

Question put and passed.

ACTS AMENDMENT (SEXUALITY DISCRIMINATION) BILL

Second Reading

Resumed from 17 September.

HON N.D. GRIFFITHS (East Metropolitan) [7.51 pm]: This Bill should be second read by this House because it deals with an area of fundamental injustice. It deals primarily with two areas of policy. Firstly, it deals with the proposition that sexuality should be a ground of discrimination under the Equal Opportunity Act. Secondly, it deals with Criminal Code treatment of sexual behaviour between males.

The important point behind the overall policy of the Bill is that homosexual people are people. They are entitled to be treated as people. They are entitled to be respected as persons and protected from unjust discrimination, rejection and violence.

The Australian Labor Party has no difficulty with agreeing with the proposition that sexuality should be a ground of discrimination under the Equal Opportunity Act. It is a cause we have advanced on a number of occasions through the recent history of Western Australia. The proposition of having sexuality as a ground of unlawful discrimination under the Equal Opportunity Act is not revolutionary; it is not something new.

At this stage it is appropriate that I make reference to the Equal Opportunity Act so that members and others interested can understand what we are getting at. The Equal Opportunity Act deals with the issue of discrimination

and makes it unlawful on a number of grounds. It deals with aspects of life which are fundamental and, in many cases, aspects of life which people enjoy and are entitled to enjoy as people without being discriminated against. Those aspects of life are so basic that if people did not have the capacity to exercise them without being subjected to discrimination, they would not be able to live good, proper lives. That is an aspect to which we in the Australian Labor Party object.

The Equal Opportunity Act provides mechanisms to deal with discrimination in two ways: Firstly, it provides for an educative process so that the community will behave better. I have always come to a point of view in respect of policy, and how we treat people, that if we treat a segment of the population badly we are failing as a society. The Equal Opportunity Act is designed to ensure that we treat each other well. It has within its scope an educative process which encourages the community as a whole to behave properly and better, so we can deal with each other in the way that we were brought up to deal with each other when we went to school. Where processes of education and conciliation do not work, the Act provides relief to people, whether by way of an award for damages - injunctive relief - or in some cases making null and void instruments, contracts and other arrangements which have an effect on how people conduct everyday affairs.

The Equal Opportunity Act in its terms in respect of the areas of discrimination deals with, among other things, employment and education, and matters of that kind, to which we are all entitled and which we should all have. It is proposed that sexuality be added as a ground of discrimination. This is not a new concept in Western Australia. It is not a new concept elsewhere in the world. It is a concept which has no fundamental difficulty, nor should it have any fundamental difficulty to any person of goodwill.

In Western Australia the proposition that sexuality should be a ground of discrimination has its origins in a number of sources. One of the primary sources is the actions of the Australian Labor Party, as a political party and also as a party in government. When Hon David Smith was a Minister and had responsibility for matters to do with equal opportunity, he made use of the Equal Opportunity Act, particularly his power under section 81. In using his power under that section he caused a process which led to a discussion paper being prepared; that is, discussion paper No 3 entitled "Discrimination on the Basis of Sexuality". The paper was prepared by the office of the Commissioner for Equal Opportunity, and was presented in 1994 to the Minister of the day. Subsequently, submissions were received from members of the public. A further document was produced, and the Minister of the day - at the time the Court Government was in power - made a decision that the issue would not be taken further. That was a very unfortunate decision on the part of the Minister and the Government that the Minister represented, because it has led to a continuation of unjust discrimination.

I note that the situation has a likelihood of persisting perhaps for another three years. However, in three years when the Australian Labor Party returns to the Treasury Bench it is our intention to enact our party policy to the effect that sexuality will be a ground of unlawful discrimination under the Equal Opportunity Act, because we believe in the fundamental principle that people should be treated properly. That is what the policy of this Bill seeks to achieve and, as such, we warmly welcome its objectives.

When the Commissioner for Equal Opportunity provided the discussion paper, a number of recommendations were set out dealing with a number of aspects of sexuality as a ground of unlawful discrimination. Dealing with the recommendations, the report, at page IV in the "Executive Summary" under recommendation 1, states -

The twentieth century has seen a remarkable extension not of human rights, but of the range of persons counted as fully human - women, Aborigines, the mentally and the physical impaired, and children. Within this context, the failure to recognise the rights of homosexuals is striking. Yet, in many senses the dispute is less about the desirability of proclaiming the rights of homosexuals and more a matter of collisions of interests. The assertion that homosexuals are entitled to human rights is not a claim for a new set of rights. Rather, it is to assert that homosexuals have the same rights as everyone else.

To use my own words, people are entitled to be treated properly irrespective of their sexuality, and that primarily is what this Bill seeks to achieve. The report sets out a number of recommendations which are broadly consistent with the policy of the Bill. The report is a useful document because it examines the situation in other jurisdictions. When considering what is being proposed for Western Australia, it is important to note what has taken place, and continues to take place, elsewhere in the world. I will refer to that part of the world which has a lot in common with Western Australia. I hate using the word liberal, but in this context I refer to liberal democracies - I do not make reference to members opposite. The report makes reference to a number of western democratic societies.

First, the United Kingdom has given the matter consideration but frankly has not advanced the matter at this stage. Undoubtedly, the Blair Government, having a similar philosophy to that of the Australian Labor Party, will move on the matter at the appropriate time according to the steps necessary in the UK.

Page 16 of the report makes reference to what takes place in the United States of America. Members who have any knowledge of the USA know it comprises many States and jurisdictions in which the laws vary. I quote -

Many States, counties and municipalities have enacted legislation which prohibits discrimination on the basis of homosexuality.

Reference is made to certain States - Minnesota, California, Connecticut, the District of Columbia, Hawaii, Massachusetts, New Jersey, Vermont and Wisconsin - as having Statutes prohibiting discrimination in employment on the basis of sexual orientation. The document then makes the following reference -

Perceived sexual orientation is protected in some States, where it is only necessary that the alleged discriminator believes that the complainant is heterosexual, homosexual or bisexual.

Canada has a lot in common with Australia. Members who have had anything to do with certain parts of Canada know that many aspects of that country have much in common with Western Australia regarding their demographic make up and economies. Canada is a jurisdiction we should always bear in mind when considering these matters. This reform is not revolutionary. Page 19 of the report makes some detailed reference to Canada; I quote -

Notwithstanding these developments at a national level, a number of provinces and territories specifically prohibit discrimination on the grounds of sexual orientation.

Reference is made to the Quebec Charter of Human Rights and Freedom preamble, which states -

. . . respect for the dignity for the human being and recognition of his rights and freedoms constitute the foundation of justice and peace.

I note in passing the use of the word "his", but it is a 1981 preamble and the world has moved on since that time. Reference is then made to the proposition -

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, color, sex, pregnancy, sexual orientation . . .

The list continues. Ontario has a different approach, but again it deals with the proposition that discrimination on the grounds of sexual orientation is prohibited. Page 20 of the document makes reference to a number of other Canadian provinces which have assented to anti-discrimination legislation similar in varying degrees to the approach adopted in Quebec and Ontario. They include the Yukon, Manitoba, Nova Scotia and British Columbia, a part of Canada with which WA has a great deal in common. Its society is very similar to Western Australia's. The New Democratic Party, a sibling party of the Australian Labor Party, was recently re-elected to Government in British Columbia. No doubt, the fact that the New Democratic Party held power in the 1970s and 1990s is significant to what has taken place in that province. British Columbia legislated discrimination reform under a New Democratic Party Government in 1992. The other Canadian provinces listed are Saskatchewan and New Brunswick, which similarly have laws on the basis I have outlined.

The report also makes reference to other jurisdictions with which we have a lot in common. The laws are not the same but they tend along the path outlined in this Bill to some extent in France, the Netherlands, Denmark, Finland, Norway and Sweden.

I wish to make reference to the position in other Australian States. It is important to understand that when we in Western Australia are advancing the proposition that we should treat our people properly, we are doing nothing new. We do something which is taking place in Australia as a whole. The bottom line is that Western Australia is part of Australia and, frankly, when people cross the borders of the Australian States, they should go from one friendly jurisdiction to another. They should not find themselves in the backwater, as we are in Western Australia at the moment in this policy area.

Establishing sexuality as the grounds for unlawful discrimination under the Equal Opportunity Act is not a threatening proposition. It has happened overseas and elsewhere in Australia. It is not novel. The language varies from State to State, but the point remains the same. Page 23 of the report makes reference to the New South Wales situation in "dealing with direct and indirect discrimination on the grounds of homosexuality being unlawful". The wording is different. The WA Bill refers to sexuality, but that aspect is defined. The observation is made in the report -

Discrimination occurs if the discriminator treats the aggrieved person less favourably than another person who the discriminator did not think was homosexual on the basis of the aggrieved person's sexuality or as a result of stereotyped assumptions about the characteristics of homosexuals.

That appears to be a proper provision as it prevents people from being treated badly. My philosophy is that one gets the best results from society if people are treated well, and bad results if people are treated badly.

The discussion of South Australia commences on page 27 of the document. I note that relevant legislation in South Australia prohibits direct and indirect discrimination on the ground of sexuality. I do not suppose it comes as any great surprise that Victoria had a Law Reform Commission report dealing with the matter, but the current regime in Victoria is not as friendly as it should be. A strong recommendation was made from the then operative Law Reform Commission in Victoria.

Hon Derrick Tomlinson: I apologise for coming in late. To which document are you referring?

Hon N.D. GRIFFITHS: I am referring to discussion paper No 3 of the Commissioner for Equal Opportunity. This is a source document which is readily available to members. It illustrates that what Western Australia is doing is not revolutionary; it has been looked at in other Australian jurisdictions. I do not know about other members, but I have not seen many parts of Australia; I want to see a lot more. However, I do not think Australia is being destroyed or ceases to be a decent place because of this sort of legislation. In fact, I believe it has been improved immeasurably by such legislation. Legislation that says people should be treated properly always improves the level of civilisation because good policy is to do with treating people well. If people are treated well, they tend to behave better and the world is happier. Happiness is pretty basic. Policy should be about promoting happiness rather than treating people badly and making people unhappy.

In 1991 the Queensland Parliament dealt with this issue. Page 31 of this document refers to the Queensland legislation going further than the position in South Australia or New South Wales in that it provides that it is unlawful to discriminate against a person on the basis of that person's association with, or relation to, a person identified on the basis of lawful sexual activity. The Queensland legislation sets out in detail areas that are appropriate when dealing with this aspect of discrimination. In the Australian Capital Territory similar legislation advances the proposition with which this Bill deals.

It may surprise some members to know that the Northern Territory also deals with this matter. I have not mentioned Tasmania in this context, but I will refer to Tasmania in another context with particular reference to the other primary area of policy of the Bill. I am happy to hand over the document to members who are concerned about how they will vote, or to anyone else. On page 36 the matter is summarised in these terms, bearing in mind the report is dated 1994 -

To date, in Australia discrimination on the ground of sexuality, albeit defined as homosexuality or lawful sexual activity, is unlawful in the Australian Capital Territory, New South Wales, South Australia, Queensland and the Northern Territory. Such discrimination is unlawful in many European countries, and in some American States and Canadian Provinces.

I refer members also to the discussion that commences on page 65 because we are not talking about an academic issue, but about a real issue that affects real people living their day to day lives. These words are used by the author of the report -

. . . it is apparent from the findings of the empirical studies, decisions of tribunals and courts, and the number of complaints lodged with agencies, that homosexuals experience discrimination in specified areas of public life.

It is about time Western Australia caught up with those jurisdictions with which it has so much in common and had sexuality as a ground of unlawful discrimination.

The second primary area of policy is to do with an aspect of this State's Criminal Code. The Criminal Code's treatment of sexual behaviour between males is out of step with the rest of Australia and is open to constitutional challenge. The policy of the Bill when enacted will rectify this. The Government has its head in the sand on the constitutional issue. Yesterday this Bill was Order of the Day No 13. Today it is Order of the Day No 12 because Order of the Day No 1 was finally disposed of late-ish yesterday evening. Members may recall that yesterday I asked a question of the Attorney General in question time. It was a simple question. Frankly, I thought it was one that deserved a considered answer. I regret that such an answer was not received. I referred to Order of the Day No 13 and asked whether the Attorney General was aware of legal opinion to the effect that section 322A of the Criminal Code, which deals with the age of consent for sexual behaviour between males, was open to challenge as to its constitutional validity. I asked also, if the answer was yes, what was the Attorney General doing about it? I made a note of the answer, which was in these terms: Order of the Day No 13 was not his.

I could have asked that question of Hon Helen Hodgson, but she is not the Attorney General. The Attorney General has responsibility for the operation of Western Australia's Criminal Code. His answer dodged the issue. I trust the Attorney General will give a fuller commentary on the issue later this evening. He smiles. I look forward to listening to him. Yesterday he dodged the issue in, dare I say it, a trite way.

Tasmania finally faced up to the issue as a result of matters pending in the High Court - matters in which I understand our Government involved itself. I look forward to a proper accounting for that waste of money. Tasmania has dealt with the issue; Western Australia has not. Irrespective of what we may think of the state of the law in Western Australia, whether the people of Western Australia agree with the policy of the Bill on this issue, it is dangerous for there to be a threat to the constitutional validity of part of our Criminal Code. I do not think it is necessary that I go through the argument; it is well known. There is commonwealth legislation, the Human Rights (Sexual Conduct) Act. People over 18 - I put this in broad terms - have a defence against criminal charges in respect of consensual sex.

All members in this House are aware of what section 109 of the Australian Constitution says. The Attorney General may not like the proposition, but he has a duty to act in relation to it. I very much regret that so far he has failed in his duty, but perhaps he will surprise us this evening.

In dealing with the issue of consent for sexual behaviour between males the Bill is not dealing with an issue which is novel in Australia. I make reference to a document headed "Age of Consent: The Nation". I have gone through the relevant legislation and I find that the document adequately summarises the position, so I make reference to it. I am not talking about anything other than consensual sexual activity. I will deal with the age of consent for, firstly, heterosexual activity and, secondly, homosexual activity: In New South Wales it is 16 years of age and 18 years of age; Victoria, 16 and 16; South Australia 17 and 17; the Northern Territory, 16 and 18; Tasmania 17 and 17, the Australian Capital Territory 16 and 16; Queensland 16 and 16; and Western Australia 16 and 21. The document also makes reference to New Zealand: 16 all. That sounds like a soccer match. No, it cannot be; the score is far too high! The document refers to Canada, 14 years and 14 years; and in the United Kingdom the age of consent is 16 years for heterosexuals and 18 years for homosexuals.

Hon Simon O'Brien: Are you saying that the age of consent should be 14? If not, why use that argument?

Hon N.D. GRIFFITHS: What a stupid interjection from a stupid interjector.

Hon Simon O'Brien: How does it support your argument?

Hon N.D. GRIFFITHS: The member opposite should not get excited. I made a very proper point; namely, that the policy of the Bill directs itself to a proposition which is not foreign to jurisdictions of a similar nature to Western Australia. There are those who have been described by others as homophobic and in their propaganda on issues of this kind they talk about behaviour which they want regulated which they say should be the subject of criminal sanction. The sorts of acts that are raised in the public mind are matters which are quite properly the subject of criminal sanction and will remain the subject of criminal sanction. In fact, during Labor's term in office and, subsequently, as a result of our efforts when some of these issues came before the Parliament in the last Parliament, the sanctions against what is properly designated as criminal behaviour in the area of sexuality were strengthened. Penalties were increased and the net was cast wider. There has been no weakening; there has been a strengthening of the laws with respect to protection, and the policy of this Bill will not alter that at all.

It is my duty to point out to some just what this Bill does not affect, because I would hate them to interject out of pure ignorance. If somebody wants to say something I am happy to listen to them. I am not inviting interjections, because as you know, Mr President, that would be disorderly and I am not disorderly - or not too often.

The area of policy which is sought to be changed is dealt with in chapter 31 of the Criminal Code, which deals with sexual offences. I will take the House briefly through matters dealt with in chapter 31 and point to the very necessary safeguards which the Australian Labor Party put in place and strengthened while in government. We strengthened them in opposition too. Members may recall the Attorney General trying to weaken some of these matters when they last came before the House. The Opposition would not have that. We tightened them up even further. We think that one of our primary duties is to protect those who are weak and those who are in need of protection. That is consistent with our approach that people should be treated properly.

Section 320 of the Criminal Code refers to sexual offences against children under 13. The penalty is 20 years for penetration; 20 years for procuring, inciting or encouraging a child to engage in sexual behaviour; 10 years for indecent dealing; 10 years for procuring, inciting or encouraging to do with indecent deals. Section 321 refers to sexual offences where a child is between 13 and 16 years. The penalty is 14 years where a child is under the care, supervision or authority of the offender, 20 years where the offender is under the age of 18 years, and where the child is not under the care and supervision of the offender the penalty is seven years. The Labor Government increased the penalties dramatically. Section 321A contains substantial penalties dealing with sexual relationships with children under the age of 16 years in other circumstances. Section 322 was last amended in 1992. We were in government in 1992. When we talk about real protection, this is real protection.

Section 322 relates to a child of or over the age of 16 years. If one sexually penetrates a child over the age of 16 years where that child is under a person's care, supervision or authority the offender is liable to imprisonment for 10

years and if one procures, incites or encourages a child to engage in sexual behaviour one is liable to imprisonment for 10 years. Section 322(7) deals with the age aspect appropriately. It is a defence to a charge under this section to prove the accused believed on reasonable grounds that the child was of or over the age of 18 years. We increased the age. I pass over section 322A, which is part of the policy of this Bill, which deals with consensual sex. It is a section which the policy of the Bill will cause to be rectified in an appropriate way.

These matters dealing with indecent assault, aggravated indecent assault, sexual penetration without consent, aggravated sexual penetration without consent, sexual coercion, aggravated sexual coercion, and all other matters dealing with the regulation of sexual misconduct that properly justifies a criminal sanction, will remain. Those who scaremonger and tell untruths frankly have no case whatsoever. It is about time -

Hon Peter Foss: What about incest?

Hon N.D. GRIFFITHS: Incest remains, as the Attorney General knows.

Hon Peter Foss: What about the problem with that?

Hon N.D. GRIFFITHS: The law remains. I suggest that the gentleman opposite, who has the obligation to properly be involved in the administration of our criminal law, should get a better understanding of what is said in the primary criminal Statute rather than tell me, when I ask a perfectly reasonable question, that Order of the Day 13 is not his.

In concluding my remarks, I make some observations about the political realities facing Western Australia and their relevance to this Bill. I regret that because of the numbers in the Legislative Assembly, this Bill will not advance without the agreement of the Government or, at the very least, significant support from the coalition Liberal-National Parties. There is no point whatsoever in grandstanding about it, and there is no point in symbolic gestures. In my view we should get on with the legislative process, pass the second reading of the Bill and take measures that will advance the cause of making good policy legislation as soon as that can be achieved. I conclude my remarks on that note.

HON GIZ WATSON (North Metropolitan) [8.33 pm]: As Australia's first "out" and openly declared lesbian parliamentarian, I believe I have a particular responsibility and a special contribution to make to this debate about anti-discrimination laws. The importance of my being visible as a lesbian has nothing to do with political posturing. Indeed, my preference would be to keep my private life private. However, being identified as a lesbian is important to break down fears and homophobia, and to challenge misinformation and negative stereotypes. Most importantly, my openness can give courage to others to become more open and have their home lives acknowledged by their friends and colleagues. Currently, a very high percentage of the gay and lesbian community feel they need to keep their sexuality a secret from colleagues and friends and, tragically, even from their families. Gay and lesbian people make up about 10 per cent of the population and are in all walks of life. It is a human tragedy that so many people dare not mention their partners in their workplaces. Their private lives cannot be recognised, and they are denied normal social solace if their partners fall ill or die, or if their relationships falter. They are forced to live in fear of their private lives becoming known, as many would be harassed or discriminated against or even lose their jobs.

That the law does not currently protect these people from this very real and extreme discrimination is an abomination in our times. The passage of this amending Bill would promote the healing of wounds kept open by fear. With the protection that this change in the law would provide, it would be safer for more gay and lesbian people to come out and, with our increasing visibility, the wider community would learn that we are regular people and that any fears about us are unfounded.

As parliamentarians, we have a responsibility to play a leadership role in the community. It is vital that we demonstrate enlightened attitudes that will lead to a more tolerant society - a society that will accept all members without fear and discrimination. Parliamentarians also have a responsibility not to vilify people and not to encourage others to do so. Therefore, I hope members will take care in the ensuing debate on this issue of the anti-discrimination laws.

Hon Helen Hodgson said in her speech that she does not believe she has heard any part of any other legislation condemned in stronger terms than the preamble and amendments to this Act. I agree with that statement. The preamble to the Act - commonly referred to as the Foss amendment - portrays this Parliament as a place of bigots. It is highly offensive to the gay and lesbian community, and also to the great majority of heterosexual Australians who believe that such a demonstration of homophobia is an anathema to a just and caring society. I look forward to the repeal of this offensive preamble, as it is totally inappropriate for a modern society, and only gives encouragement to those who wish to spread fear and hatred in our community.

The gay and lesbian community represents 10 per cent of the population. It is impossible to fully estimate the contribution the gay and lesbian community makes to the whole of society, but I believe it is considerable. Gay,

lesbian and bisexual people work in all fields of endeavour, and bring their special gifts to bear wherever they work. Some occupations appear to attract a higher percentage of gay and lesbian workers, particularly the arts, the entertainment industry, the hospitality industry, religious organisations and the political arena. The world would certainly be a vastly poorer place without their contribution over the ages. The gay and lesbian community is infinitely diverse and, despite an affinity to the areas I have just mentioned, certainly defies stereotypes. My gay and lesbian friends include teachers, vets, publishers, scientists, parents, insurance salesmen, lawyers, psychologists, carpenters, plumbers, social workers and pilots. That we should be denied full equal rights under the law is a shocking travesty of justice. I emphasise that we are not seeking special rights, only equal rights. I call on everyone in this House to support all aspects of the amendments in this Bill.

The main obstacle to this amendment Bill is to overcome the hoary old monster of homophobia. I shall spend a few minutes discussing this antediluvian phenomenon which continues to plague us, even in modern times. Many homophobes take refuge in the *Bible* to justify their views, and this is particularly sad as I believe the *Bible* should be a source of inspiration and it should not be used as a fuel for fear and loathing. The *Bible* was written in ancient times, and it carries with it a great deal of antiquated cultural baggage. It is a dangerous pursuit to be a biblical literalist.

Leviticus 18 says man should not lie with a man, as with a woman. This is the most commonly quoted reference used to justify homophobia. However, later words of wisdom from Leviticus 19 states categorically that no one shall work on 25 September. Today this dogma is universally ignored. There is no shortage of perilous admonishments in the pages of the *Bible*. Leviticus 20 states that children should be taken out of the city and stoned if they answer back to their parents. If that admonishment were adopted or enforced, I suspect it might have spelt the demise of many, if not all of us, in this place. Deuteronomy chapter 22, verse 11 specifically forbids the wearing of mixed fabrics. I mention this to my colleague Hon Christine Sharp, who is known to wear such garments. Deuteronomy also dictates that women should not wear men's clothes. Happily we seem to have overcome the limitations imposed by the fashion dictates of ancient times.

The *Bible* also makes frequent references to people suffering from possession by the devil or demons, a theory now wholly discredited by modern medicine. It is interesting that some people are able to cheerfully ditch large sections of the *Bible* as culturally irrelevant yet still feel compelled to cling passionately to Leviticus 18 as if their life depended upon it. This is at best irrational and at worst a deliberate distortion of the spirit of the *Bible* in order to maintain their own bigoted views.

More extreme homophobes fear that homosexuality is the work of the devil. I remind members of this House that only two generations ago, it was accepted practice in our schools to harass and discriminate against left handed children for exactly the same reason. It was believed that the devil worked through the left hand, and thousands of left handed children had their preferred writing hand tied behind their backs, or suffered other kinds of repression. What this did to their creative talents and self-esteem I dread to think, but I am thankful that this barbaric belief system has become a thing of the past. The parallels between fear of left handedness and homophobia are manifest: They are equally baseless, and cause unnecessary suffering to innocent people.

Myths and superstition play a major part in maintaining homophobia. One of the most damaging myths is the false linking of paedophilia and homosexuality. The bald fact is that over 90 per cent of paedophiles are heterosexual men, and the victims are mostly well known to the perpetrators and often related to them. I would like to lay to rest once and for all this appalling untrue homosexual-paedophile myth.

Another popular myth is that homosexuality may somehow be contagious like a flu, and a peculiar notion is put about that exposure to the idea of homosexuality can convert or recruit someone to become a lesbian or gay person. This fear is totally irrational, yet it is amazingly potent in stirring latent insecurities into fierce antipathy towards non-heterosexual people.

Another oft quoted fear is that the whole fabric of society would disintegrate if gay and lesbian people had equal rights. If the fabric of society were so fragile that it would so readily fall apart, we should have serious cause for alarm. I expect that the fabric might need some patches in places, but it is surely not that threadbare.

According to some unhappy and fearful people, family values would be threatened by granting gay and lesbian people the protection of the law. The values I treasure most in my family are love and acceptance, and I expect other members do too. I also reject outright the inference that my family, which includes my partner and her three children, is in any way innately disadvantaged by virtue of the fact that neither of us is male. The children, who are all hard working, intelligent, humorous and socially well adjusted teenagers, are ample testimony to the healthy functioning of our family.

I ask members to appraise this amendment Bill with open hearts and minds. Homophobia is based on fear and

ignorance and should have no place in the laws of our State. Homophobia is bereft of justification on any grounds - social, economic, scientific or humanitarian - and the gay, lesbian, bisexual and transgendered communities deserve members' full support to recognise their status as citizens, with full and equal rights. Without legal protection, prejudice, discrimination and violence against gays and lesbians will continue unabated. The consequences of this entrenched discrimination can be dire, particularly for young people. The persuasive rejection that they may experience can lead to severe depression and incidents of self-harm, including suicide.

While Australian research remains silent on the subject of homosexuality and suicide, American and Canadian studies indicate a significant link, particularly among young people. Young people grappling with same sex attractions face enormous isolation and stigma, resulting in damaged self-esteem, distancing from their families and peers, and an increasing sense of isolation.

An accredited Canadian study, to which Hon Helen Hodgson referred previously, which took a stratified random community sample of young men between the ages of 18 and 27, found that the gay young North American men in the sample accounted for 62.5 per cent of all men who reported ever having made suicide attempts. This is obviously a significant over representation because the gay men comprised only 13 per cent of the random sample. The study exposed the alarming fact that these young gay men were 13.5 times more at risk of a serious suicide attempt than their heterosexual counterparts. Another study conducted by the University of Minnesota identified young gay men as being seven times more likely to have attempted suicide than their heterosexual counterparts. These studies are important because they are random samples of men as opposed to previous studies which have looked only at young gay men. While no population data are presently available to definitely gauge the increased risk of suicidal behaviour among young gay men in Australia, it is horrifying to acknowledge that our laws and prejudiced attitudes can lead to so much self-harm and even death.

This Bill presents a package which, if enacted in its entirety, would bring the rights of the gay, lesbian, bisexual and transgendered communities into line with the remainder of the community. This is not a radical request but simply a fundamental enactment of equal rights for all citizens of this State. It includes amendments to the Criminal Code to bring the age of consent into line with the age of consent for heterosexuals. It calls for repeal of the insulting Foss amendments. It calls for equal protection under the law in the provision of goods and services and accommodation. It acknowledges New South Wales royal commissioner James Wood's edict that uniform consent laws would remove the opportunity for selective policing, extortion and corruption.

There is already talk of trading off "this against that". That this trading off process is so blithely bandied about underscores a deeply entrenched lack of respect towards gay and lesbian people. Why should we not have equal rights? There is no reason for us to be treated as second class citizens in any aspect of our lives. This lack of embarrassment on behalf of my heterosexual colleagues as they play fast and loose with my rights as a lesbian is remarkable. There seems to be a blind spot which makes it okay to unapologetically talk about granting some rights but not all rights. I suggest they try superimposing upon this debate the identity of race or religion and see how bizarre and incredibly insulting these proposed compromises appear.

The challenge before us now is to throw some light onto that blind spot and to look deeply at our own fears on the subject. I am confident that if the torch of truthfulness were applied to this debate, these fears would be dispelled. I look forward to members' full support for this amendment Bill so that we can move forward into a new millennium, having discarded the last vestiges of superstitious baggage surrounding sexuality.

Gay and lesbian people have suffered dreadful persecution over the ages. For example, after the liberation of Hitler's concentration camps, gays were left incarcerated for several months following the end of the war - victims of the ambivalent attitudes of the liberating Americans.

A recent psychiatric convention in the United States passed a motion confirming that homosexuality cannot be changed or influenced by aversion therapy. The Diagnostic Statistic Manual, Version 3 - the manual for the psychiatric profession - was amended as late as 1973 to remove homosexuality as a mental illness. Before that time, hundreds of gay men were given electric shock treatment in barbaric circumstances in an attempt to cure them. Coincidentally, 1973 was the year that a Western Australian joint parliamentary select committee with the powers of an honorary royal commission advocated gay law reform. As a result of that inquiry, the Tonkin Government introduced a gay law reform Bill into the upper House. That Bill was introduced by Grace Vaughan and successfully passed through the upper House. Unfortunately, its future was interrupted by a state election, and the incoming Premier, Charles Court, threw out this gay law reform Bill.

However, we should take heart from the many countries which have adopted a more enlightened approach - with no adverse consequences. Napoleon decriminalised homosexuality in France in 1791. This became part of the Napoleonic code, and by the early 1800s applied to all countries under the Napoleonic empire, including Spain, Portugal, Belgium, the Netherlands, Ecuador and Nicaragua.

In recent times, decriminalisation of homosexuality is becoming fairly universal, as a quick review of a few countries shows: West Germany decriminalised homosexuality in 1968. In the Commonwealth: Britain 1967, Canada 1968, Scotland and Northern Ireland early 1980s; Hong Kong 1987; New Zealand 1986; and Romania as recently as 1996. In Australia: Victoria 1980, South Australia 1975, New South Wales 1983, and Queensland 1990. Members will all be aware that Tasmania decriminalised homosexuality this year.

I send my heartfelt congratulations to Tasmanian gay rights activists, including Rodney Croombe, and the Tasmanian Greens for their recent success in achieving gay law reform in their State. The question which was put to the people of Tasmania was: "Do you want a society with a reputation for bigotry and intolerance and to be the laughing stock of the rest of the world, or do you want a society characterised by tolerance and acceptance of all its members?" Tasmania chose the latter, and for all our sakes, I sincerely hope that Western Australia will do likewise.

A measure of society's tolerance is how well we protect the rights of minority groups. Western Australia is the last State in Australia to change its discriminatory laws towards lesbian, gay and bisexual people and we should be ashamed about this.

The Western Australian political system's historical reluctance to embrace a modern humanitarian understanding of difference in sexuality exposes our political base as archaic and out of touch with contemporary reality. We risk ridicule and condemnation by the international community if we do not rapidly attend to gay law reform in this State.

I also draw members' attention to the fact that Australia is a signatory to the International Covenant on Civil and Political Rights, including the first optional protocol, which enables human rights complaints to be taken by an individual to the United Nations Human Rights Committee in Geneva. If we do not amend our state laws, we risk being in contravention of this treaty.

What the Bill can/cannot do: I mentioned earlier that many gay, lesbian and bisexual people are unable to disclose their sexuality even to their families. Others are rejected when they do. In either case, they are left bereft of family support, which can be emotionally devastating and often extremely damaging to their sense of self-worth.

Changing the laws will not instantly change negative, fear-based attitudes, but it can be a beacon, sending a signal that the dark ages of homophobia are coming to an end. This message: "That there is nothing wrong with gay, lesbian, bisexual and transgendered people" is extremely important to be declared openly, clearly and unreservedly to the whole community. The more unanimous the support received for this Bill, the stronger and more effective this message will be to overcome the undercurrents of fear and hatred which are, unfortunately, still rife. The Bill, if enacted in its entirety, will be a firm stepping stone to progress unprejudiced attitudes in our society towards people of all sexualities and lifestyles.

This amendment Bill, which is long overdue, will put an end to legal discrimination on the grounds of sexuality and will provide legal protection and equal rights for all citizens of Western Australia, regardless of their sexuality. In 1965, Martin Luther King said: "Judicial decrees may not change the heart but they can restrain the heartless". With these words in mind, it is clear that this amendment Bill is a very necessary and long overdue piece of legislation.

I commend the Bill to the House. I ask members to think long and hard on the issue. I particularly call on this Government to allow its members a conscience vote on this matter.

HON PETER FOSS (East Metropolitan - Attorney General) [8.55 pm]: This Bill has three aspects. First, it seeks to amend the Equal Opportunity Act to outlaw discrimination on the grounds of sexuality and transgender identity; second, it seeks to amend the Criminal Code to allow sodomy at the age of 16; and, third, it seeks to repeal the Law Reform (Decriminalization of Sodomy) Act 1979. The Government opposes each aspect of this Bill.

There is a small problem in that, in the case of transgender, the Bill seeks to deal with a matter that has already passed this House. At an early stage of this session we passed an amendment to the Equal Opportunity Act dealing with substantially the same issues as this Bill. I will raise that point in Committee. Although the Government supports amendments to the Equal Opportunity Act relating to people who have a transgender identity case, I have a difficulty because it has already been dealt with by this House.

I note that the Labor Party supports only the second reading of this Bill. That sounds slightly like political posturing in that members opposite have indicated that they will support the second reading but then do not want to have to make a decision with regard to it at some later stage. We have seen that tactic on the part of the Labor Party of late in this House. It is obvious that members opposite, like society, have varying views within their ranks as to whether they support what is proposed by the Bill. I do not for one moment criticise them for that, because it is clear that there are very strongly held views both ways in our society, and that is perfectly legitimate.

In those circumstances, when we are dealing with legislation such as this, it is often very difficult to meet the

requirements of all members of society. One of the things we try to do is to see whether we can arrive at some sort of resolution that tries to meet the wishes of those individuals.

I do not know who is suggesting compromises - certainly no-one on the government side; we oppose the Bill - and I am certainly not suggesting any. I have some knowledge of the events surrounding the passing of the decriminalisation of sodomy legislation as I had a major part to play. It was a time of considerable difficulty for me because of the stand I took. In its own way, that Act tried to meet each of the requirements expressed by the various elements of our society. I will deal with that later.

This is clearly not a matter for compromise because there are people who object to such legislation for quite genuine reasons. Classifying everyone as homophobic because they do not agree with this legislation is just as clearly characterising and intolerant as the activities of those whom Hon Giz Watson calls "homophobic". We must recognise in this society that it is perfectly proper for people to have views which are contrary to the member's and which regard what she is doing as immoral, improper or even disgusting. That does not mean they are homophobic - they simply have a different view.

Several members interjected.

Hon PETER FOSS: They can have it for religious reasons. This shows the problem we have in our society: One side believes itself to be totally right, as does the other. The nice thing about that is that the member can classify everyone else as homophobic if they disagree with her. It may very well be that they have strong religious principles that do not accord with the member's. It is not a matter of looking at Leviticus; I will read the views of the Most Reverend Archbishop Hickey. He does not rely on Leviticus but upon some far more basic moral principles that lead him to disapprove of what the member wants. If the member wants a tolerant society, she must be tolerant of people who have religious beliefs. I was somewhat upset during the course of Hon Giz Watson's speech about the way in which she spoke. It may not be gleaned from the written word but it certainly was noticeable from the tone of her voice that she seemed to think that people who are familiar with the *Bible* and have regard for it and the religion were in some way to be derided. They are valuable members of our society. One cannot dismiss them because one happens to disagree with their views.

Hon Giz Watson interjected.

Hon PETER FOSS: I am glad to hear that because I thought I detected in the member's voice a suggestion that it was ridiculous to be familiar with the *Bible* and that those people were in some way to be derided. I think those people and their views are to be respected. They may not agree with the views of Hon Giz Watson but they are valuable members of our society who cannot be disregarded simply by classifying them as homophobic. They have views which happen to disagree with the member's, but they hold them firmly for what they see as good reasons and what I support as good reasons.

I will deal first with the Criminal Code. We keep talking about the term "age of consent", which is certainly an easy, shorthand way of dealing with this area of the law. The important thing to realise about the law as it was previously is that it was not a question of age of consent or a matter of putting sodomy on a similar basis as vaginal sex: It was putting sodomy on a similar basis and in the same section of the Criminal Code as bestiality. Members may not see it that way but it is a way in which some sections of our society see it. In that context an age of consent means nothing at all. What was said by society and by this Parliament at that time in the preamble to the Act was that although the Parliament did not approve of that, there are areas in which one can express that disapproval. The point I made during the debate on that Act is that one can have virtually four degrees of dealing with a certain act. They apply to almost anything in society. One can approve of it, or approve and encourage it; one can be totally neutral to it, when one's attitude may be that "It does not affect me one way or the other and I do not believe we should have anything to say on it"; one can disapprove of it; or, finally, one can disapprove of it with criminal consequences. Which of those things one does is based on judgment and discrimination, believe it or not. The word "discrimination" means exactly what we do in this Parliament: We discriminate against behaviour every day. We decide whether we approve of it, are neutral about it, disapprove of it or believe it should be visited with criminal consequences. That is what being human beings is all about. We have this form of discrimination when we make decisions on a daily basis. It is not a matter of black and white; it is not a matter of approve or disapprove. Many grades exist from approval and hearty endorsement to disapproval with criminal consequences.

When the legislation went through the Parliament I saw large numbers of people. I was one of those brand new members of Parliament who tried at that stage, and I hope still to do this, to find out what society actually wants. People say, "Why does the Parliament not do what the people want it to do?" The problem is that all too often the people do not all agree on what they want us to do. They certainly did not agree on the question of sodomy. There were wide areas of disagreement. What appeared as a thread through the whole debate was that nobody really seemed to want to have people prosecuted for sodomy. They did not want it approved, but they certainly did not want

it visited with criminal consequences. Even those people who were very strongly against the amendment that I supported were at least of the view that they would not like to see people regularly prosecuted for breaches of the Criminal Code as it then was. Equally they were strongly of the view that they did not want to see this amendment as a first step in a significant change. Some members want to see it as a final step in a significant change but a large number of people in our society do not feel that way.

Hon Cheryl Davenport: How come the rest of Australia has done it?

Hon Giz Watson: I do not think the Attorney General is right.

Hon PETER FOSS: I am sorry about that. I think the member will find otherwise. What determines these things at any time is the political make-up of any Chamber, not what happens to be the views of our society.

[Interruption from the gallery.]

The PRESIDENT: Order! My job here is to keep order in this place. I say to members in the public gallery that all members of the Legislative Council welcome your attendance here to observe and listen to the debates. However, one of the rules in this place is that all you do is observe and listen. I ask you to respect that rule.

Hon PETER FOSS: Very large numbers of people oppose what is being proposed here and what was proposed before, which was the change from making sodomy totally illegal before the age of 21. I do not see it as a matter of equating heterosexual vaginal sex with homosexual anal sex. One of the important things that came out was that sodomy was illegal whether heterosexual or homosexual. It was not simply a question of whether someone was homosexual but whether the person was engaging in anal sex.

I would like to read a letter from the Most Reverend Archbishop Hickey so that members may appreciate that it is not just a matter of blind adherence to Leviticus but a matter of having moral views in which he sincerely believes. He wrote -

Dear Mr Foss

I wish to register my opposition to the Bill now before the WA Parliament's Upper House.

If passed, the Bill would -

- (a) legalise all homosexual acts, including sodomy, for all males 16 and over
- (b) refer to homosexual partners as "spouses"
- (c) facilitate the promotion of homosexuality in schools.

- (a) In my view the legitimisation of acts of sodomy for 16 year olds would be a most regrettable step. Boys of that age are still maturing, often insecure about their sexual orientation and open to exploitation by older males.

Given the public outcry about child abuse, it would be extraordinary for the Parliament to introduce a change to the law that would increase the likelihood of such abuse of children.

Hon Giz Watson: Have you taken on board the fact that 90 per cent of sexual assaults are heterosexual?

Hon PETER FOSS: I am reading Archbishop Hickey's letter.

Hon Giz Watson: I understand that.

Hon PETER FOSS: It continues -

- (b) Referring to homosexual partners as "spouses" will accelerate the acceptance of such unions as the equivalent of marriage between a man and a woman. This move would change radically the traditional understanding of sexuality and its links with love, procreation and marital stability.

It is wrong to discriminate unjustly against any person, but not all discrimination is unjust. Sometimes a change in favour of one group causes discrimination against another. For instance, allowing homosexual couples the right to adopt discriminates against the rights of children to have a father and a mother.

Any move to consider homosexual partners as "spouses" increases their eventual acceptance as a married couple.

- (c) Section 24 of the 1989 Law Reform (Decriminalization of Sodomy) Acts states:

"It shall be unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary education institution".

The repeal of this provision would enable courses in schools to present homosexual activity as acceptable. It would have profound effects on the understanding of sexuality, would lead to greater identity confusion and early experimentation, discourage any desire to seek help to overcome difficulties in this area, and facilitate involvement in groups that endorse homosexual activity.

It is the position of the Catholic Church that, whatever the origin of homosexual tendencies, homosexual acts are a misuse of sexuality because those acts are not open to the possibility of human procreation.

Homosexual people are therefore called to live a chaste life. They are to be respected as persons and protected from unjust discrimination, rejection and violence.

However, neither homosexual activity nor homosexual relationships can form the basis for any alleged rights and certainly not those rights belonging to marriage.

The Bill before the Upper House is dangerous and should be rejected.

I seek leave to table the paper.

Leave granted. [See paper No 1058.]

Hon PETER FOSS: Whether members agree with those views or not, I am sure they would all agree that the views are sincerely held by a large number of people who are followers of not only the Catholic Church but also other Christian denominations. Members will find those views also endorsed by other religions. We can disregard those views and say, "Those views do not accord with ours and therefore we should disregard them." We must recognise that this law affects in some people's lives a very important part of morality. Members may wish to disregard those people's morality, but they do so in a way which disregards their rights.

An important aspect of these questions is often to try to persuade people, if members wish to do so, that their ideas are right and not to legislate to change them.

Hon Giz Watson: Is it not a case of their rights?

Hon PETER FOSS: I will get on to that when I come to the Equal Opportunity Act, because it definitely affects their rights.

Hon Tom Stephens: He did not answer the question.

Hon PETER FOSS: I will deal with it when I get to the Equal Opportunity Act.

Hon Tom Stephens: He always says that.

The PRESIDENT: Order!

Hon PETER FOSS: They have their views and they are entitled to their views and to have their representatives in this Parliament represent those views and, if they believe appropriate, to embody them in their vote in this Parliament. They are entitled to do that without abuse.

The letter from Archbishop Hickey is moderate. It does not seek to abuse people; it seeks to put his point of view and to have that view represented in this Parliament. He is entitled to do that and that includes by people voting in favour of that view.

I regret that Hon Giz Watson chose to characterise people who oppose her point of view as homophobic. I find that difficult in view of what I went through when the original legislation went through this Parliament. The member may see that Act as being homophobic. As a new member coming into this Parliament and being given the terrible responsibility of a free vote, I thought it was appropriate to cease prosecuting people over the age of 21 for sodomy. I have that view and I took it up in this Parliament. I went through absolute hell. It is easy to fight one's opponents, but it is not easy to fight one's friends. I aged in that time. When I first came to this place Hon Bob Thomas stood and said he did not know whether he or I was the youngest member in this Chamber. After that Bill went through there was no doubt who was the younger because I aged about five to 10 years during the course of that Bill passing through this Chamber.

Hon Bob Thomas: I am getting younger.

Hon PETER FOSS: I do not think the member is. It was a time of great trauma and the amendments I moved were carefully cast to try to represent the views that were being expressed by society. I hope that that Bill, in one way or

another, has had an important effect on society. It recognised the views of the people who were opposed to the change. It has been a very important step in the acceptance of people who are homosexual. What has happened since then has, in some respects, resulted in some people's worst fears. The acceptance they foresaw has probably occurred. It is important to remember that as we take these steps in society we must recognise the views of those people. I do not see myself as homophobic. I regard people's sexuality as irrelevant in any judgment of them. I do not see that as something I should take into account when judging a person. For me that is not of any relevance. We must recognise that not everyone feels the same way as members opposite or me, but nonetheless their views must be respected.

Another group is concerned about this legislation and perhaps their views are not as tolerantly expressed as those of Archbishop Hickey. I refer to the views held by the Australian Family Association, with which Kim Beazley senior is associated. Their letter was not addressed to me, but to the Premier. Unfortunately, I am missing at least the last page of the letter. It makes some points that are worthy of listening to. It will help members understand why people have concerns about this Bill. I will not read it all and I will seek to table it. Interestingly, it attacks the Bill on gender reassignment, of which I have been a sponsor. It reads -

In March 1990 the Law Reform (Decriminalisation of Sodomy) Act 1989 came into force. It removed long established sections of the Criminal Code which prohibited sodomy (for both males and females) as well as other acts of gross indecency between males in private.

This ALP-sponsored legislation only passed the Legislative Council when two Liberals, the Hon Peter Foss and the Hon Margaret McAleer, crossed the floor to vote for it after negotiating amendments to it which retained the criminality of acts of sodomy or indecent dealing between men where one of them is under 21, as well as putting certain restrictions on the promotion and encouragement of homosexual behaviour. (The original bill had retained the criminality of homosexual acts involving males under 18.)

The homosexual lobby made it clear to their supporters then that this was only the first step in achieving an agenda which included legalising homosexual acts for all those aged 16 and over, anti-discrimination legislation, legal recognition of homosexual partnerships and the repeal of the "no promotion" restrictions under the Foss amendments.

In relation to the age of criminality for homosexual acts, it has been claimed that the Commonwealth's *Human Rights (Sexual Conduct) Act 1994* effectively decriminalises homosexual acts for males 18 and over.

I hope Hon Nick Griffiths is listening to this.

Hon N.D. Griffiths: Of course I am.

Hon PETER FOSS: To continue -

However, this has not been tested in the High Court and cannot be simply presumed as that Act only prohibits "arbitrary interference with the right to privacy" in matters of sexual conduct.

Hon Tom Stephens: I was not listening. Can you tell me the author of that advice?

Hon PETER FOSS: It is from the Australian Family Association and it is signed by the state president, Mr John Barich.

Hon Tom Stephens: It is a constitutional lawyer's viewpoint?

Hon PETER FOSS: He is making a correct statement. I am reading it because it happens to state the situation correctly.

Hon N.D. Griffiths: He agrees with you - is that the position?

Hon PETER FOSS: I agree with him. To continue -

It would be open to the Western Australian Government to establish that protecting males aged 18 to 20 from sodomy and indecent dealing by other males, was not arbitrary but well-founded public policy.

While I am dealing with that I should mention incest. The reason I raise that is it interferes with sexual relationships of people of any age. There is no limitation on age in incest, but there are different penalties depending on whether the person is over or under 16. Obviously there can be non-arbitrary interference in sexual relationships and incest is one of those.

Hon Tom Stephens: I do not see the point of the interjections you made during the comments of my colleague, nor the point you are trying to make now.

Hon PETER FOSS: It is a legal point. It says that it does not totally prohibit sexual relationships in private between consenting people, but it prohibits only arbitrary interference. It does that because it is also what the convention refers to. As members understand, the Federal Government does not have an unfettered right to legislate in this area. Its right is derived from the treaty power; therefore, it has to legislate in accordance with the treaty power. If it does not, the legislation would be invalid and section 109 would not come into operation.

I am sure Hon Giz Watson and Hon Helen Hodgson are not suggesting that we should repeal section 329 of the Criminal Code or that it is in breach of commonwealth law and therefore is struck down by section 109.

Hon Tom Stephens: You know we are not suggesting that.

Hon PETER FOSS: I know.

Hon N.D. Griffiths: It is nonsense.

The PRESIDENT: Order! The Leader of the Opposition will have the opportunity to speak, if that is his wish, when the Attorney General sits down.

Hon PETER FOSS: The point is that there is no way the Commonwealth would seek to do that because the convention deals with arbitrary interference. This is not arbitrary interference. The United Nations committee made it clear that the decision on how to implement it was a matter for local jurisdiction. So long as we take into account that we are not arbitrarily interfering, we make the decision. The decision made in this State is that 21 is the appropriate age. The reason is stated in the legislation and it is well understood that there is a difference in maturity between males and females. Strangely we had an extraordinary situation recently where, due to the slavishness of treating males and females identically, the marital age for males and females was set at 18. In other words, girls could previously marry at 16 and boys at 18. That was changed to make it 18 for both male and female. Not long ago we had a couple who thought they were married but found they were not. That was done through slavish adherence to doing everything at the same age. It is silly. We know that girls mature earlier than boys. It is a fact of life and is worthy of recognition. That maturity suddenly does not happen to people at the age of 18 years; it happens to them over a period in their lives. This is recognising the difference in maturity between males and females.

Hon Tom Stephens: That maturity is reached early in their lives.

Hon PETER FOSS: No. I believe it is probably reached later. Perhaps the Leader of the Opposition might like to read this document. So that I do not bore him by repeating what I said in 1989, I will merely refer him to the debates of that time. The letter continues -

The Court Government has refused to act on a recommendation from June Williams, the Equal Opportunity Commissioner, that anti-discrimination legislation for homosexuality be introduced.

Some experts, while acknowledging the role of predisposing developmental problems, attribute the fixing of homosexual identity to such early homosexual encounters with an older man. The later feeling that one was "homosexual" from an earlier age is really just a recollection of particular developmental problems (the sense of being 'different' than other boys, of lacking a strong sense of male identity from one's father) coloured by subsequent homosexual experiences.

It also states -

Hodgson seeks to add "sexuality" and "transgender identity" as new grounds for anti-discrimination complaints to the Equal Opportunity Act.

"Sexuality" is defined as "the quality of being self-identified as bisexual, heterosexual, homosexual or lesbian" . . .

Discrimination is prohibited if anyone is treated less favourably because of their (actual or presumed) sexuality or transgender identity or any characteristic imputed to such a sexuality or identity or any association with another person of such a sexuality or identity.

This prohibition applies to employment, education, goods and services, housing, associations, sport or superannuation.

The general exemptions in the Equal Opportunity Act apply so that religious bodies are exempt in certain areas (such as ordination of ministers) but it may be necessary to prove to the Equal Opportunity Tribunal that a discriminatory act "is necessary to avoid injury to the religious susceptibilities of adherents of that religion".

Of course, that relates only to those religious bodies, not those who happen to have those religious beliefs who are not officials of those religious bodies. It continues -

Unlike the Henderson Bill, this bill does not contain an exemption for adoption and reproductive technology so that it could result in homosexual couples demanding access on the same terms as partnerships lack the complementarity of the two sexes present in marriage, and so can never provide a child with two parents - a father and mother.

Deliberately creating "families" based on homosexual partnerships should be distinguished from situations like widowhood, desertion and single unplanned pregnancy where one parent is left with sole responsibility for the child.

It continues -

Hodgson seeks to amend the definition of "de facto spouse" in the Equal Opportunity Act to include a same sex partner as a "spouse".

This would create a significant precedent as no other legislation at either State or Commonwealth level includes such a definition.

Although it has been suggested that all we are doing is catching up with the rest of Australia, this Bill is significantly different in that respect. It continues -

Recent attempts to surreptitiously include such a definition in the Commonwealth's Child Care Rebate Act 1993 and WA's Local Government Act 1995 were successfully exposed and stopped. Once this definition was accepted it would be difficult to stop it functioning as a precedent, leading to broad legal recognition of homosexual partnerships as legally equivalent to de facto marriages.

The changed direction directly relates to the ground of "marital status" as a ground on which discrimination is prohibited. This would mean that the status of being a homosexual partner of another person [as distinct from being a homosexual] was also protected by the Equal Opportunity Act. This may operate to make homosexual couples eligible on equal terms with married and de facto couples to all services - government and private.

Comment: The State has an interest in and a duty to protect the status of marriage as the natural and best context for bearing and raising children. This has been extended in recent years to give increasing recognition to de facto marriages, precisely defined as "marriage-like" although not formally registered.

I seek leave to table the document.

Leave granted. [See paper No 1059.]

Hon PETER FOSS: That document raises a concern that homosexuality is increased by this. I think people find some aspects disturbing. I invite people to read Gore Vidal's autobiography *Palimpsest*. Those people who have concerns about certain aspects of aggressive homosexuality and recruitment to homosexuality should read that book. It is not a book by a person with any particular axe to grind. It is by a man who happens to be a homosexual. He is in a long term relationship with another man, with whom he does not have a sexual relationship. He deals with the question of how he became homosexual and his attitude to young men and homosexual relationships with them. People should read that book. For those who are not familiar with the area - I must confess to not being familiar with it myself - it was quite disturbing in some respects.

Another point that has been raised in support of this issue is suicide statistics. Those statistic are ambiguous. We could use the argument that has been raised either in favour of or against this legislation. It all depends on what we think is the cause of the suicide. The member has said that the cause of the suicide is the current legislation. It could be argued that the cause of the suicide is the situation in which people find themselves and should be discouraged by this legislation.

I was somewhat surprised when I was at an arts function and was attacked by two young lesbians who held me up as being the person who sabotaged the possibility of more tolerance in our legislation covering homosexuality. It surprised me because I was the person who stopped the Bill going through. I then received a letter from the Australian Council for Lesbian and Gay Rights written by Mr Brian Greig, the Western Australian delegate. Although it did not quite take the same view that these two people who attacked me did, I noticed that perhaps there was some support in it as to why people might regard me as being of that character. At page 2 of what is called "A Brief History of Gay Law Reform in Western Australia" there is a section headed "The Foss Amendments". It states -

Suddenly, days before the Bill was to be debated, Opposition MLC, Hon. Peter Foss, announced support for the Bill - but on the strict condition that the Government must accept amendments.

If Ms McAleer was considering supporting the . . . Bill in its original form, she was now in a political position where she had to support her Liberal Party colleague, and his amendments . . .

I want to make it quite clear that that was not the situation. Hon Margaret McAleer did not make up her mind until very shortly before the vote was taken. Interestingly enough, while we were standing on the other side of the Chamber from everybody else in our party, she told me that one reason she could support the Bill was the amendments I had moved. She did not necessarily have a great deal of faith that they would achieve what she hoped. I refer members to the *Hansard* of that time and what she said. Members will see that she states -

Hon David Wordsworth was not sure whether this was the fourth or fifth proposed Bill which he has contemplated, but I know in my case it is the fourth. I voted in favour of the first two Bills, and on the last occasion I did not, but I have never denied, and I have always upheld, that I believe sexual acts between consenting males in private should be decriminalised. On the last occasion this legislation was before the House I received many genuine, as well as orchestrated, representations, which expressed a great deal of fear - which has been expressed again this time - principally in respect of children, not simply that they would be taught in sexual education or other classes in such a manner that they would not see the seriousness of homosexual acts, but also that there might be a freedom among their teachers or in their environment which could corrupt them. A secondary matter which has come out of the representations I have received is the spread of AIDS. The third was that by leaving the law as it is, where it is not enforced, it stands - as Hon Derrick Tomlinson said - as a symbol of society's disapproval, and perhaps also, in a psychological way, as a deterrent.

On the last occasion I gave weight, as I do now, to the fears expressed by those people, but I have come to the conclusion that the amendments proposed by Hon Peter Foss do their very best to address those fears, which I believe are often based on a misunderstanding of the present situation. I am prepared to support the second reading of this Bill in order that the proposed amendments may be put in place. There may be a certain power of deterrence in this section of the Criminal Code as it stands. We do not know how many people would engage in homosexual activity if the Criminal Code did not exist in its present form. We do know that some people have chosen to live in other States because they do not wish to be branded as criminals in this State . . .

She made it quite clear to me that it was the presence of the amendments that I had proposed that allowed her to support the Bill. It was quite clear from what she said to me that she would not have supported it but for the amendments I made. At page 3 it incorrectly states that there is a clause which would make it a criminal offence to promote homosexuality, as follows -

It reads;

It shall be contrary to public policy to encourage or promote homosexual behaviour and the encouragement of homosexual behaviour shall not be capable of being a public purpose or promotion.

That does not create a criminal offence. I do not know how anyone could even suggest it does. As I made clear in my speech, the question of public policy has nothing to do with that. It is well-known in law what public purposes are about. It also reads at that page -

The addition of a clause that made it a criminal offence to '*teach homosexuality*' in schools. It reads;

It shall be unlawful to promote or encourage homosexual behaviour as part of the teaching in any primary or secondary educational institution.

Again, that does not create a criminal offence. At least some attempt was made to put an argument in that one by referring to a part of the Criminal Code that suggests that something prohibited by a Statute could cause a general misdemeanour. I do not think that applies to this issue. It certainly does not make it a criminal offence. At best it may be a misdemeanour, but I do not believe it is. It goes on, I think quite correctly, to say -

In October 1989, a campaign both for and against the Bill reached its peak. It was covered widely in the media and caused intense popular debate that divided the community.

Mr Foss became the target of a bitter and sustained attack from the far-right.

I think it went further than the far right; I came under bitter and sustained attack by almost everybody other than the far left.

Hon Derrick Tomlinson: Some of those, too.

Hon PETER FOSS: Yes. To continue -

He was identified by the anti-gay lobby as the one person responsible for facilitating law reform. He was also berated by Party colleagues who fiercely opposed even qualified reform.

That is a fair indication of the situation. To continue -

Mr Foss was also condemned by the gay community which took offence at the amendments and saw a great danger to civil rights in what he was proposing. It was also outraged that 21 was the amended consent age, and that sexually active gays under this age would face five years in jail for private consensual sex.

I am sure that some gay people took offence at that but a large number of people who approached me for reform were quite happy with the amendments. They would have preferred more, but their principal concern was that they should be free of criminal prosecution. They saw that for most of them that was a significant change. It also had the advantage that it enabled the legislation to go forward when it would not otherwise have gone forward.

The legislation embodied the views on both sides at the one time; that is, criminal prosecutions should not flow from sodomy in private and that people had concerns that by supporting it they might be seen to be approving of it as opposed to disapproving of it. Moral decisions are among the hardest but nonetheless most necessary decisions for us to make.

Hon Tom Stephens: This is not a decision on morals; it is a decision on law.

Hon Helen Hodgson: Human rights.

Hon PETER FOSS: Hon Tom Stephens and I must differ. I will stick with Archbishop Hickey, who thinks it is a moral issue. I think it is moral. It is possible for Hon Tom Stephens to characterise it as not being moral, but some people who are opposed to this Bill see it as such. For me, eating pork is not a moral issue but I accept that for people of the Jewish religion it is an important area of their religious law.

Hon Helen Hodgson: Does that mean you don't eat pork?

Hon PETER FOSS: No, but it means that I accept that they do not and I accept their reasons for that. I accept that for them it is a moral decision. I would not pass an anti-pork discrimination law so that everybody had to eat pork. That would be a ridiculous law to pass.

Hon Giz Watson: We are not asking everybody to be homosexual.

Hon PETER FOSS: However, members opposite are asking us to pass a law which will prevent people from discriminating on something that they regard as immoral. I am not asking everybody to eat pork, nor am I asking that everybody should cease to be homosexual. All I am saying is that for some people in our community it is a moral issue. This legislation does not deal with those people, nor, as I pointed out earlier, with some of the religious bodies in terms of that. It does not deal with people's religious beliefs. If it is a moral issue for those people, members should at least respect that.

I was about to say that moral decisions are the most difficult decisions for us to make in this Parliament, especially when our morality does not agree with that of other people. We cannot just apply our own morality and say that we do not know what is the problem.

A nice example is female genital mutilation!. Generally speaking, female genital mutilation is practised by Islamic people. Male genital mutilation - circumcision - was practised generally in our society for a while and is still practised by Jewish and Aboriginal people. If we examined our Criminal Code we would find them both illegal. However, why is there so much insistence upon us having a specific provision for female genital mutilation when we are not doing anything about male genital mutilation?

Hon Cheryl Davenport: We can; I am happy to.

Hon PETER FOSS: Interestingly, when the Labor Government tried to abolish Medicare benefits for male circumcision it had to recant on it. In our society we are sometimes a little hypocritical, depending on whose morality it is. It is easy to be cynical about Muslim morality; it is not quite so politically correct to be cynical about Aboriginal and Jewish morality. I notice that Hon Cheryl Davenport does not have any problem with eliminating male genital mutilation. I do not want to express a view either way, but to point out the difficulties in moral decisions when we do not share the morality of persons with whom we are dealing. I do not support any form of genital mutilation, although I have been genitally mutilated. I did not have much say in it at the time. I will not say what happened to my kids; that would be unfair.

Hon Tom Stephens: I am not sure of the relevance of that information to the debate.

Hon PETER FOSS: I am saying that moral decisions are difficult and if we disregard other people's morality we do so at the risk of riding roughshod over their important rights. I am asking members to appreciate that any decision they might make will impact on people for whom they are posing a severe moral dilemma. If we ride over their

objections we must appreciate that we are doing that. We cannot merely dismiss them as being homophobic; we must appreciate that they are people with views honestly held. They are moral people in our society and are usually good citizens and should not be lightly dismissed.

Hon N.D. Griffiths: You did that with the labour relations Bill.

Hon PETER FOSS: Hon Nick Griffiths can take that view.

Hon N.D. Griffiths: I do and I expressed it at the time.

Hon PETER FOSS: I refer now to the amendments to the Equal Opportunity Act. People do not want to be treated specially; they want to be treated equally. The Equal Opportunity Act does not work that way. It is a measure which positively overrides what would normally be considered to be an individual's rights. There are worthy and unworthy causes of discrimination. Until recently the word "discrimination" did not have a pejorative meaning. If one said, "He was a man of discrimination", one would not be considered to be speaking in the pejorative. It is recognised that one of the finer things in life is a capacity to discriminate. It is when the grounds are unacceptable to society that we forbid that discrimination. Discrimination in itself is not a social wrong; it is the foundation of being a human being. Where it becomes wrong is when we as a society believe that a particular discrimination should be discouraged because we want to encourage something else in our society.

Some of our most fundamental rights involve how we use property if we own it. I heard Hon Giz Watson say today how we should not take away people's rights in property without compensation because as a fundamental basis people who have property are entitled to exercise those rights. How often have we heard the term "freedom of association", certainly from our Labor colleagues? Whom we do and do not associate with is a basic freedom. Our rights to employ and to live with whom we choose are normally regarded as basic human rights. The fundamental role of our society in general is to protect and respect those rights.

However, quite rightly, occasions arise when a greater social benefit is achieved by interfering with those rights rather than protecting them and we therefore prevent people from making decisions on certain grounds. With the Equal Opportunity Act we not only make it a criminal offence when someone purposely discriminates, but also, if we engage in a course of conduct which has the effect of discriminating, that behaviour falls under the Act.

The recent Education Department policy on transfer of country teaching positions will have an effect on country schools because teachers were encouraged to go to the country by making it a surefire way to promotion. It was not intended to offend the Equal Opportunity Act but it was accepted, rightly or wrongly by all involved, that it discriminated against women because of their lesser mobility. It had nothing to do with intent, but arose as a result of a policy. Members should keep that in mind when we start dealing with these amendments, because it is not discrimination on grounds of homosexuality; it is discrimination on the grounds of sexuality. Hon Giz Watson mentioned that in some areas of employment, homosexual people tend to congregate. That could become illegal for employers. They would have to take action to ensure that their employment policy did not end in that result. It is not on the grounds of homosexuality; it is on the grounds of sexuality. If looking for equality, members should keep in mind that it will affect not only people who seek to gather together as heterosexuals but also people who happen to gather together as homosexuals. Members should keep in mind what they are proposing here. They may find there are some consequences to this which they do not intend.

Discrimination is fundamental to most of our decisions. If we want to employ someone, we want to employ an honest person. We do not say that that is an unlawful ground of discrimination. If we are advertising a labouring job, we may want to employ someone who has the strength to carry out the work. If we are looking for a surgeon, we certainly try to find one who has the necessary skills to carry out surgery. All the time we are discriminating on grounds which are perfectly legitimate. It is unfortunate that the term "discrimination" has become the pejorative simply because there are improper grounds of discrimination such as race, religion, gender, marital status and disability. Discrimination per se is not undesirable; discrimination on certain grounds is.

The problem with discrimination on the grounds of sexual preference is a difficult one. If it is made illegal, we must demonstrate that the result of limiting those civil rights is to promote a higher and better social outcome. If we were to ask a deeply religious person whether limiting his or her right to discriminate on who should enter the person's home as a lodger, or enter partnership with the person in his or her employ, the answer -

Hon J.A. Scott: We are not asking those people, we are asking the Minister.

Hon PETER FOSS: That is an interesting point. I asked those people. I thought Greens (WA) members always said that before we make legislation we should consult the public. I hope that the Greens did consult with some deeply religious people to see what their attitude was. If they were told that when they advertised for lodgers, from now on they would not only have to take in heterosexual lodgers but also homosexual lodgers, what would their attitude be?

Do members think that it might be offensive to those people? Members might think that what they seek to propose is better than that -

Hon J.A. Scott: You are the most pious person I have ever met.

Hon PETER FOSS: It is amazing how hypocritical the Greens can become when it suits them - having as their party method of progressing the notion that we should always consult the community; but when it does not suit them to consult, because people's views might not accord with theirs, they do not think it is necessary. Members should consult with both the people who support the legislation and those who do not.

Hon Giz Watson: I have spoken to people who are in the church.

Hon PETER FOSS: Good! Has the member spoken to Archbishop Hickey?

Hon Giz Watson: No.

Hon Ljiljana Ravlich: She has left that to you!

Hon PETER FOSS: The member knows that I consult both sides. Some people would find that this is overriding their basic rights in society. Whether we agree with them or not, it does not alter the fact that we are not merely giving equality; we are overriding a normal civil right for a particular purpose. The question is: Is it so important to our community that we not only tolerate, but do other things?

At the beginning of my contribution I referred to approval, neutrality, disapproval, and disapproval with criminal consequences. We have gone from having disapproval with criminal consequences to disapproval but without criminal consequences. Members opposite are seeking to go from there, past neutrality, to approval -

Hon Helen Hodgson: No; to neutrality.

Hon PETER FOSS: That shows how little Hon Helen Hodgson knows about what she is promoting. Any form of equal opportunity law is not just neutrality; it is a positive affirmation of what members seek to protect. Is the member neutral about eating pork? I am pretty neutral about eating pork. Therefore, why should we not put that in? Of course, it would be a ludicrous suggestion, because we are neutral about eating pork, but members are not neutral about this. They seek to impose this on people who have strong religious views against their views. Members say that those people's views are unacceptable and are not worth as much as theirs.

Hon Norm Kelly: Humbug!

Hon PETER FOSS: I can accept that members take that attitude, but I cannot accept that they do not believe they have it. If members are saying that they are not riding over people's rights, if they are saying that what they are doing is giving a positive encouragement, heaven help us! It is one thing to do what members seek to do, and do it advisedly and for good reason. It is another thing not to know what they are doing. Members appear to think that what they are doing is neutral. I do not know what else members might like to say about it, but it is not neutral.

Hon Christine Sharp: We are saying that those people are wrong!

Hon PETER FOSS: At least Hon Christine Sharp is being honest. She is saying those people are wrong, and that this is something we need to do. I have no quarrel with that, as long as the member knows what she is doing. I am concerned that Hon Helen Hodgson, Hon Giz Watson and Hon Jim Scott do not know what they are doing. They do not appreciate that they are taking a positive approval step. That is perfectly legitimate; we did it for race, gender, marital status and disability. I accept that. We propose doing it for gender dysphoria. I do not have a problem with any of that. At least I knew what we were doing. At least I knew that we were saying the positive encouragement of these things is more important than individual rights. Members can say that; they can support it and do it, but at least they should know what they are doing. It is plain from the interjections of Hon Helen Hodgson, Hon Giz Watson and Hon Jim Scott that they do not know what they are doing. It is a frightening state of affairs when the major proponents of the legislation do not even know what they are doing. One would think at least that these members would know what they are doing.

Hon Giz Watson: Yes: Representing the view of the majority of society, which you are not.

Hon PETER FOSS: That is an interesting point. I do not know how the member can claim to represent the majority of society. The letter I tabled outlined a survey which stated that people believed that the whole question of what homosexual people wanted and how they were getting coverage was excessive. The vast majority of people would certainly support the decriminalising of sodomy, and that has happened. They would certainly support the view that people should not be treated unequally.

Hon Ljiljana Ravlich: You do not know. You tell everybody else, but you do not know.

Hon PETER FOSS: I know no more than Hon Giz Watson in that respect.

The PRESIDENT: Order! The Attorney General will address the Chair.

Hon PETER FOSS: I have not suggested that the majority of society is in favour of what I said, or against it. All I say is that I at least know that the legislation does not seek to give neutrality, but a positive overriding of people's rights because people can see a merit in doing so. I can certainly accept that members can hold that view, propose it and support it; they can do so by all means. However, at least members should know what they are doing, and they should not say that it represents neutrality.

I have with me a bundle of letters, obviously written by a person other than those who signed them. They are identical and somebody has scribbled a name on the bottom. Firstly, the letter states -

Western Australia has the worst anti-gay laws in Australia and the highest age of consent for gay men in the world.

Some places in the world do not have an age of consent and if a person engages in the activity, that person is likely to find some part of the body lopped off, or to be killed. The letter is not very accurate. It continues -

Sexuality is the only ground of complaint not covered by the Equal Opportunity Act.

That is plainly wrong. All sorts of things could be, but are not, included in the Act. That is wrong. That is the sort of nonsense people circulate and ask people to sign. These statements are plainly incorrect.

Hon Norm Kelly: To which people do you refer?

Hon PETER FOSS: Whoever prepared this little document and multiplied it and misrepresented the situation significantly.

Hon Norm Kelly: It does not mean much if you are referring to somebody in the never never.

Hon PETER FOSS: I have no idea who has printed this document. If I knew, I might be able to name the person. I know plainly - I have not counted the copies - that somebody has been pushing this document around for signing. People have signed it obviously without a great deal of questioning. In terms of an expression of opinion, the letter is worth nothing. It is incorrect and people were asked to sign it. If it was anything like the letter's content, they would not have been told accuracies at the time.

These people do not understand what the Equal Opportunity Act is about, nor do the Greens and Hon Helen Hodgson. All three Greens members made it perfectly clear that they had no idea what the legislation is about, although that does not greatly surprise me.

Hon J.A. Scott: What waffle.

Hon PETER FOSS: When Hon Jim Scott runs out of any proper defence, he does two things: One, he abuses people. It shows how extremely clever the member is that all he can say by way of argument is "What waffle." Second, the member takes statistics and misrepresents them. We know how good the member is at doing that through the prime example with national parks. The member retreats to some form of strange behaviour when he loses the argument.

The point is simple: Before members vote on this Bill, they must recognise that they will be overriding basic and fundamental human rights for a purpose which is not neutrality, but positive affirmation. Members will override the views genuinely and firmly held by a number of people. Members should do so if they believe in it. At least Hon Christine Sharp is honest about that. Good. If the member wants to make that decision as a legislator, and feels that she has undertaken the appropriate consultation, I defend her right to do so. However, a member who does not know what he or she is doing, and does not recognise it, has not done the work necessary in order to support such legislation.

Hon Christine Sharp: Why not leave it to the conscience of your colleagues?

Hon PETER FOSS: Every member of the Liberal Party always has the right to a conscience vote.

Hon Ljiljana Ravlich: What a load of nonsense!

Several members interjected.

The PRESIDENT: Order! Members, let us not interject. I am listening to the Attorney General and members' interjections are confusing.

Hon PETER FOSS: I am sure you know, Mr President, that on any vote, whether on a matter that is minor, major,

moral or otherwise, every member of the Liberal Party has the right to a conscience vote. Members opposite scorn and sneer and judge others by their own standards. I have had nothing but a clear indication from party members that that is how it should be.

Hon Kim Chance: Absolute sophistry!

Hon PETER FOSS: The member says that, but -

Hon Kim Chance: It is, and you know it.

Hon PETER FOSS: I know it is not sophistry.

Hon Derrick Tomlinson: Why doesn't Hon Kim Chance have a conscience vote?

The PRESIDENT: Order!

Hon Cheryl Davenport: We do have a conscience vote on two issues.

The PRESIDENT: Order! I am trying to stop others from interjecting and Hon Cheryl Davenport is interjecting. The Attorney General has the floor.

Hon PETER FOSS: Being a person who regularly exercises his conscience vote, I can say with confidence that it exists. Members opposite have confused two areas. We have a wide canopy of capacity to deal with such matters. We have what is occasionally called a free vote; that is where the party has no view and it is left to the individual to make up his or her mind. That happened with the 1989 Bill. Second, we have a conscience vote. That means that a decision can be made on two bases: Where one believes in one's conscience that the measure cannot be supported, or where in the interests of one's electorate one cannot vote in support of a proposal. This latter option would have helped Hon Kim Chance recently; it would have been nice for the member to have that option in the ALP! In those circumstances, a Liberal Party member is free to announce in the party room that he or she will not follow the party line. Importantly, if one exercises that conscience vote, one is not thrown out at preselection; one is not in breach of party rules; and one is not at hazard. Although I exercised a conscience vote for the 1989 Bill, when I gained tremendous amounts of criticism - hate mail, members name it - I was re-endorsed by my party.

Hon Derrick Tomlinson: And was promoted on the ticket.

Hon PETER FOSS: The man who followed the party line did not. Life is not fair!

Most people would believe that a fair deal for people whose sexual preference is homosexual is important. I do not disagree with that. However, that does not mean that one changes the age at which sodomy can take place to anything under the current age. I do not believe that one should repeal the provisions in the decriminalisation of sodomy Act, nor take the positive move of bringing it into the Equal Opportunity Act. I now read the preamble to the Law Reform (Decriminalization of Sodomy) Act, which seemed to upset a lot of people -

WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

That would be supported by those promoting this Bill. It states also -

. . . the Parliament disapproves of sexual relations between persons of the same sex;

Parliament is entitled to say that. Many in our society agree with that. Tolerating something and approving of it are quite different. People may tolerate something or find it inconsequential, or they may disapprove of it. It states further -

. . . the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

A large proportion of society would agree with that provision. Many people are happy that people should get on with their private lives and do what they want to do, but they do not believe it should be so "in your face". The thing people find offensive are people who are "in your face" about their sexuality. I do not go around saying I am a heterosexual. It happens to be the case; I accept that as being me. People who are homosexual can accept themselves as being homosexual. It is not a matter of having to tell everybody about it; it is a matter of their accepting that is what they are. The Act states also -

. . . the Parliament does not by its action in removing any criminal penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;

That happened to be the view that was expressed at that time. It was a matter of expressing a tolerance by not making it criminal behaviour, but not wishing to be seen by doing so to be creating a change in community attitude. The Act states further -

. . . the Parliament disapproves of persons with care supervision or authority over young persons urging them to adopt homosexuality as a lifestyle and disapproves of instrumentalities of the State so doing:

That view was expressed by a large number of people.

Hon J.A. Scott: Do you believe in slavery as well?

Hon PETER FOSS: That is a very subtle remark by Hon Jim Scott. No, I do not. I do not think that comment has anything to do with this matter.

I have indicated the reasons the Government does not accept this Bill. We do not believe there is any justification for changing the age at which sodomy ceases to be illegal. In 1992 the Labor Government made even more comprehensive its discrimination between male and female sexual relationships. I would have been happy with what the State originally had, which was to place a 21 year age limit on sodomy. The State now has a much more intricate scheme of discrimination against people who engage in homosexual behaviour than existed previously. In 1992, without a great deal of thought or subtlety, a Labor Government made amendments to the Criminal Code that went beyond what was suggested by my amendments in 1989. I know why the Labor Government did that; however, it could have preserved the original situation better.

The second reason the Government does not support this legislation is that the preamble and the provision relating to proselytising is still valid today.

The third reason is that the Government does not consider that society at this stage should so support the area that it should override people's rights and make it a ground for illegal discrimination. That does not mean the Government does not believe there should be toleration of these matters. That has been indicated by the attitude it has taken here. The Government does not believe this Bill is appropriate. When we go into Committee - I believe we should go into Committee on this Bill - I will indicate why I believe some of the provisions are more unacceptable than others.

HON CHERYL DAVENPORT (South Metropolitan) [10.04 pm]: Sometimes I wonder about Hon Peter Foss. Sometimes I think he should have been an actor rather than a politician and a lawyer. I, too, was in this Chamber in 1989. Although Hon Peter Foss may have aged, my colleague Hon John Halden has probably aged as well because he was also the victim of nasty hate mail. However, he had the intestinal fortitude to take on an issue on which this State was far behind the rest of the country. Unfortunately, almost a decade later, this State is still demonstrating that it is not in even the twentieth century, let alone moving into the twenty-first century.

I will take up some of the issues Hon Peter Foss has talked about tonight. I will also raise other human rights issues I have read about and also the question of violence that can be experienced by lesbians and gay men. I take up first the question of the conscience vote. I note the debate Hon Peter Foss indulged in this evening. In 1989 Hon Peter Foss took almost 10 minutes of his speech to talk about a conscience vote. When he commenced his remarks this evening he was clear that the Government was taking a position that would see it oppose this Bill.

Hon Peter Foss: All my colleagues took that view, except one.

Hon CHERYL DAVENPORT: On page 4318 of *Hansard* of 14 November 1989 Hon Peter Foss is reported as saying -

It is an important part of the Liberal philosophy that members on this side of the House have the right to exercise their conscience.

He went on to say that the Labor Party did not have that right. I indicate to Hon Peter Foss that the Labor Party does have that right on two moral law reform issues - abortion law reform and euthanasia. However, as a member of the Australian Labor Party, I subscribe to the notion that our policy is developed within our party forums and it is open to the public and to the Press unless we choose not to open it; mostly that is not the case. We debate those issues and we accept the decisions of our conferences and pursue our policies accordingly.

Hon Simon O'Brien: Do you have a conscience vote on this issue?

Hon CHERYL DAVENPORT: No. Our party policy agrees with the position that is put forward in this legislation. We agreed with that position in 1989 and we continue to agree with it today.

I refer members to the reason Hon Peter Foss gave in deciding on 21 years as the age of consent. He said during his speech -

Regarding the 21 year age limit, we must recognise the fact that what happens in our lives is very much in response to what happens between the ages of 14 and 25. We might have predilections already set, but the way we respond to them is very much influenced by what happens during that time between the ages of 14 and 25.

I will give members an example of a young friend of mine. I know his mother very well and I know him as a young homosexual. He is now 26 years of age. That young man knew he was different at the age of 10. By the age of 13 he had identified that he was homosexual. He was able to confide in his mother about that fact. However, to this day he is unable to confide in his father. Hon Peter Foss has the notion that the difference between male and female maturity is in this case some seven years, if we take the age of consent for heterosexual relationships as 16. Homosexuals do not reach maturity in his eyes until they are 21. I find that rubbish. In my view, although boys might mature later, it is not seven years later, and in many cases they are as mature as girls of the same age.

In 1989, when the original Bill to decriminalise homosexuality was introduced into this State, 74 per cent of the Western Australian population believed that decriminalisation should occur. I suspect that percentage is now higher. At that stage, believe it or not, that poll showed that Western Australians' attitude to decriminalising homosexuality was ahead of the rest of Australia. It is interesting that while the rest of Australia has moved to agree on an age of consent that is not 16 years of age in all cases, but is 18 in some States, it is nothing like 21 as it is in Western Australia. The move to decriminalisation started in South Australia in 1975 and ended this year in Tasmania with an appeal to the High Court on a case which has resulted in the Tasmanian Parliament agreeing that the age of consent should be 18.

Western Australia is now totally out of step with the rest of the nation. I have had to ask myself why. My view is that we are all equal, so why is the age of consent different for people who have a different sexual preference? They should exercise their sexuality in the way they choose at the age of 18. I do not think they should be treated differently. In fact, by legislators not agreeing to that proposition we are setting up grave inequalities in this country on human rights issues. I will read into the record part of a speech made by Sir Ronald Wilson to a "Sexual Orientation and the Law" conference held at Murdoch University in August 1996. Sir Ronald states -

Human rights matter for everyone. Firstly, they matter because they are derived from the very nature of a human being. Secondly, they matter because the imperative to understand and to accept that human rights matter for everyone is strongly supported by international law.

Australia ratified the International Covenant on Civil and Political Rights as long ago as 1980 and, as Hon Giz Watson mentioned, the protocol was ratified in 1981. The Australian Government has moved in relation to sexual preference as a ground of unlawful discrimination. We have plenty of reasons for doing this, not the least being that we are denying a minority group within our community the ability to extend their full human rights. I do not agree with that. It is wrong and we should have the courage as legislators to ensure that injustice does not continue to exist.

I will refer to examples which relate to the headings in Hon Helen Hodgson's second reading speech, in particular to the section headed "work provisions". As Hon Giz Watson said, it is difficult for people in workplaces to come out. I pay tribute to Hon Giz Watson, who made a courageous decision when she was elected to this place by revealing her sexuality to us and to the wider community. I congratulate her wholeheartedly on that step. I do not think she will have any reason to regret what she did. It is a wonderful thing she has done.

I refer to another paper to the "Sexual Orientation and the Law" conference and to examples that are quoted in the paper presented by Christopher Kendall, who is a lecturer in law at Murdoch University. His paper was entitled "Homophobia as an Issue of Sex Discrimination" and refers to lesbian and gay equality and the systemic effects of forced invisibility. He provides some examples of the way gay people feel within the workplace. The paper states -

. . . the effort spent on concealment affects productivity and this, in turn affects their opportunities for promotion.

The paper then provides examples. The first statement is -

Being gay and hiding it adds innumerable to the stress of working in a firm. I spent all my time worrying about the impact if people found out. Every word I spoke, on the phone to clients, to other lawyers, to secretaries, I had to be concerned about what I said. I was constantly checking myself and my reactions. Time better spent on doing work is taken up with anxiety about being discovered as gay or lesbian.

That speaks volumes to all of us. The next statement is -

At some point, the weight of what you're doing catches up with you. What you do during the day is completely separate from your real life. You're not yourself and have to make an effort to fit in. Pretending you're straight is a lot of work. Put yourself in a situation where you won't allow yourself to respond naturally to anything. You must check everything. Your brain is constantly going - it's exhausting.

I wonder how many of us have had to think about what it might be like for gay or lesbian people who have to grapple with their conscience in the context of whether they come out or not within the workplace. Christopher Kendall states -

This process of self-censure can also affect the perception others have regarding your work performance, even if productivity levels are acceptable, indeed exemplary. By being denied the opportunity to express oneself as one would to those from whom you do not fear repercussion, one again risks being seen as someone who is not a team player - as someone who lacks collegiality:

The third statement is -

In workplaces where lesbians and gay men have not felt free to talk about our home lives, often we are perceived as withdrawn or secretive, not qualities readily selected as leadership material. Or we are perceived as not joining in the social life of the workplace. Then management can see us as not adequately identified with our jobs and may pass us over at promotion time.

The inability to be accepted as a normal person within society has many effects that people who are heterosexual and classed as "normal" cannot hope to understand.

I also wanted to talk about accessing goods, services and facilities. I was interested to hear the new prostitution policy discussed on talk back radio this morning. I hope that legislation will pass some time next year in this State. Although the Minister for Health, Kevin Prince, was talking about the health regulations that might be part of the law in the future, a caller asked whether the prostitution laws would affect both male and female prostitutes. He said yes, it was equal. If this legislation is not passed, it cannot possibly be equal because the age of consent for homosexual males is 21 years.

Hon Greg Smith: They will have to wait until they are 21 to be a prostitute.

Hon CHERYL DAVENPORT: It is not equal. It will not be equal unless this law reform is passed.

Hon Greg Smith: Why not make women wait until they are 21?

Hon CHERYL DAVENPORT: I hardly think that the male fraternity who are the owners of the major brothels in this State will agree with such a proposal.

Another issue in accessing services is accommodation. It is no secret that often when people live in homosexual or lesbian relationships, they are not necessarily able to be honest. It is high time that sort of discrimination ceased. If this legislation is passed, there is a good chance that it will not continue in the future.

I now refer to the whole question of law reform and the fact that this activity is no longer regarded as a criminal offence. Prior to 1989 there were few incidents of enforcement of the law. It was a mockery of the law at that time and, quite frankly, I have heard of no cases in this State in the past eight years of enforcement of the 21 year old age limit. I think this society is still thumbing its nose at the law.

I refer to another issue of law reform on which there is a conscience vote; that is, abortion. In this State between 8 000 and 10 000 abortions are performed annually. Technically that is an offence but our society thumbs its nose at the law. It denies women access to services and denies them choice. It is not dissimilar to the situation homosexual men face in relation to this legislation.

I now refer briefly to the issue of intolerance. By retaining the current law we are perpetuating a community of intolerance. I refer members to a paper produced by the Australian Institute of Criminology in 1993. It is about crimes of hate and it makes the point that crimes of hate are perpetuated against all minority groups in Australian society. We are all aware that it is practised against Aboriginal people, some minority ethnic communities and so on. I quote three examples of incidents of violence that are particularly bad -

In Sydney in 1991 a gay man was beaten to death by a group of young men, most of whom were still at school. Having decided to "beat up a fag" they found his phone number on a toilet wall in a park and deliberately encouraged him to come to the park, where they bashed him to death.

That is pretty horrendous, but these are the crimes of hate that will continue to occur if the law is not reformed and decent education is not provided to the community on these matters. A further incident reported in the paper was -

Three men who lived next door to a lesbian couple, subjected the women to a four month period of verbal and physical harassment. The harassment included threatening phone calls and graffiti attacks. The women felt nothing could be done to stop the harassment and did not seek assistance.

It is tragic that the women in that relationship felt they could not seek the protection of the law. The third report in the paper was -

In Adelaide in January 1993 attacks were made by gangs of men on two Adelaide nightclubs. Groups of

between 8 and 14 men entered the premises and began shouting "you're all f... poofters" among other abuse. They assaulted people at random and caused damage at both premises.

As a member of this Parliament and the community in general, I do not subscribe to the notion of intolerance and the issues associated with it. I am sorry that in our Australian community reports of this nature are made. In my view, as a Legislature, it is high time, eight years after the 1989 Act, for us to take the next step if we are committed to making sure that minority groups within our society are not subject to discrimination. I quote into the record some comments by Sir Ronald Wilson at a conference, under the heading "Why Human Rights Matter for Everyone" -

For many minorities in the Australian community it is a case of out of sight, out of mind. When you add to this the commonly expressed view in some conservative circles that all Australians should be treated equally (completely ignoring the truth that if people are unequal to begin with, no amount of equal treatment can overcome the disadvantage), then this simply emphasises the vulnerability at present in Australia of minorities to further discrimination.

From my point of view this Bill is definitely about discrimination and we should make sure the injustice is put right. I commend the Bill to the House.

HON JOHN HALDEN (South Metropolitan) [10.29 pm]: This State and this House have a dubious reputation on the question of whether they treat people in an equitable way. We know how long it took for women to be given a vote for members of the Legislative Council. We know how long it took for people who did not own land to be given the vote for representatives in this place. We know the history and attitude of both Houses of this Parliament in relation to children and Aboriginal people. We know the attitude towards homosexuals. I have had some role in this debate on previous occasions.

Hon Cheryl Davenport: A major role.

Hon JOHN HALDEN: I do not know that that was the case. I know from a discussion with Hon Robert Hetherington, who on many occasions tried to reform this State's laws on homosexuality, of his frustration at putting up Bill after Bill, only to have them defeated in this place.

I know of the aspirations that I had some time ago with regard to homosexual law reform and the compromises that I, in negotiation with the homosexual community, had to make with regard to what was the first advance in reforming the homosexual laws of this State. I accept that those advances had a significant toll on those people who are most directly affected. No-one in that community wanted to accept the age of 21 as the age of consent, and no-one wanted to accept the title of the Bill, which in my view was and still is an absolute outrage. However, in the pragmatics of politics, I was grateful for the support of Hon Margaret McAleer and Hon Peter Foss. I said repeatedly during the Committee stage that I did not agree with them but that I understood that if I did not support that legislation, there would be no reform. At the end of the day an advance was made, but it was a very small advance.

At the end of the day, all people in our community deserve the right to be treated equally. In the latter part of the twentieth century, people from various groups have been treated as fully "human". That right has been extended to women, Aborigines, the mentally and physically impaired, and children. However, we still grapple with the prospect of extending that right to people whose sexual preference is different from that which is described as the mainstream. I have never been able to come to grips with why we should do that. I have endeavoured to believe that we should deal with all people on the basis that they are different and have a right to be different. In the true liberal mould and model, people have the right to express and enjoy those differences, and so long as it is between themselves and it does not impact upon or exploit anyone else, there is no role for the State in that relationship. However, the so-called liberals on the other side have traditionally and forever, with some exceptions, decided that they have a role to play in people's lives, but not in everybody's life - not in the lives of "the family". I use inverted commas because with regard to the family, the most violent institution in our society today, for many years this Parliament has said that the sanctimony of that institution shall be preserved and shall not be intruded into by the State. However, those same people have the temerity to say that other adults, who do not impact upon anyone else in any non-consenting arrangement, cannot live their lives as they choose. That is a disgraceful history in our attitude to people.

It is now said that the State should intervene in the family if there are excesses and abuses; and rightly so. Why has the State had a tradition of involving itself in people's sexual preference when there is no abuse, no exploitation and no violence, and the arrangement is by consent? I ask the liberals in this place: What is the reason for the intervention? I understand liberal philosophy particularly well, because as life is advancing upon me I am becoming increasingly liberal -

Hon Ken Travers: Do not say that!

Hon JOHN HALDEN: It is true. As I look at members opposite, I believe increasingly that they are the

conservatives, they are the moral interventionists who in every respect decide that they have the right to determine what is acceptable, moral and right. As a Parliament, we will be as successful at that as we are at saying that murder is illegal: We will be totally unsuccessful. The concept of the moral intervention of the State in people's lives is antiquated, outdated and illogical, and we must end it as quickly as possible.

I was asked recently by people who were discussing this legislation with me whether I would want my daughters to be homosexual. I said to them, "I could not care less whether my daughters were homosexual. The only thing that would distress me if they were homosexual would be the fact that they would be outrageously discriminated against." My daughters' sexual preference is their business, not mine. I do not care what they choose to do in that area; and I do not want to be patronising of them, so I will not go into that.

I understand clearly what this Bill is about. It will outlaw practices which now discriminate against people because of their sexual preference with regard to the jobs which they can get, where they can live, the goods and services with which they can be provided, the sort of entertainment which they can enjoy, and how they choose to live their lives. How can members justify that under any circumstances? I do not care about my two daughters' sexual preferences. That is a decision that they will make in their lives. What I do not want to see continue is an institutional process which allows that type of discrimination to be acceptable, because it is not acceptable and it should never have been acceptable in this State.

We are still grappling in 1997 with whether it is acceptable that not all human beings are guaranteed equality under the law. If I asked members opposite whether that would be acceptable for their wives, for people from ethnic communities or backgrounds or for Aborigines, most of them - there are some exceptions, but we cannot always grapple with everyone - would tell me that it was unacceptable, and they would be right. Why do people make the extrapolation and say that that is acceptable for homosexuals or because of people's sexual preference? It makes no sense whatsoever.

I listened intently to the Attorney General's speech from my office this evening while I was writing my speech. He referred to issues of morality. The first fundamentally important issue in this matter is that we are not making homosexuality compulsory. Listening to the Attorney General, that is what one would think. We are saying that people have a right to choose - nothing more and nothing less. This argument and the abuses perpetrated because we do not have appropriate legislation are degraded by bringing into it the question of whether Jews should eat ham. What an insult, to both the Jewish and the homosexual communities. I fail to see how an intelligent man - someone who tells us every day of the week how intelligent he is - can bring up an argument like that and expect that people will not tell him he has performed like a buffoon and that the logic of his argument is nil.

If the Attorney General is a true liberal - I doubt that - we should wonder. I do not want to dwell on this for too long because I do not want to give it too much significance. However, the issue of Jews and ham is beyond the pale. How many people does it offend, how much abuse and what exploitation occurs because Jews do not eat ham? None. They do not inflict that on me and I am happy that they do not. They do not deny me the right to eat ham, nor should they. The relevance of the argument eludes me when considering the importance of this issue. I do not think any regard should be taken of the nonsensical claptrap we heard from the Attorney General.

To follow that line of argument: Why should we outlaw the practice of female genital mutilation? I go back to being a liberal. That practice inflicts harm upon people who have no rights whatsoever - children who make no decision in that process. It impacts on the rest of their lives and they are powerless in the process. That is why, as a liberal community, we say that we will not tolerate that process. As to the issue of circumcision, the Attorney General raises some reasonable points, but I will not go into that because there are arguments for both sides.

In all of that, the Attorney General's argument misses the point. This argument is not about those issues; this argument is not about respective moralities or religious views: It is about equality under the law. Whatever percentage of our society is homosexual - I have always worked on the assumption that it is 10 per cent - we have institutionalised the process of discrimination against them. We have done that, we continue to do it today and we will do it in the future. Why - because we do not want to be homosexual? I do not necessarily want to be Aboriginal either. They have had a pretty rough trot, but we have tried to stop racial discrimination. It continues, but at least we have said legally that it should not continue. However, we say to 10 per cent of our community, "No, discrimination shall be legal and it shall be institutionalised."

I am sure that members opposite do not believe that. Whatever their biases, views or religious beliefs, as is the case on this side, they know that at the end of the day we all share some fundamental beliefs. The paramount value we all share is that all people are created equal. There is no condition to that; there is no exception; there is no if, but or maybe - all people are created equal. I am not a particularly religious person, but I come from a religious background and I think about what I was taught as a child. In the eyes of God, all people are created equal. However one perceives God, it is my belief to this day that of the things I was taught in my upbringing as a Christian that is

paramount. These people may not be created equal in terms of the law of Western Australia, but I hope they will be very shortly.

The institutionalised process of bias and bigotry against homosexuals in our society cannot be tolerated any longer. We have seen the impact of bias, bigotry and the "parental" attitudes that we have adopted towards other groups in our society. I need not go any further and I do not want an argument, but at the end of the day we need simply to look at reports of the lost generation to realise that the impact of the State on people can be enormous.

Hon B.M. Scott: They do not know their parents.

Hon JOHN HALDEN: That is an interesting point and I intend to deal with it.

The State can do enormously destructive, damaging things to children. I know that, having worked in the Department of Community Services and having been involved in that process. I regret some of the things that I did in a professional sense and under the law of this State. Of course, at the time I believed them to be right. Subsequently, with experience, knowledge and so on, one weighs up those actions and realises the damage one has done.

We have a golden opportunity to correct some of the excesses, to put the record straight and to align ourselves with the rest of the nation and with public opinion. I heard the Attorney General's comments about this. Public opinion in this matter is significant and it is about equality. Although I sometimes worry about the vagaries of public opinion, in this matter there has been a long record of public agreement that the excesses that we have legalised in this State should no longer occur.

The issue of morality or religious belief should be dealt with. I have said previously that I take the liberal perspective of morality; that is, that we should not interfere in people's lives unless their behaviour impacts on others or involves exploitation, abuse or violence. With those conditions, people should be able to live their lives.

I have never opposed Catholic or Anglican Church views on these matters. The last time I had a role in this debate, they were particularly supportive. The Bill would not have been passed had the Catholic Archbishop at the time not been particularly reasonable in his comments. I do not mind those people having their views - nor should anyone else. If they do not want to believe in homosexuality, the right to access to abortion or whatever, they are entitled to have those views and beliefs and to act them out in their lives. However, they are not entitled, be they Catholic, Anglican, Protestant, Muslim or whatever, to force those views upon the rest of the community.

There are some undeniable facts: Our community will always be diverse and it will always have differing views, practices, attitudes and preferences. The day we attempt to stifle them in a legalised, institutionalised way, we will have a very sick society. We have attempted to do that for a long time and it has resulted in particularly outrageous abuse of citizens. That should be seriously, vigorously and constructively discouraged at every opportunity. We now have the opportunity to do that.

I do not doubt that as a result of tonight's activities this Bill will pass this House. That is not the issue. The issue is that the Government of the day has an unbridled responsibility to accept the primacy of one value; that is, that all people are created equal and should enjoy equality under the law in all respects.

I want to touch on the issue of young people who may have a proclivity, as it were, towards being homosexual. What a horrendous burden we place upon those young people in our community. We have the lunacy of some who would suggest that it is an issue of preference, that they are malleable and could with due care, education, drug therapy and aversion therapy end up being heterosexual. That is nonsense. That is the absolute nonsense we heard earlier this evening and which some years ago I heard from many people who were then in Opposition. People's sexual preference is their preference whatever it happens to be. It will not be modified by a whole range of exercises, because it is innate; it is what we are born with and our experience. The fact that I guess in some respects I always like to fight for the underdog and I probably always enjoy the fight is probably innate and in my nature. I do not suggest that those opposite will ever take that away from me. Nor should people's sexual preference be treated on the same line. It is not an issue that can be modified by any one of the examples I gave, in my view. Significant research supports the fact that my view might be appropriate.

What does it do to young people to have to come to grips with their sexual preference when it is not in the mainstream? What is it like to be different, to be the one in 10 or probably the one in a hundred who actually own up to it or to be one of the rest who grapple with having to come to grips with that issue? What is it like to be different and to fear the discrimination that they will face in their job prospects, their accommodation and their familiar surroundings in a whole range of issues? What is it like to have one's worth or self-perception questioned in the way we have traditionally questioned theirs in this State? What is it like for those people? I cannot tell members. All I can say is that it probably feels like hell; it probably is hell. At the end of the day it is probably not surprising that so many of them resort to suicide, because where there is no hope suicide becomes a viable option.

That is what we have done to people in our community. None of us can ever be specifically aware of the exact number. The negative impact that we as a community have inflicted on people as a result of our laws and legislative process and institutionalised discrimination is beyond the pale and indescribable.

No members would accept it for themselves, for their children, for their extended families or for the general community, but some members will accept it for homosexuals. When the vote comes in this matter, particularly at the second reading stage, I hope to see many of my colleagues, all of us who are liberals, on the same side of the House. Regardless of our bondage to party processes, we liberals will be on one side and the conservative bigots will be on the other. It is nothing but bigotry to allow this regime to continue. I have my views about some members. I do not mind where they line up on this question. However, at the end of the day I do not want to hear some of the sanctimonious claptrap about how those members are liberals. They should identify themselves for what they are. They will be bigots and conservatives and rightly be identified for it.

I do not want to be out of order, Mr President, but I have a view on the future passage of this Bill in this House which may not necessarily be the view of those people in the gallery or those people around me. However, I expressed the view outside this place yesterday and before yesterday. I understand the great necessity for this reform, but there is a need for this Bill, because of its very essence, to be discussed in the community and for there to be a process of community involvement and consultation and an opportunity for some of the outrageous propositions that have been put forward to be debunked. That will not happen here tonight. The Parliament offers an opportunity for that to happen through some of its other processes. We need to win on every front for this Bill to be successful, not here but down there. I can tell members the rule in the other House. I think it is 32 to 19.

Hon B.K. Donaldson: It is 36 to 19.

Hon JOHN HALDEN: That exemplifies my point further.

At the end of the day the only way this Bill will pass that place is when government members are convinced that their arguments have been debunked. They are arguments of bigots, discriminators and people who will use any option to maintain the status quo. I concede that that means, for those who have waited patiently, that they must wait longer. The option is that it will be passed in this place tonight and, as a political pragmatist and strategist from time to time, I suggest it will get to the other place fairly quickly, but the Government will knock it off and start the sham of going through it not for the fifth or sixth time, but the seventh or eighth time. The only people who will lose from that process are the people directly affected.

This discrimination should not continue for one day longer than it has. The people it concerns will have to tolerate it because it is discrimination that must be overcome at the highest level in this State. Cabinet must decide that there will be a free vote and a mindset change and this outrageous discrimination will end the day this Bill is received in the other place.

Those people affected by the legislation should not have to wait and tolerate this abuse. It is an outrage that should not be tolerated by anybody in this community. However, they will tolerate it because of the bigotry of this Government. I will be blunt: Until members opposite decide everyone will be created equal under the law, this legislation will not be passed and the abuse will continue. The only way it will change is when the myths, the misinformation and the lies that are perpetrated in our community about homosexuals are dispersed and discounted as scurrilous, baseless and without foundation. People in the gallery will suffer under that regime. They will wait longer and they should not.

Whether people see sense in this or believe me is their collective decision, but at the end of the day I know what will happen to this Bill if it reaches the other place quickly. It will become interesting reading in history, but will have no impact on history whatsoever.

The opportunity must be given to one-tenth of our society to enjoy equality under the law, but that opportunity, like so many other opportunities provided to people, will take time. In the United States civil rights took many years; equal opportunity in this nation took many years and recognition of Aboriginal rights to land and other rights took two centuries. The inevitability is obvious. It is close and it requires the opportunity for one final advance to dispense with the nonsense, the lies and the hypocrisy of elements of our community.

I have been a little longer than the 10 or 15 minutes I said I would be, but this is an issue of importance to me for a range of reasons. The last time this legislation was debated I accepted an enormous compromise to get a small incremental change. There is a need for considerably more change and revisionist thinking by the Government and the community. They must open their minds and, I guess, their hearts to the life of at least 10 per cent of the community.

It is time for the Parliament to lead the way in that process. I hope that every member in this place will support

liberalism and equality under the law and I hope to see all members on the same side of the House when a division is called on this Bill.

HON CHRISTINE SHARP (South West) [11.06 pm]: I support this Bill. My remarks will be short and simple because, unlike a lot of my colleagues in this Chamber, I have very little association with the great human rights issues contained within this Bill. I do not have a lot of experience of the previous debates that have occurred in this place and this issue is not as critical to me as it is to my colleague on my right. However, I feel great support for this issue.

Having little knowledge of the issues debated in previous Bills, with some curiosity I found myself turning to the pages of the proposed legislation to answer the questions: What is all the fuss about? Why are people taking such a great stand to prevent the passage of legislation, which seems to be fair and just?

I have found myself listening to the debate tonight and reading the Bill. The Bill refers to amending the general sections of the Equal Opportunity Act and looks at the various grounds on which discrimination occurs in Western Australia. It says some basic and simple things; for example, that people should not be treated less favourably on the grounds of their sexuality and that people should be allowed to get on with their employment regardless of their sexual preference.

If a person commissions a lawyer or an agent to do some work for them or one is a lawyer or an agent, that work should be undertaken without discrimination. If a person gets a contractor to do a job for them that person should be able to get on with the task and their sexuality should be irrelevant. It should be similar for partnerships.

The Bill goes on to professional groups, trade unions and so on. It says that people should be able to become a member of a professional or trade association or take up the service of an employment agency, regardless of their sexual preference. Another important area is education. Students in our schools should not be discriminated against on the ground of their sexual preference. These are simple, basic areas of activity within our society. As I read through this document, I am waiting to find something extraordinary in it that is causing this moral outrage that I heard earlier from the Attorney General. Perhaps there is something in it that I have not understood. I do not appreciate the fact that the Attorney General is not in this Chamber right now paying us the courtesy of listening to the concerns of those on this side of the House. Perhaps he could put me right if I am not seeing something in this legislation that he has seen. It says that people should be allowed to get on a bus without discrimination, even if they are gay or lesbian; that they should be allowed to go to a restaurant or any other place of entertainment of their choice or to book into a hotel or rent a room without discrimination. It goes on to suggest that they should be able to join a club, a ratepayers' association, or an automobile association.

Hon Giz Watson: Radical stuff!

Hon CHRISTINE SHARP: That is right. The Bill would make it illegal to refuse a game of tennis to people on the ground of their sexual preference or to prevent people from being members of a football club because they are not one of the boys - or they are one of the boys! People should not be discriminated against in the transfer of land. They should not be harassed because of their sexual preference, by requiring them to fill in extra paperwork. Gays and lesbians should have equal rights to superannuation. This document talks about insurance policies and so forth.

Then we come to the fact that this Bill suggests that homosexual members of our society should be allowed to have legal responsibility for children through adoption. Some of my friends who are gay and lesbian people have children under their care. In my experience they are very loving and supportive family relationships.

Hon B.M. Scott: Are the children adopted?

Hon CHRISTINE SHARP: Yes. The second reading speech goes on to refer to the age of consent. It is extraordinary that we cannot get real about the fact that this is not only a human right, but also what goes down anyway. We are just burying our heads in the sand if we assume that male homosexuals in a perfectly normal way will not want to engage in sexual activity until the age of 21. That is ridiculous and unrealistic.

When I read through all of this, I find it is quite simply about preventing horrendous intolerance. I ask members on the government side this question: What is wrong in this legislation? We see a long list to protect basic human rights from gross discrimination. It is absurd and grossly unjust to withhold from lesbian and gay people protection from such discrimination which I consider - many others have commented on it tonight at length - to be based on misinformation, ignorance and fear.

I want to say to the Attorney General what I have already said by way of interjection: If the Attorney General is right that the majority does not want to move against discrimination in this way, if he thinks that represents the majority view, I commend to him that he allow a conscience vote among those on the government benches.

Hon Derrick Tomlinson: For the whole House?

Hon CHRISTINE SHARP: Absolutely. Why are those on the government side so dogmatically opposed to what seems to me to be an extraordinary list of very basic, very simple protections which form such a horrendous attack on basic human rights to which homosexual members of our society must submit at the moment? I will be supporting this Bill tonight.

HON J.A. COWDELL (South West) [11.16 pm]: I support the second reading of this Bill. The long title of the legislation is a Bill for an Act to amend the Equal Opportunity Act 1984, The Criminal Code and the Law Reform (Decriminalisation of Sodomy) Act 1989. I am supporting this legislation because of those three parts of it. Firstly, this Bill provides some protection where there is none at the moment for victims of unfair discrimination. Secondly, it provides some equality where there is no equality at the moment in the Criminal Code. Thirdly, in respect of the 1989 legislation, this Bill provides some compassion where currently there is prejudice and incitement.

This Bill is consistent with the policy objectives of the Australian Labor Party. As members will know, the Labor Party introduced the 1984 Equal Opportunity Act and got it passed through the Parliament. The Labor Party has further supported in the legislation prepared by Hon Yvonne Henderson amendments along these lines to the Equal Opportunity Act. The Labor Party has striven to achieve a uniform age of consent. It has been part of our state platform for 10 or so years that there be a uniform age of consent set at 16 years.

We introduced legislation when we were in power with an age of consent for males in homosexual relationships of 18 years. We did so in the hope of getting that legislation through this Chamber, realising that a uniform age of consent of 16 years would not get through. Unfortunately this Chamber amended that legislation and took the age to 21 years. Nevertheless it remains the policy of the Labor Party that there be a uniform age of consent set at 16 years. We also moved to change the penalties and end the barbaric penalties that were in the Criminal Code of whippings and 14 year sentences with hard labour.

The Labor Government's progression of reforms, and amending legislation in opposition, recognises its commitment to the removal of penalties that apply to people between the ages of 16 and 21. Our reasons for supporting the legislation include the need for protection where there is no protection for victims of unfair discrimination in this regard; and equality where there is inequality in this discrimination on the basis of age and the defence that can be provided in the case of criminal charges. More particularly, we want to see compassion in place of the prejudice and incitement that is predominantly characterised by the 1989 Law Reform (Decriminalization of Sodomy) Act. How can one not see this Act as an instrument of prejudice and incitement?

The Bill before the House has no preamble. The preamble of the 1989 legislation states -

WHEREAS, the Parliament does not believe that sexual acts between consenting adults in private ought to be regulated by the criminal law;

AND WHEREAS, the Parliament disapproves of sexual relations between persons of the same sex;

AND WHEREAS, the Parliament disapproves of the promotion or encouragement of homosexual behaviour;

AND WHEREAS, the Parliament does not by its action in removing any criminal penalty for sexual acts in private between persons of the same sex wish to create a change in community attitude to homosexual behaviour;

The Act wishes to perpetuate a community attitude as it was then. For this reason we oppose particularly that legislation. Members can look at the sections of gross discrimination that apply in that Act. Defences that apply in the case of sexual relations with 13 year old females are not applicable in the case of male to male relations with 21 year old males. There are page after page of discriminatory sections, concluding with what is known as part 2, the "Proselytising Unlawful" section, which is another harangue. If members are in any doubt, and Hon Cheryl Davenport almost stole the best quotes as to the sentiment behind a significant part of the 1989 Act - I am not referring to those sections that reformed the worst aspects of the Criminal Code - the Attorney's own words speak volumes. On page 4321 of *Hansard* of 14 November 1989 the Attorney General states -

I would like members to consider the following: Society expresses its attitude to behaviour in four different ways - approval, neutrality, disapproval and disapproval with criminal consequences.

Earlier in the debate this evening the Attorney berated some members for departing from neutrality in regard to this Bill and referred to their positive affirmations as departing from neutrality. Faced with the four options in essentially what is the Attorney's 1989 Act he came down in favour not of the neutrality that he advocated this evening but of disapproval. He was willing to modify the criminal consequences, but the legislation expressed substantive disapproval. The Attorney General stated -

If we are to fight these things, it is a matter of fighting them with our own attitudes and the way in which we bring up our own children and the way in which our children are taught.

The other behaviour which is very worrying is that which leads to AIDS.

We should concentrate our attention on the abhorrent behaviour.

I have chosen the age of 21 as the age of consent for males for a particular reason.

It is said that homosexuality is learnt and is not a genetic behaviour. I accept that as the appropriate scientific knowledge

This is the basis of the Attorney's Bill of 1989.

Hon J.A. Scott: Did he really say that?

Hon J.A. COWDELL: The Attorney continued -

This Bill is not about homosexuality, although there might be social discrimination against homosexuals and that discrimination might be in the form, in one extreme, of what is described as "poofter bashing", or that social discrimination might be in employment or in various forms of social ostracism.

The Attorney was not interested in addressing any of this. He brought down a piece of legislation which tried to cement community attitudes as they were, in a negative vein, and not to address the very real problems that the Attorney recognised but chose not to address. He specifically said that he would not have neutrality. We are not talking about positive encouragement. He said that we would not have neutrality. We had an attack; there was not even neutrality.

One appealing aspect of the Bill before the House is the removal of the ideological thoughts of the current Attorney General in the 1989 Act. This Chamber may indeed pass the Bill but it requires the approval of the Legislative Assembly to become an Act, and that is unlikely. The only positive resolution of this issue will be the election of a Labor Government with a majority in the Legislative Assembly. I look forward to the ultimate positive resolution of this Bill. It can only be resolved in that form.

HON GREG SMITH (Mining and Pastoral) [11.28 pm]: We have heard some amazing claims about what homosexuals can and cannot do.

Hon Cheryl Davenport: No, now we will hear amazing claims.

Hon GREG SMITH: It is claimed that if we do not pass this Bill homosexuals will not be able to get jobs, work as commission agents, be employed on contract, or belong to a professional or trade organisation.

Hon Bob Thomas: That is not what was said.

Hon GREG SMITH: Members opposite claim it is imperative to pass this legislation so that homosexuals can belong to these organisations. They claim homosexuals cannot go to an employment agency, or to school because they can be kicked out of school and off buses - if they are allowed on in the first place. They cannot go to a motel, buy a house or get goods and services. The one assumption everyone makes is that homosexuals are discriminated against. There is a lesbian member in this House, and I do not know of anyone who discriminates against her. There are some homosexual people in the gallery, to the best of my knowledge.

Hon J.A. Scott: You are discriminating right now by speaking like that.

Hon GREG SMITH: That is typical of people like Hon Jim Scott. I do not care where the homosexuals are; they are not discriminated against. I have some k.d. lang and Elton John records at home, and I believe they are homosexuals. God forbid, but I listen to their music.

The PRESIDENT: Order! Hon Greg Smith will address the Chair and not individual members.

Hon GREG SMITH: The one point people are missing is that homosexuality is not a benign factor such as race, colour and sex; it is behaviourally based activity. It goes through the whole community. It does not matter what colour, sex or nationality a person is. If members try to justify this Bill on the basis of the debate so far they could justify many other things. I am one of the most discriminated against people in the House.

Hon Ljiljanna Ravlich: Why?

Hon GREG SMITH: Because I am a smoker. If I hired a car, I could not smoke in it.

An opposition member: Could you have sex in it?

Hon GREG SMITH: If I go to some motel rooms I cannot smoke in them. Members opposite may well laugh, but smoking is a behavioural activity, just as homosexuality is. People of all nationalities smoke and some people do not like smokers.

Several members interjected.

The PRESIDENT: Order! If members turn this into a game, we might as well all go home. To date most speakers have been heard in silence, so I ask that we hear Hon Greg Smith in silence. If members think it is a joke, they should leave the Chamber.

Hon GREG SMITH: Like homosexuals, I am discriminated against by insurance companies, because they think as a smoker I have a higher risk of contracting cancer. Statistics indicate that homosexuals have a higher risk of contracting AIDS. No-one argues with that. What would happen if this House legislated to give extra rights to one group which has a behaviourally based activity? It would discriminate against those that do not have them. What would happen if I had an extra bedroom in my house and I wanted someone to rent it? If a person with long blue or green hair and rings through his nose and eyebrow inquired, I would probably say I had rented it out. That person would walk away because I did not want him to board in my house. What would happen if someone else knocked on the door and said, "Hello ducky, I have come to rent your room"?

Hon Kim Chance: It will be one of your Liberal colleagues.

Hon GREG SMITH: I might say I had already rented the room. If that person did not believe me, he might run to the Equal Opportunity and Employment Commission saying I had discriminated against him and not given him a room because he was homosexual. I could be dragged up before the commission. The person I described before with the long hair and rings through his nose and eyebrow would have no right to complain or to say anything to anyone. The same applies to jobs.

What would happen if I wanted someone for a job and it required heavy work in the woolshed? If a person five foot tall, weighing six stone applied, I would say I did not think he was up to it.

Hon John Halden: You would never have got a job.

Hon GREG SMITH: If the next person who applied happened to be homosexual and I did not give him the job, that person could complain that he did not get the job because he was homosexual. They are making the assumption that they are being discriminated against.

Hon John Halden interjected.

The PRESIDENT: Order! Hon John Halden, we have already been through the fact that there will not be any interjections, and you seem to have missed that point.

Hon GREG SMITH: The problem has nothing to do with the way in which the general community treats homosexuals. The problem is the way homosexuals feel about themselves. We cannot legislate for their inadequacies and abnormalities.

Hon Ken Travers: The short people syndrome.

Hon GREG SMITH: We will legislate against that too. To give an idea of how far attitudes towards homosexuality have moved in the last 30 years, I refer to a document that quotes from an article in *Time* magazine of 1966. I do not feel comfortable reading it out because the way it talks about homosexuals is quite disgusting. I am serious. Society has moved on and now accepts many things. The quote in the article is -

"Even in purely nonreligious terms, homosexuality represents a misuse of the sexual faculty and, in the words of one . . . educator, of 'human construction'. It is a pathetic little second-rate substitute for reality, a pitiable flight from life. As such it deserves fairness, compassion, understanding, and, when possible, treatment. But it deserves no encouragement, no glamourization, no rationalization, no fake status as a minority martyrdom . . ."

Hon Tom Stephens: One of the missing things was criminal penalties.

Hon GREG SMITH: Members must face the fact that the majority of the population is heterosexual and, just as homosexual people are probably uncomfortable about the thought of a sexual relationship with a member of the opposite sex, so heterosexual people feel the same about sodomising another man, for example. I do not like the thought of it, and do not want to do it.

I have some of the material from which Hon Helen Hodgson quoted and I demonstrate what I have said about homosexuals learning to deal with their homosexuality. I refer to a study that took samples of feelings and emotional

state during the discovery of their sexuality. The report of that study, entitled "Sexuality issues and risk taking behaviour amongst WA gay and bisexual male youth" states -

The discovery of same sex attraction for the majority was clearly during the high school years.

The most difficult aspects of discovering their sexuality were the sense of isolation, no support, and a fear of being found out - especially by parents. Generally related to the feared reactions of others.

The most common feelings experienced during this time were depression, anxiety and confusion.

It is a very good report about 30 people who were surveyed. It continues -

The majority (27/30) felt different before they realised they were gay.

The process of discovering their sexuality, and dealing with community values impacted on relationships, ability to communicate, and self esteem.

Over 1/2 felt that unemployment, passing exams, change in living situation, and going to university were all easier to deal with than discovering their sexuality.

2/3 felt family problems were either similar or easier to deal with than discovering their sexuality.

Over 1/2 felt HIV/AIDS in the community impacted negatively on their sexuality and how they felt about it.

The majority feel different . . . impacted negatively on their sexuality and how they felt about it.

The following is a sample of their behaviour during their discovery of their sexuality: Twenty-three of the 30 contemplated suicide. More than half of the sample attempted suicide. Reasons for suicidal attempts can be summarised as "ending the pain", "hating themselves", and "negative reaction from others". Of those who felt suicidal only six told anyone it was primarily due to the fear of being found out that they were gay. Half to two-thirds reported regularly getting drunk and smoking cigarettes and marijuana. A third reported using other illicit drugs and a third reported self-mutilation and homophobic behaviour. If those feelings develop in homosexual people at school age we must ask ourselves whether we are discriminating against them or should they learn to live with themselves. I have no problem whatsoever with homosexual people.

This report also indicated that most of the teasing and bigotry started in school. My father was a Methodist Minister and I was brought up in the most unprejudiced way one could possibly imagine. However, I can still remember teasing people thought to be homosexual when I was at school. I do not know whether this develops because one is part of a heterosexual group or because they are different. We cannot legislate against that. Should we lock up school children for teasing someone they think is homosexual?

Hon Tom Helm interjected.

Hon Ken Travers: I thought you said there was never ending discrimination.

Hon GREG SMITH: Homosexual people do not get kicked out of school because of it, but they must learn to live with it.

Hon E.J. Charlton interjected.

The PRESIDENT: Order! The member should address the Chair.

Hon GREG SMITH: Every member in this House has a mother and a father. They might not have grown up with them but they were conceived by a man and a woman; therefore we can assume their parents were heterosexual.

Hon Giz Watson: Why?

Hon GREG SMITH: If the member can tell me what can be conceived through sodomy I would be very pleased to hear about it. The act of sexual intercourse is a natural act; all animals do it. It is the form of reproduction.

Hon Ken Travers: Many sodomise too.

Hon GREG SMITH: No-one can tell me there is anything natural about sodomy. It will not reproduce a thing.

Hon Ken Travers: Nor does your speech.

Hon GREG SMITH: It has said much more than the speeches of many other members.

As I said, we are trying to legislate against something that is behavioural. It is not legislating against someone who is black, white, Asian or female.

Hon E.J. Charlton: That will be next week.

The PRESIDENT: Order! If members are going to treat this debate as a joke it does not say much about the manner in which this Parliament is acting. I thought it was a pretty serious debate. Hon Greg Smith should address the Chair.

Hon GREG SMITH: It is a very serious debate. Thank you, Mr President.

Hon Helen Hodgson quoted a number of figures and she referred to the Kinsey report of 1948. I have more figures from Kinsey highlighting the percentage of people who are homosexuals. It reads -

Furthermore, while most people seem to know about Kinsey's original study, very few know about a more recent Kinsey Institute study conducted in 1970 and released in 1989. This study found the number of homosexual males to be only 1.4 per cent. It also found that lesbians are far fewer than male homosexuals.

Recently the *Wall Street Journal* presented a summary of some of the recent studies on the extent of homosexuality. All the findings presented similar low figures. In the United States a 1989 University of Chicago study found that only 1.2 per cent of both male and female adults reported homosexual activity.

Point of Order

Hon HELEN HODGSON: I cannot recall whether Hon Greg Smith has identified the document from which he is reading.

The PRESIDENT: Is the member asking him for to identify the document?

Hon HELEN HODGSON: I would like him to identify the document.

Hon GREG SMITH: It is the Department of National Research Library *In Focus* article titled "The Challenges of Homosexuality".

Debate Resumed

Hon GREG SMITH: To continue -

More recently, a 1993 survey found only 1.1 per cent of men claimed to be exclusively homosexual.

In France a 1992 government study of over 20,000 adults found that 1.4 per cent of men and 0.4 per cent of women had had homosexual intercourse in the five years preceding the survey.

In Britain a 1991 nationwide survey of 19,000 adults found that 1.4 per cent of men aged 16 to 59 had homosexual contact in the past five years.

In Canada a nationwide survey of 6,000 first-year college students found that 1 per cent were homosexual and 1 per cent were bisexual.

In Norway a 1987 nationwide poll found that 0.9 per cent of males and 0.9 per cent of females had homosexual experience in the past three years.

Finally, a 1989 study in Denmark found less than 1 per cent of males aged 18-59 were exclusively homosexual.

Hon Ken Travers: Do you know the age of consent in any of those countries?

Hon GREG SMITH: No.

Hon E.J. Charlton: It has nothing to do with it.

The PRESIDENT: Order!

Hon GREG SMITH: The lowering of the age of consent disturbs me the most. This community still has something we call morals. If I walked into Parliament House with a 16 year old girl under my arm fondling her in a sexual way people here would be disgusted. I cannot hear anyone denying it. This legislation proposes that it is all right for a 16 year old boy to be dealt with in that way.

Hon Kim Chance: What are you talking about?

Hon GREG SMITH: That is true; members opposite want to lower the age of consent to 16. That is a fact of the matter. No-one would argue that boys mature more slowly than girls. If we related that to the age of maturity, a boy at 16 is probably equivalent to a girl of about 14. Hon John Halden referred to children when he was in here and I am pleased about that. I have three young boys. If one of them, at the age of 15 and a half, befriended an older man

who took him out, showed him a good time, and took him to the pictures, later said to me, "It's okay dad; he's all right", but at 16 he said, "Dad, he touched me" or "He bought me some drinks and I got half drunk and he sodomised me", what could I do? He did not break the law so I would not have the law to protect my children.

Hon Ken Travers: Would it be any different if it was your daughter?

Hon GREG SMITH: It would be different if it was my daughter. If my 16 year old daughter came home with a man of 25, I would say, "You are staying home; you are not going out with him".

I am disappointed and surprised that the Labor Party is supporting this Bill.

Hon Bob Thomas: We support tolerance.

Hon GREG SMITH: The Labor Party wants to have two bob each way. It knows that this Bill will not get through the other place but that it can keep the homosexual lobby group happy by supporting this Bill.

I refer to a letter from Dr Geoff Gallop, Leader of the Opposition, addressed to Mr Croft, about the Here for Life Suicide Intervention Project, which states-

Thank you for your letter dated 15 August 1997.

There is no intention by the Australian Labor Party to promote a homosexual lifestyle.

I note the project is a Federal initiative and the project was specifically intended to reduce youth suicide.

I understand that sexuality issues amongst gay and lesbian youth have been identified as present in many attempted or fatal incidents of self harm.

Youth suicide is a major issue and it may well be possible to provide appropriate counselling and information without actively promoting a particular lifestyle.

I seek leave to table that document.

Leave granted. [See paper No 1060.]

Hon GREG SMITH: Any person who supports lowering the age of consent for boys to 16 is basically supporting the sodomisation of children.

Point of Order

Hon HELEN HODGSON: I ask Hon Greg Smith to table the "Focus on the Family" document from which he quoted.

The PRESIDENT: Order! Under Standing Order No 48 the member is required to table the document that he identified earlier, and it will be returned to him in 72 hours.

The document was tabled. [See paper No 1061.]

Debate Resumed

HON KIM CHANCE (Agricultural) [11.53 pm]: I will not keep my comrades from the floor for long because I do not intend to speak for a great length of time, largely because many of the things that I would have liked to say have been said, principally by Hon John Halden. I support this Bill, not because I have any close links with the gay or lesbian community but because I hate discrimination in all of its forms. I know what discrimination is. I am a white, Anglo-Saxon Protestant, which is not commonly a group in our society which is discriminated against, although I am, as is Hon Greg Smith, a smoker; but I have, nonetheless, lived with discrimination, and that has taught me to hate the concept of discrimination.

I grew up in a wheatbelt community in the 1950s, which is a fairly conservative place in which to grow up, and I remember that the public toilets in my town were in three divisions: A toilet for men, a toilet for women, and a toilet for native women; not that we ever saw native women at night because Aborigines were banned from that town after 6.00 pm. It was also a time when the McCarthy era was running strong in the United States and in Australia, and we were taught that communists were evil people. A much loved uncle of mine was a very public communist, and I thought he was the kindest, most generous man whom I had ever known. He did not eat babies, which was basically what we were told communists did. From that point on, I think I learnt to distrust everything that I was told about generalising people, because I learnt about homosexuals at about the same time.

Each of the principles of equal opportunity has been hard won. When slavery was abolished, it was opposed by the

people who believed that slaves did not deserve rights as human beings. When the right to vote for all adult males was introduced, it was opposed by the property owners. When the right to vote for women was introduced, it was opposed by some men. When the legal right to have a same sex partner was proposed, that was opposed by the homophobes. At every stage that we have approached the frontier of a new stage of equal opportunity and of the right to live as a human being, someone on the other side of the line has said, "Do not cross this line. This is the line where you cease to be a moral person."

The arguments that have been used to oppose those advances in human rights at every turn have one thing in common. When we look at them 10, 20 or 100 years later, we will see those arguments for what they really are: Cant and humbug. The arguments that we have heard from members opposite today will in five, 10 or 15 years be regarded as being of the same genre and of the same level of cant and humbug that was used to oppose votes for women and for the landless.

The Attorney General argued that we discriminate commonly in our normal lives, and for good reason, in a range of matters. I was interested in and am tempted to comment on his views about the conscience vote in the Australian Labor Party, but I will not do that because I have given undertakings. We do discriminate, of course, but it is interesting that in each case that the Attorney General mentioned, the discrimination related to a degree of qualification, whether physical, educational or intellectual, to perform a particular task. Hon Greg Smith mentioned the size of a person who was seeking a job shifting wool bales around a shearing shed. Is it a form of discrimination to refuse an untrained and unqualified person the right to practise medicine? Of course it is not a form of discrimination, at least not by any reasonable terms. Is it a form of discrimination to refuse a person entry to a medical school on the basis of that person's gender or sexuality? Of course it is.

That is exactly what this Bill is about. It is about moving the frontiers of acceptance and equality one step further. I urge members to support the Bill no matter their opinion on sexuality, because at the end of the day the Bill is not about sexuality; it is about human beings being allowed to be human beings.

HON TOM HELM (Mining and Pastoral) [12.01 am]: Like the previous two speakers, I am fortunate enough to be a person who is not discriminated against. I am an Anglo-Saxon, white, blue eyed and once blonde haired male - until it went grey. I guess I have everything going for me; therefore I join the majority of people in Australia. However, I am a pom; I am called a pom, and I resent that. However, that is the way I am. Members know that I have strong trade union links. I am an active trade unionist, and I have been one for 30 years. Members know that because of my trade union links, and those with the Australian Labor Party, I have been unemployed for certain periods. I have been blacklisted. I guess I must have something in common with the people who have been discriminated against in this State. I refer here to our black people. They have been and will continue to be discriminated against. That is clear. Currently, political debate is raging about the discrimination that indigenous people in Australia must suffer. That is why we must support this Bill. It is late at night, and people get fed up listening to us, but this is the only chance we have to convince the troglodytes on the government side of the House, hoping that they will be open to our arguments. People in the other place may be open to the same arguments, so we must put our arguments from a personal viewpoint.

The technical detail of the legislation has been well explained by Hon Helen Hodgson, Hon John Halden and others. They have been able to refer to records and surveys on the issue. However, some of us must voice our personal experience and explain why we feel the way we do. Although we can talk about discrimination against indigenous people, we also need to understand that our personal experiences are important.

I have some very close and dear friends who are homosexual; they live in homosexual relationships. They are successful in business and in society. However, in this day and age, in many circumstances, they must hide their homosexuality and their love for each other - just because they are of the same gender. I am offended by that situation, and we should work hard to correct it.

We must understand the law. We must also understand what the Bill is all about, and which aspects of the law it seeks to change. Currently, if a person is caught with a person of the same gender - a male homosexual under the age of 21 - in compromising circumstances, that person is committing a criminal offence and could be sentenced to five years' imprisonment with hard labour.

I am contributing to this debate partly as a result of the comments made by Hon Greg Smith, and for other reasons. I have thought about this issue, and I have read the debate in the newspapers about a policeman who had a loving relationship with a male person younger than 21. He must cease being a policeman, because he is considered a criminal. The same could be said for a member of the Army, the Air Force or the Navy. Many examples can be provided of people being affected in that way. The major aspect of the Bill is to prevent that occurring in future. The Bill will prevent society from precluding these people from joining in many areas of society. I bring to the attention of the House another aspect, and I do not apologise for doing this. Two senior officers in this Chamber do

not hide their sexuality, and if they ever entered a loving relationship with a person younger than 21, the law would preclude them from continuing their work in this place. No-one could say that they do not have the ability to do that work, but they would be precluded from this place because they would be committing a criminal offence. If the Bill does nothing else, it prevents that happening in other areas of life. That fact is staring us in the face. The sexuality of those people is not hidden; it should not be hidden; there is no need for it to be hidden.

It is important to understand that we may not have children who would want to enter a same gender relationship. We may not know any children who would want to do that, but we are confronted with the fact that we preclude such people from serving their country, and from serving in this Chamber, and from doing other things because, even though we do not use the criminal penalties open to society, they remain in place. At least this Bill will remove those aspects of society and bring some equality into debate in this place. I ask the House to support the Bill.

HON J.A. SCOTT (South Metropolitan) [12.07 am]: I support the Bill. We are dealing with a fairly simple issue that does not favour anyone. The Bill will simply correct an injustice that remains on our Statute books, and that must be done as soon as possible. We have heard a lot of bifurcation by the Attorney General about this matter. He spoke about positive encouragement and the various ways to deal with an issue such as homosexuality. We are not talking about positive encouragement; we are talking about removing positive discrimination against people who do not have sex in the same way as do the majority of us. The Bill is all about doing away with discrimination. It will not positively assist anyone. It will merely raise the status of people who have been affected by bigoted thinking in the past. Hon Greg Smith spoke about community values and read from a 1960s document -

Hon E.J. Charlton: He did not. He went through the situation right up to the 1990s.

Hon J.A. SCOTT: The document to which he referred related to the past and how people were discriminated against.

Hon Derrick Tomlinson: It was *Time* magazine.

Hon J.A. SCOTT: He spoke about community values and how discrimination was rife in the past. Community values have moved on since then. The problem is that the Liberal Party is at odds with community values; it is about time it caught up.

Unfortunately, its backwardness in this regard is causing a lot of pain to many people. Like my colleague Hon Christine Sharp, I cannot understand why they are getting so hot under the collar. There is nothing in the Bill that threatens them in any way. It simply removes injustice. Do they support injustice? Obviously the Attorney General does, because he said that the Parliament supports discrimination against homosexuals. I find it outrageous that anyone could say such a thing in this century. A member earlier pointed out that Napoleon changed the laws in this regard in the countries in which he held power. Hon Peter Foss and the Liberal Party should come into this century, it is almost finished -

Hon Derrick Tomlinson interjected.

Hon J.A. SCOTT: I did not hear the member's interjection, but I am not sure what Hitler has to do with it. He certainly discriminated against homosexuals.

Hon E.J. Charlton: He was one.

Hon J.A. SCOTT: His regime caused horrific damage to homosexuals and others, but that is getting away from the point.

Hon Peter Foss still has the attitude that somehow people are made into homosexuals. As has been pointed out by other speakers, people are what they are because of their genetic makeup. The idea that this Parliament should disapprove of people because they are being themselves and, worse, that it should discriminate against them because they are being themselves, is beyond belief. I wonder sometimes what legislation the Government has in store if it holds attitudes like that.

There is a very long history of struggle against inequality and injustice in the world in many areas of human experience. That struggle goes on. One of the outstanding and indelible characteristics of that struggle is that it will continue and that equality will happen. I urge members opposite who, despite being told what to do -

Hon Derrick Tomlinson interjected.

Hon J.A. SCOTT: Hon Derrick Tomlinson said that is nonsense. I have certainly read it in the newspapers.

Hon Derrick Tomlinson: You will be telling me you believe in Modesty Blaise next.

Hon Ken Travers: Let them have a free vote.

Hon Derrick Tomlinson: Let us have the whole House vote on conscience. I dare you. Of course you will not. You do not know what a conscience vote means.

Hon J.A. SCOTT: I am pleased Hon Derrick Tomlinson knows what a conscience vote means. It is a pity he does not have a conscience with which to vote.

The PRESIDENT: Order! Let us deal with the Bill before the Chair.

Hon J.A. SCOTT: This battle will not end here. We know that the edict has come down from the Executive Government that it will not tolerate its members moving forward. It wants us to stay in the backwaters as the most regressive State in Australia in terms of human values. Certainly, we see a lot of boasts about Western Australia doing well financially, but we are not doing very well in human values.

The sooner we end this discrimination, and the sooner members opposite support such legislation, the sooner we will get rid of inequality and introduce justice. We will then move forward in a real way and not just hanker after more dollars in this State.

HON B.M. SCOTT (South Metropolitan) [12.16 am]: I rise briefly to speak for a group of people who cannot be represented in the Parliament this evening, and who most likely will never be represented: I refer to the unborn children of the future. Much has been said tonight about basic human rights being couched in terms of protection by the United Nations.

I for one believe strongly that any unjust discrimination is unacceptable. Personally, I do not abide by the fact that people should be discriminated against because of their sexual preference. For adults, that is their own business. However, it is a different matter when it involves children.

Basic human rights need to be recognised as the basic rights of children. In most recent times in this State we have had classic examples of the basic rights of many children not being protected. We had the report of the stolen generation of Aboriginal children. Why were the rights of those children denied? It was because they were denied access to their origins. Every human being has the right to the knowledge of his or her origins. It is a basic element and is inherent in developing a strong personality, ego and the confidence to face life.

We have discussed adoption legislation and argued strongly not to veto information and contacts, and not to deny children the right to know their origins. The United Nations Committee on the Rights of the Child argued that the rights and prerogatives of parents may not undermine the rights of the child as recognised by the UN convention. One of those rights is that children have the right to knowledge of their origins - the right to know where they came from.

This Bill deals with discrimination on the grounds of sexuality and relates to the ability of adults to exercise sexual freedom and preference, and I have no problem with that for adults. However, my biggest fear is that if this Bill is passed, it will lead to allowing same sex partners to adopt children or access IVF or other human reproductive technology to have children. People could argue that people of the same sex make good parents. I do not deny that. However, every child has a right to know who is his or her father and mother, and to have access to those parents.

For generations this society and other societies have had the knowledge that parents are the best people to do the parenting for their children. I have a number of homosexual friends who have taken children into their relationships. I do not see that those children have suffered, because they are loved by that parent and know who their parents are. That does not create a problem. That is a different situation from creating children in a same sex arrangement, call it what one will. Sometimes discrimination in favour of one group of people leads to discrimination against another group. The group I am defending this evening is unborn children. Allowing homosexual couples the right to adopt and to go into the IVF program or have artificial insemination will discriminate against the rights of children to know their origins and to have access to their mother and father.

HON KEN TRAVERS (North Metropolitan) [12.22 am]: Unfortunately I was taken away earlier this evening to urgent business outside the House, and I was therefore unable to listen to all the speeches tonight. However, I am sure that members on this side of the House will have eloquently put forward the arguments. Having heard one controversial speech from the other side of the House, I am glad I did not hear the other controversial speech which was made earlier. Having listened to people like Hon Cheryl Davenport when I first returned to the Chamber, I know that the arguments have been well and truly put in support of this legislation.

One of the things I did earlier this evening was to attend a City of Stirling citizenship ceremony. As part of the ceremony we give a speech to new citizens. In my speech tonight I welcomed those people to the great social democracy of Australia. Tonight's debate has shown me that we are not really quite there yet and that I have misled some of those people. Having listened to the debate, I do not know that we have truly become a great social democracy. We will not become that great social democracy which I thought we had when I spoke to those new

citizens until we are assured that discrimination is removed from our society. Some of those people who became Australian citizens tonight have suffered immense discrimination. Nevertheless, gay, lesbian and transgender people in Australia are suffering discrimination as we speak. That is why I wanted to participate in this debate tonight and place on the record my support for this Bill. It is a shame that a Bill such as this is necessary in our society and that it is necessary to put in place legislative frameworks to prevent discrimination. I am sure that all members of this House would prefer that discrimination was not practised as part of the culture of our society and that everybody was treated equally without regard to any one identifying feature of their personality or makeup.

I also support the Bill on behalf of the many gay, lesbian and transgender people whom I have known and whom I have considered to be my friends. I am sure that I was not aware that many of my friends were gay, lesbian or transgender people. In many respects it does not matter that I did not know. In many cases it may have been because of their fear about being open about those things that I did not know. Whether that would have changed the relationships, I do not know. I hope it would not and I do not think it need have changed them.

I also support the Bill for one simple reason: Gays, lesbians and transgender people are discriminated against in our society, but not by everybody. I am sure that when members opposite say they do not discriminate against people on that basis, they are speaking the truth. Nonetheless, there are people in society - too many of them - who do discriminate. Some speeches tonight highlighted the prejudices and the concerns I have that that discrimination continues. I do not know why I am heterosexual, and I am sure many gay, lesbian and transgender people do not know why they have their sexuality.

Hon J.A. Scott: But you can change.

Hon KEN TRAVERS: I do not think it matters. That is one of the great red herrings that has been brought into this debate. I do not think it matters in this debate tonight whether it is a generic or a behavioural issue. The issue is: Regardless of why people are that way, should they be discriminated against because of that? That is the fundamental question. The question is not how people came to be at that point, but whether by being at that point they are treated differently and unfairly by others in society. When people start talking about why people are homosexual and whether it is a behavioural issue, it is a nonsense; it is irrelevant to the debate tonight.

If we are to be a decent society, we must ensure that people are treated equally. I hope that everyone in this Chamber seeks to ensure that we are a decent society. I said earlier it is most unfortunate that this legislation is needed; however, I am convinced it is needed. Earlier today during question time Hon Greg Smith asked a question that was ruled out of order. I am not sure exactly where he was leading with that question. He gave statistics that I thought would lead to his estimating that 4 000-odd people in Western Australia were bashed because they were homosexual. I am not sure whether it is that figure; I am not sure of the point he was going to make. However, even if only one person is bashed in Western Australia every year because of his or her homosexuality or transgender, should we not seek to protect that person? Is anyone in this Chamber prepared to stand up and say he or she is sure there are not people being bashed because they are gay, lesbian or transgender?

Hon E.J. Charlton: That is against the law.

Hon KEN TRAVERS: I do not think so.

Hon E.J. Charlton: Of course it is.

Hon KEN TRAVERS: The assault is. Will anyone stand up during this debate and say he or she does not believe there are examples of discrimination in our society against people, based purely on their sexuality? I do not think so. It is for that reason we are in the unfortunate situation of requiring legislation to ensure that that discrimination is removed from our society.

Earlier this evening Hon John Halden said that all people are created equal. That comment reminded me of my visit to the United States of America about three years ago. I remember vividly standing on the monument in Washington from which the great speeches were made about discrimination and the race marches on Washington, and being inspired. Later in that trip I visited the National Museum of Civil and Political Rights in Memphis. It was one of the most inspiring places I have been to. It was inspiring to know that someone stood up against discrimination and lost his life. For those who do not know, the museum is located behind the Lorraine Motel, which is where Martin Luther King junior was shot, unfortunately ending his life early. I think all of us here respect him greatly because he fought against discrimination.

This is where I got my first taste of those in the United States who seek to call themselves liberals, but are conservatives. As we went through the museum, I studied every part of it. I was shocked by what I discovered society in America was like in the 1950s and 1960s. The depictions presented were horrendous. It was a wonderful museum. Visitors could participate in the presentation of situations which existed in those years; for example, black

people could get on a bus and were ordered to get to the back, or they could sit in a cafeteria and be told to move.

We were told a story about Emmett, a young boy who lived in Chicago who had visited the south. He made an off the cuff remark about love to a shopkeeper. Two hours later that kid was taken from the home of his uncle and aunt by two white people and killed. The story continues that these two white people, who had taken this 10 year old boy and bashed him, were found. They were taken to court. When the court case was in progress, all of the townspeople - including the jurors and the offenders - sat on the grass outside the court at lunch time having a picnic. We can easily conclude what the verdict of the jury was - not guilty. Those two murderers got away with their actions. I draw attention to that because in my view, it was discrimination in the extreme.

Today we are dealing with yet another form of discrimination. Thankfully, in terms of racial discrimination in Australia and the United States, although we still have a long way to go, we have also come a long way. I was also surprised by the speed with which people moved through that museum. Only I and two colleagues from the Australian Labor Party and the Australian Democrats took the time to visit and be moved by what we saw. Other people were more keen to visit Gracelands, which was most unfortunate. That visit will remain in my memory for a long time. Although I do not ever see myself being equated to Martin Luther King in any way, shape or form, while I am a member of Parliament and for the rest of my life I will oppose discrimination in any form, as long as people are identified as being different from everybody else, or not fulfilling the norms expected by our society.

Hon E.J. Charlton: Does that mean you will help people who are not members of the MUA get jobs on the waterfront?

Hon KEN TRAVERS: I decided earlier that I would not respond to the nonsense put forward by Hon Greg Smith, because I did not think it was worthy of rebuttal. I will continue to adopt that policy in terms of the red herrings and absolute nonsense that those opposite bring forward in this debate, with one exception. Another element of this legislation relates to reducing the age of consent. I have not yet heard one argument in this place about why there should be a different age of consent for males and females. Hon Greg Smith talked about having three young boys and being concerned that at, say, 16 and a half years of age, a 25 year old bloke might take them out. I interjected at that time because I cannot see the difference between concern for a daughter or a son. What difference would it make? Any parent would be concerned about their children's exploration of sexuality, whether it be in a heterosexual or a homosexual relationship. If one had a young daughter and someone over 40 was coming to take her out one would have some concerns. It does not matter whether the child is male or female. The only reason one would be concerned for one's son and not one's daughter is if there were some in-built prejudice towards homosexuality. The other issue that members have yet to deal with is:

What is intrinsically wrong with homosexuality? Why do some people say that it is wrong? Accepting homosexuality does not mean that we will all want to become homosexuals. The former President used to say to members in this place, "You might not like what is said, but you must listen to it." We may not like what homosexuals do, but we must respect their right to do it. It is not for us to decide what they should do; they make that decision. They have a right to choose. That is the principle that we need to adopt when debating this legislation. I urge members to support the legislation.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [12.38 am]: The Australian Labor Party supports this legislation for a number of reasons.

Hon Peter Foss: Do you?

Hon TOM STEPHENS: I do. I thought Hon Peter Foss might pick up on that. If it were a conscience vote, which it is not - the Attorney General knows it is not - the result would still be the same: The second reading of this Bill would be passed in this House. I know that because I have checked. The reason is that it is good legislation.

Several members interjected.

The PRESIDENT: Order! If the Leader of the Opposition addresses the Chair I will prevent interjections.

Hon TOM STEPHENS: It is good - remove legislation of this sort from the Statute book.

Hon Derrick Tomlinson: Will we go through all stages tonight?

Hon TOM STEPHENS: There are better ways of dealing with legislation in the upper House.

Hon Derrick Tomlinson: Will you go through all stages tonight?

Hon TOM STEPHENS: If necessary. However, there are better ways for this House to behave than the way in which the coalition has indicated it will endeavour to proceed.

Hon Derrick Tomlinson: Will you proceed through all stages before prorogation?

Hon TOM STEPHENS: I have already said that if this House has to go through all stages tonight, it will. However, there are better ways of proceeding and members will hear about those in a few moments. The Labor Party believes it is important to remove discriminatory legislation from the Statute book. Along with so many others members of this House we are sensitive to the issues put to us by a variety of people.

Should the law operate in ways to enshrine aspects of a moral code into the Statute books? Is that the way the law should operate? In my view, it is not. The law should enshrine only those aspects of the community's moral code that impact adversely on interrelations between individuals, those interrelations between individuals which are the source of harm for those individuals or the wider community. That harm can relate to obligations towards and respect for property, driving behaviour and the like to enshrine a correct and appropriate response on the part of individuals to each other.

There is no reason for retaining within the Statute book the penalties applying to sexual relations between adult males. It seems an extraordinary proposition that the Statute should exist. Is it supposed to be a deterrent? Clearly it has not had that effect in our community, and why should it? That is not the object of the law in terms of support for the moral code of some in the community. It is a silly proposition that should have no attraction at all for legislators. It surprises me that some members have articulated just that in the sophistry tonight.

This is a real opportunity to at last embrace legislation in this Parliament that has been put before the Parliament time and again by the Western Australian Labor Party. It was initially introduced by Grace Vaughan almost 30 years ago, and subsequently the Parliament had opportunities to remove from the Statute book those features of the Criminal Code that have been found offensive to people in the Labor Party and in the community.

I am encouraged to conclude my remarks. Had they been given the opportunity by the member handling the legislation, I am sure every member of the Labor Party would have spoken in the second reading debate on this legislation. I am now urged to quickly conclude my remarks so that the mover of the Bill can respond to the debate and bring it rapidly to a conclusion. I hope against hope that some of the members who urged this House not to support the legislation will have been persuaded by the arguments in support of the legislation. They will then have the opportunity to develop that support among all sections of the community, particularly those in the other place.

Hon Derrick Tomlinson: Will you go through all stages tonight?

Hon TOM STEPHENS: If necessary. However, it would be in the best interests of improving the Statute for the process to be different from that.

HON HELEN HODGSON (North Metropolitan) [12.45 am]: It has been a very interesting debate tonight. I thank members who participated and shared their feelings with us. I am sure that everybody who has an interest in this subject will have found those opinions to be enlightening and will appreciate that members said what they truly believed on this matter.

I thank members on this side of the House who spoke in support of the Bill, and the members of the State Parliamentary Labor Party. In particular I acknowledge that the contribution Hon Giz Watson made to the debate based on her personal experience has been important in sharing the matters that gay and lesbian people face here in Western Australia every day. It takes a great deal of courage to speak on those matters in this place when one is personally affected by them.

I note that Hon Nick Griffiths in support of the Bill gave quite an extensive history of gay law reform in this State. I appreciate that that is now on the record for members who were not aware of the history. I understand that as of this week sexual equal opportunity legislation has been passed in Kazakhstan. Surely we should be trying to ensure that we do not fall behind a place like that on matters of human rights.

The issue of paedophilia and homosexuality was raised by Hon Giz Watson. I asked a question of the Minister for Police last week and the answer was that there is absolutely no link between homosexuality and paedophilia. That is quite correct. According to statistics provided by this Government, most child sexual abuse cases involve heterosexual abuse rather than homosexual abuse.

Youth suicide statistics were raised by a number of members tonight. The Minister for Health has acknowledged that youth suicide statistics for young gay men in Western Australia are significantly higher than those for the rest of the population. That answer was also given in response to a question within the last month or so.

I acknowledge that the Attorney General has recorded his opposition to each aspect of the legislation. Therefore, I must examine some of the issues he addressed. He acknowledged that each side believes itself to be totally right. All members in this House agree that based on the correspondence we have received on this matter it is clear that

people have very firmly held beliefs one way or the other. This issue engages the emotions, and when emotions become engaged in a debate of this nature it means that things can become fairly heated.

The Attorney General referred to the issue of the laws in other States and how they are applied. In a number of respects this Government has a commitment to consistency of laws throughout the Commonwealth. A number of matters come before the House for commercial, financial and other reasons on which the House tries to gain a consistent approach throughout the Commonwealth. I do not see any reason why human rights laws should be different. As part of a Commonwealth, each State makes its own laws in these matters. However, it is outrageous for Western Australia to be lagging so far behind the rest of the country. The only State in the country lagging behind Western Australia in the matter of equal opportunity protection is Tasmania and that is because it does not have any equal opportunity protection whatsoever. Western Australia is the only State in the Commonwealth that still has an age of consent that is over the age of 18.

The letter that was tabled from Archbishop Hickey is obviously his personal view, and I acknowledge that he has the right to hold that view. I repeat, however, one sentence from that letter: "Homosexual people are to be respected as persons and protected from unjust discrimination, rejection and violence." Therefore, Archbishop Hickey does recognise the issue of rights and protection.

The Attorney raised the issue in that letter that changes to the law would increase the likelihood of abuse of children. I have stated that statistics from the Minister for Police indicate that there is no connection between paedophilia and homosexuality. Another point in that letter is that it would facilitate the promotion of homosexuality in schools. That matter is mentioned in the preamble to the 1989 Act. It is interesting that eight years later, that has never been tested, and there is still some doubt about how effective that would be if it were tested in the courts. Therefore, I do not see how anyone could claim that it was effective in doing what it purported to do.

The Attorney General also raised the issue of the age of consent for girls being different from the age of consent for boys on the basis of physical maturity. Even if I conceded that argument, the difference in maturity between the ages of 16 and 21, when we are talking about emotional or physical maturity, might not be a five year differential. I know some 16 year old boys who are more emotionally stable than some 21 year old women. I do not necessarily believe that 16 year old girls are emotionally mature enough to be in a sexual relationship, but because the law allows that to take place, it is not a criminal action. The essence of what we are talking about is whether it is right and proper that a person aged between 16 and 21 who engages in homosexual sex, regardless of whether we think that is morally right or wrong, is committing a criminal act for which that person can be sent to prison.

The Attorney General also raised the issue of adoption and reproductive technology. My Bill is totally silent on that matter. That means that the status quo will stand. The status quo is that provisions in the Adoption Act and the Human Reproductive Technology Act deal with some of these matters.

Hon Peter Foss interjected.

Hon HELEN HODGSON: It is my understanding that the Equal Opportunity Act contains a provision that where there is a specific statutory provision to the contrary, that specific statutory provision will override the Equal Opportunity Act. That general rider will ensure that other relevant Acts are not affected in any way.

The argument about suicide statistics was fairly ambiguous. To summarise Hon Greg Smith's argument on this matter, he said that the reason young gay men are suicidal is that they put pressure on themselves while coming to terms with their sexuality. I am sure that the pressure of being considered a criminal, and being outside the bounds of society, possibly has a fair bit to do with that as well.

On the question of whether it is a moral issue, many matters that people consider to be moral issues are covered by the Equal Opportunity Act. In some cases, people from certain backgrounds believe it is a moral issue that women are treated as inferior to men and do not qualify for the same treatment. Some races believe that other races are inferior to them. In those cases, we have specifically stated that people may have that belief, but we do not believe it is compatible with the standards of society in Australia in the 1990s.

A couple of members raised the issue of whether people had to accept homosexual lodgers. If those members had read the Bill closely they would realise the answer is no. The Bill contains a specific explanation regarding accommodation. If a person or a close member of a person's family is providing accommodation for fewer than three people, that person can discriminate. Therefore, that exception deals neatly with the issue of lodgers.

I do not think that neutrality equals approval. That is a specious argument. Equality equals neutrality. I remind members that under the Equal Opportunity Act people have the right to make a complaint but they must first go through the conciliation process before the matter is taken before the Equal Opportunity Commission. This legislation does not give anyone anything. It provides an avenue for people to explore the issues and state that they

believe they have not been treated fairly on certain grounds. In a nutshell, a large part of the Attorney General's argument related to overriding the human rights of a person who chooses to discriminate. In other words, he said that in the case of someone who chooses to discriminate against someone else, because the person has a particular belief, we should allow his rights to override the rights of the person being discriminated against. A lot of what we deal with in this place deals with competing rights. We must accept that, but in this case we must consider the expectations of the community in Western Australia in the 1990s. The majority of people do not expect discrimination. The Attorney General accepted that argument. I think I have noted his words correctly. He said that he was happy for people to get on with their private lives. The majority of Western Australians believe that whatever people do in their private lives is their private business. In that context, why should people be discriminated against because of what they do in their private lives?

The next point made by the Attorney General was that there should be toleration. I agree. We must be able to tolerate each other's differences and celebrate those differences.

Hon Peter Foss: Make it illegal to do anything else!

Hon HELEN HODGSON: I have heard that theme; that is, whether we should make it compulsory to engage in homosexual activity.

Hon Peter Foss: You would make it illegal to convict people of murder as well!

Hon HELEN HODGSON: On this issue, it is a case of competing rights. The right of people to lead a private life in a way that they see fit must be protected.

We heard some discussion about a paper that was tabled, from the Australian Family Association, which referred, in part, to issues of early homosexual encounters with older men being formative in the development of homosexuality.

I will table a letter sent to me by Dr Allan Shafer and signed by 24 noted clinical psychologists: Dr Shafer himself, Dr Wendy-Lynne Wolman, Deborah Foster-Gaitskell, Francoise Spangone, Lee Goddard-Williams, Paul McEvoy, David Richards, Maria Rymarski, Chris Theunissen, Helen Costello, Nirada Van Der Berg, Joanne Fitzgerald, Bryan Suter, Dr Kevin Franklin, Margaret van Keppel, Carmella Yomtov, Alan Lazarus, Zish Ziemienski, Associate Professor Noel Howieson, Dr John Carroll, Lynette Clayton, Carol Bolton, Robin Jones and Heath Townsend. This letter supports the Bill and it states -

As senior members of the professions of Clinical and Counselling Psychology concerned with the mental health of Western Australians, we feel that the proposed changes are extremely important. We are concerned that Members of Parliament will be influenced in their vote by poor information and understanding of the issues in this area which is one fraught with irrationality, myths and moral pressures.

We wish to state our professional opinion on some of the concerns members of the community and Members of Parliament may have about changes to both the age of consent for gay men, and anti-discrimination legislation.

Age of Consent

There are widespread incorrect beliefs about this issue. They are mostly based on false beliefs about the basis of homosexuality. Many people, motivated by irrational feelings, believe that homosexuality is something that can be taught to young people, or that they can be persuaded or seduced into becoming homosexual. Indeed the myth is often perpetrated that adult homosexuals "recruit" young men for sexual purposes. *This is entirely false.* The difficulty many people have in accepting that this is false is based on their lack of personal experience of homosexuality. It is our common professional experience (and legitimate research supports this) that most gay men have recognised their sexual differentness from very young and the way they manage and come to terms with this in our society shows great variation: some accept this very early, others suppress their feelings temporarily because they are frightened of rejection, some go through a lifelong process of finding ways to live with their differentness in our community. The legal age of consent plays no part in helping young men manage their sexuality or in shaping their sexual orientation. On the contrary, by criminalising the behaviour of young men (in contrast to their heterosexual peers) their capacity to adjust quickly and live settled lives is severely impaired.

It is *very* difficult for heterosexual people to understand the lack of choice that homosexuals have about their sexual orientation. There may be some choice (as we all have) about the *way* people live their lives, but sexuality is an innate part of our humanness and claims that it can be changed permanently are simply not sustainable. There have been instances where homosexuals have temporarily suppressed their sexual feelings (for example under the sway of religious conversion), only to find that these feelings inevitably

return after a while. Claims that homosexual feelings can be changed are often based on these temporary situations. But they can no more be changed by "treatment" than can heterosexual people be "converted" into homosexuals - at any age - if they do not have a predisposition for this. If they do have a predisposition, then efforts to obstruct the natural development of their sexuality are harmful, not helpful.

The letter goes on to discuss the antidiscrimination legislation. I seek leave to table the letter.

Leave granted. [See paper No 1062.]

Hon HELEN HODGSON: If Hon Greg Smith has Elton John and k d lang recordings at home, I do not like his taste in music. I prefer Tchaikovsky.

The tone of what he had to say was noted early in his comments when he referred to what would happen if we did not do these things. His argument was based on the fact that we were expecting people to change their behaviour and to become homosexuals, lesbians or transgender because we are passing this Bill. That is not the case. The letter that I have just tabled indicates that it is not a learned or voluntary behaviour.

Hon Greg Smith referred to the issue of boarding, an issue I addressed earlier. He also referred to an article written in 1966 which again addressed some of the ways in which, at that time, people believed that homosexuality could be treated - I say that in its medical context. Earlier in the debate, a member said that it was not until 1973 that it was recognised in American medical literature that homosexuality is not a medical condition. In that context, we can expect the comments quoted in the context from 1966 not to be the same as the issues discussed in 1973, and certainly not in 1977.

Hon Greg Smith commented about picking up 16 year old girls and fondling them and this being regarded as inappropriate. The implication seemed to be that we could expect such behaviour of gay men. I refer the member to the document from which he quoted in his speech tonight; namely, "The Challenge of Homosexuality" by Bill Muehlenberg, the third paragraph of which states -

Many homosexuals simply want to be left alone, to live their lives quietly and peacefully.

Further down, the same paragraph reads -

Most people do not mind the private, discreet activity of homosexuals or anybody else for that matter.

I find nothing offensive about a heterosexual couple walking around the premises holding hands, and I find nothing offensive about same sex couples walking around the premises holding hands. However, I find some levels of behaviour offensive by heterosexual or same sex couples. The sex of the couple does not matter; the behaviour of the couple determines whether something is offensive.

The member's comments had a built-in assumption that same sex couples are more flamboyant about their private life than heterosexual couples. My experience is to the contrary. My experience is that the majority of same sex couples keep their private lives very much to themselves. This is to the extent that a friend commented to me recently that his brother has only just discovered that he was gay. He said that he invited him to dinner with his partner a year ago, but his brother only worked out that they were gay a year later. That shows the level of discretion of many same sex couples in relationships, even with family members. It is a total misconception that flamboyance is involved with homosexuality. Sure, some couples are flamboyant, but I know some flamboyant heterosexual couples. It relates to the individuals involved, not their sexuality.

Hon Greg Smith also said that homosexuality is a behavioural issue. The implication was that we should not afford protection to behaviour. What about religious people? My behaviour involves my attending church, probably three times a month. I sing songs and read out of a funny, centuries old book, but we have legislated for protection on the basis of religious belief. This is not a case of behaviour. One cannot use that argument to say that we should not be providing protection to people on the basis of their behaviour. It is not a behavioural matter but what people are and what they are doing flows from that.

I have just outed myself. I had deliberately distanced myself from all the arguments about religion but, yes, I am a practising Christian. I attend a church where currently a serious debate is going on. For that reason I have not brought those religious arguments into what I have been saying. However, as I say, I am a practising Christian and I attend church regularly. I know people in the church who are having to suppress their sexuality. They are some of the most spiritual people that one could ever meet. They have strong, deeply held beliefs and they are currently extremely distressed by the discrimination that they experience in the community as a whole. I do not want to involve the church in the debate any further except to say that Christianity does not mean that one automatically condemns people for their sexuality. My God believes in acceptance of people for what they are.

Hon Derrick Tomlinson: What about your church?

Hon HELEN HODGSON: Most of my church does.

In response to the letter from Archbishop Hickey, I also have a quote from the Anglican Archbishop, Dr Peter Carnley, of December 1994 which reads -

WA legislation relating to the age of consent is in complete confusion because it discriminates between men and women. The principle of equality between the sexes [is good reason] to make 16 the common age of consent for heterosexual and homosexual sex.

That states the views of another senior church figure.

Hon Greg Smith commented on the Kinsey study. I did not use the Kinsey study as the basis for the percentage of homosexuals in my speech. I used it for some statistics, but the percentage of population that was homosexual was from a different source. The quotation that 7 to 13 per cent of the population are homosexual was a finding of fact by the United States District Court in the Equality Foundation of Cincinnati v the City of Cincinnati in 1994. I believe that was the answer given to the question on notice by the member.

Hon Greg Smith: One figure was mentioned from the Kinsey report.

Hon HELEN HODGSON: One figure was mentioned, but it was not to do with the percentage of homosexuals. Hon Greg Smith claimed that if there is a dispute between an employer and an employee, one could use homosexuality as a ground on which to go to the Equal Opportunity Commission, even if homosexuality had nothing to do with it. The equal opportunity legislation would work the same. One can go to the Equal Opportunity Commission, make a complaint and have the matter dealt with under the processes of the Equal Opportunity Act. I believe that in a recent case a Minister was sued by a pregnant woman who was sacked. The issue was whether the sacking was because the woman was pregnant. The Equal Opportunity Commission went through its regular processes. It found that it was not the reason for the dismissal.

The same procedures would apply in the case of an allegation that a dismissal was on the basis of sexuality. Therefore, we can say that the processes of the Equal Opportunity Commission are adequate to resolve the matter. The Attorney General said it was not a criminal act if a man under the age of 21 engaged in homosexual sex. However, there have been two cases of enforcement of those laws in the relatively recent past.

I turn to a couple of issues raised by Hon Barbara Scott. Her comments were largely about protecting the rights of unborn children and of protecting families.

Hon B.M. Scott: I mentioned children, not families.

Hon HELEN HODGSON: The same arguments could be raised in a number of cases for which there is protection under the Equal Opportunity Act. For example, people cannot be discriminated against on the basis of their marital status. Members talk about protecting children. The laws are already such that if a child is in a single parent family, the issue of equal opportunity and the impact that will have on the child arises. Adoption and artificial insemination were raised previously.

I return to the point I made at the time that where provisions under other legislation already deal with a matter, that matter is not impacted on in any way by the Bill that is before this House. The Human Reproductive Technology Act -

Hon Cheryl Davenport: Which is currently undergoing a major review.

Hon HELEN HODGSON: - requires a couple to have been in a heterosexual relationship for a certain period before they are eligible for in-vitro fertilisation. This Bill will not impact on that in any way. In the same way, other forms of fertility treatment are available to lesbians, because they cannot be discriminated against on the basis of being single women. What I seek to introduce will not impact on the law in that area. Those arguments must be followed through to verify that there is no impact in the areas of IVF, fertility treatment or adoption.

The only issue is that requirements exist under the Adoption Act for adoptions other than consent adoptions, and those are not impacted on in any way by this Bill. If members go through the Bill carefully and follow through the way sections in the Equal Opportunity Act interact with other legislation, they will find their concerns in that area are dealt with.

I am sure other issues were raised that I have not addressed. However, at this stage I will bring the debate to a close and commend the Bill to the House.

Question put and a division taken with the following result -

Ayes (15)

Hon Kim Chance
 Hon J.A. Cowdell
 Hon Cheryl Davenport
 Hon E.R.J. Dermer
 Hon N.D. Griffiths

Hon John Halden
 Hon Tom Helm
 Hon Helen Hodgson
 Hon Norm Kelly
 Hon J.A. Scott

Hon Christine Sharp
 Hon Tom Stephens
 Hon Ken Travers
 Hon Giz Watson
 Hon Bob Thomas (*Teller*)

Noes (14)

Hon E.J. Charlton
 Hon M.J. Criddle
 Hon B.K. Donaldson
 Hon Peter Foss
 Hon Ray Halligan

Hon Barry House
 Hon Murray Montgomery
 Hon N.F. Moore
 Hon M.D. Nixon
 Hon Simon O'Brien

Hon B.M. Scott
 Hon Greg Smith
 Hon Derrick Tomlinson
 Hon Muriel Patterson (*Teller*)

Pairs

Hon Mark Nevill
 Hon Ljiljana Ravlich

Hon W.N. Stretch
 Hon Max Evans

Question thus passed.

Bill read a second time.

Referral to Standing Committee on Legislation

HON N.D. GRIFFITHS (East Metropolitan) [1.22 am]: I move -

That this Bill be referred to the Legislation Committee.

I do not intend to speak at length. The policy of the Bill has been set by the second reading. It is proposed to facilitate rational, as distinct from rhetorical, discussion which will allow legitimate community concerns to be submitted, considered and addressed. In that context, I note what His Grace, Archbishop Hickey, has said, and I note the observations of Hon Barbara Scott and of many others from each side of the argument. Those who are interested in implementing good policy will accept this as a proper device to educate and allay unnecessary concerns. I trust the House will accede to the motion I have moved.

HON DERRICK TOMLINSON (East Metropolitan) [1.23 am]: I oppose this motion.

Hon John Halden: You have more than one Bill before the committee?

Hon DERRICK TOMLINSON: Hon Nick Griffiths made the correct observation that the principle of the Bill has been established by the second reading of it. The House has now accepted the policy that there should not be discrimination in the areas specified in the Bill. Therefore the Legislation Committee cannot deliberate on the policy; it can only consider matters of detail.

Hon John Halden: Correct; that is from the chairman of the committee.

The PRESIDENT: Order! It is now 1.25 am. If members want to play games and have the place erupt and we stay here for a bit longer that is entirely up to them. If members want to use a bit of commonsense, and a fair bit of commonsense has been used tonight in this debate, they will hear members in silence. That is the way it should be.

Hon DERRICK TOMLINSON: This means that the committee can call for submissions on matters of detail and it can hear evidence on matters of detail. It cannot hear evidence on the principle of the Bill. If people want to use the principle of the Bill in the argument of matters of detail they are at liberty to do so. We cannot change the policy of the Bill; neither can we comment on the policy of the Bill when we report. Therefore, I am forced to ask why Hon Nick Griffiths would suggest that by referring the Bill to the Legislation Committee we can use that opportunity to educate and to develop rational argument about the policy of the Bill. The argument that was presented in the second reading debate was that because the Government holds the numbers in the lower House it will require reasoned argument to get people to change their minds and to cross the floor and vote with the Opposition when the Bill is in the lower House. Hence, by referring it to the Legislation Committee there will be the opportunity to develop that rational argument which will convince people to vote for the policy of the Bill in the lower House. However, the Legislation Committee cannot hear that argument; it can only hear argument on matters of detail. Therefore, let us determine what the real agenda is.

It is now 20 November. The Legislation Committee could meet perhaps three or four times between now and Christmas. Bearing in mind that already the Constitution Act and the Electoral Act have been referred to it, it is highly likely that the Legislation Committee will deal with those Acts as a priority since they have precedence in referral. Therefore, this Bill will be deferred. Between now and the Parliament resuming it is likely there will be prorogation.

Hon John Halden: No, there won't. Hon Derrick Tomlinson knows better than I that we will not prorogue until June.

Hon DERRICK TOMLINSON: According to the standing orders of this place the business will cease and the matter will drop off the Notice Paper upon prorogation. The Democrats have been duded by their clever colleagues.

Hon Norm Kelly interjected.

The PRESIDENT: Order! Hon Norm Kelly will have an opportunity to speak in a moment if he wishes.

Hon DERRICK TOMLINSON: All of those people who have patiently waited in the public gallery to observe the debate tonight likewise have been duded, because this legislation will go nowhere.

Many times tonight we have heard members of the Labor Opposition say that they would vote for the second reading. How many times did I ask Hon Tom Stephens whether he would see this through tonight? How many times did he say that there was a better way of proceeding? Members on this side know what the better way of proceeding is. It is to dud the Australian Democrats by referring it to the Standing Committee on Legislation because the Labor Opposition knows it will then not see the light of day. I oppose the motion.

HON NORM KELLY (East Metropolitan) [1.30 am]: Hon Derrick Tomlinson feels that this Chamber is in a far better position to evaluate the detail of this Bill which contains 13 or 14 pages of clauses.

Hon Derrick Tomlinson: They are repetitious.

Hon NORM KELLY: He thinks we are in a perfect position at 1.30 in the morning to consider every detail of the Bill and send it to another place in a better condition. It is obvious from the debate tonight that some members have not read the legislation and do not know what the clauses are about, let alone being in a position to debate the detail of the clauses at this late stage of the proceedings.

The whole purpose of the standing committees in this Chamber is for small groups to evaluate such things as the detail of this Bill. The Australian Democrats want this Bill to go to the Standing Committee on Legislation, so that it can report back to this place on its deliberations on the best way to proceed with this Bill.

As Hon Derrick Tomlinson said, members of this House have already decided how they feel about the Bill. They support the principle, and we need to work out the detail.

HON PETER FOSS (East Metropolitan - Attorney General) [1.32 am]: The Government opposes this motion for the simple reason, using the words of Hon Nick Griffiths, that it is a device. The Opposition very carefully said it would support the second reading but it was quite clear that it did not want the Bill to go any further. It does not require anybody's imagination to be stretched to recognise that this Bill will not complete its passage through this House prior to the Christmas break. Members opposite know the consequences of that; that is, they will not have to vote for it.

The net result is that the Opposition has managed to have it both ways. It can say it supported the Bill to those people who would like the legislation to be passed, and say to those who do not want it to be passed that it supported the Bill only to the second reading. Labor Party members have covered both sides and have given themselves the capacity to go to the public and tell people they are on their side, whether they are for or against this legislation.

Several members interjected.

The PRESIDENT: Order! I ask members not to interject.

Hon PETER FOSS: The net result is that the Bill has probably been marked by the fact that the differences are not differences of detail but are differences of principle. If members opposite had really wanted this Bill properly considered by the committee, it would have been appropriate to refer it to that committee prior to the second reading. Those members of the public who wanted an opportunity to comment and some way of airing their views, have been denied that. If the Opposition had wanted this properly heard by the Standing Committee on Legislation, the motion should have been moved earlier.

Hon Kim Chance: How?

Hon PETER FOSS: The Opposition could have moved for the Bill to be referred to the Legislation Committee prior to the second reading.

Hon John Halden: Why did you not do it?

Hon PETER FOSS: It was not the Government's idea. The Government is happy to finish the Bill tonight.

Hon N.F. Moore: We do not have the numbers, pal.

Hon John Halden: We know the game.

Hon PETER FOSS: This is an exercise in hypocrisy by the Opposition. It said all along it would support the Bill only to the second reading stage, but it had no desire to allow the public to have any real input. In typical fashion, the Opposition has tried to cover itself. It will be caught because every time it does this, it is caught out. This motion is opposed by the Government.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [1.34 am]: The comments about the position of the Labor Party by Hon Derrick Tomlinson and the Attorney General are untrue.

Hon E.J. Charlton: Actions speak louder than words.

Hon TOM STEPHENS: That is right. I will outline its actions. The Opposition has supported the second reading of this debate for these reasons: First, because it agrees with the policy of the Bill. Members on this side believe that there are ways of ensuring that those people who think that problems exist with the detail of the Bill have the opportunity of putting that to the Standing Committee on Legislation.

Hon N.F. Moore: The archbishop does not like the Bill at all.

Hon TOM STEPHENS: If members had listened to both sides of the argument during the second reading debate they would know that members argued about whether the detail of this Bill impacted on issues such as the adoption laws of this State, and if they had impacted -

Hon Derrick Tomlinson: You will get absolution on Sunday.

The PRESIDENT: Order!

Hon TOM STEPHENS: If you want to move for him to be thrown out, Mr President, I will help you.

The PRESIDENT: Order! He might not be the one that goes out. We have sat here for about six hours with very limited interjections. We have had more interjections in the past three or four minutes than in the past six hours. Perhaps members do not want to go home. If that is the case, that is fine; I will accommodate them.

Hon TOM STEPHENS: In her response to the second reading debate, Hon Helen Hodgson made it quite clear that members opposite had missed the detail of the Bill. However, if by any chance she was wrong, the Legislation Committee will have the opportunity of taking on board and evaluating the considerations of members opposite and the viewpoints in support of this legislation and adjusting the detail to make sure that it complies with the policy of the Bill as agreed to by the House. I hope the Bill will then be sent by way of message to the other place. At least members would not be able to put up paper tigers and fallacious arguments against the Bill that are nothing more than sophistry. If members opposite want to defeat this legislation they should defeat it for what it is, not for what it is not. Members opposite heard what the Bill is. It has been explained by its proponent. It is defended on the basis of that proposition by the Labor Opposition.

The PRESIDENT: Order! The motion before the House is to refer the Bill to the Legislation Committee. The member's comments are meant to be directed to that. We do not need a rerun of the second reading debate.

Hon TOM STEPHENS: This Bill can be appropriately dealt with by the Legislation Committee, not as some device to kill off the policy of the Bill, but rather as an appropriate response -

Hon N.F. Moore: You want to kill off the detail so you will not have it.

The PRESIDENT: Order! The Leader of the House will come to order.

Hon TOM STEPHENS: We on this side of the House know that the Government hoped the Bill would pass through all stages tonight so that it could go to the other place and not be dealt with again, or at least be killed off in double quick time. However, we will rob members opposite of the opportunity of defeating this legislation in that way. There is another way of keeping the legislation alive and ensuring that the policy of this Bill will be agreed to by the Parliament. It is good policy. We are well aware that the Government has no intention of proroguing the Parliament in the early part of next year.

Hon N.F. Moore: That would probably be good, because you would then have the opportunity of voting on it, which is something you tried to avoid today.

Hon TOM STEPHENS: I thank the Leader of the Government for confirming, as a number of us have heard, that there a strong prospect that the Parliament will not be prorogued until perhaps the middle of next year. We have yet to get a clear indication of that decision, but in that case the Legislation Committee will have a real opportunity of considering this legislation into the middle of next year and fixing up any details so that the Bill can come back to this place and be transmitted to the other place in a form that has the prospect of being dealt with on the basis of the facts rather than on the basis of the fiction that some members opposite have tried to peddle tonight. I commend the motion to the House.

Question put and a division taken with the following result -

Ayes (15)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport
Hon E.R.J. Dermer
Hon N.D. Griffiths

Hon John Halden
Hon Tom Helm
Hon Helen Hodgson
Hon Norm Kelly
Hon J.A. Scott

Hon Christine Sharp
Hon Tom Stephens
Hon Ken Travers
Hon Giz Watson
Hon Bob Thomas (*Teller*)

Noes (14)

Hon E.J. Charlton
Hon M.J. Criddle
Hon B.K. Donaldson
Hon Peter Foss
Hon Ray Halligan

Hon Barry House
Hon Murray Montgomery
Hon N.F. Moore
Hon M.D. Nixon
Hon Simon O'Brien

Hon B.M. Scott
Hon Greg Smith
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Pairs

Hon Mark Nevill
Hon Ljiljana Ravlich

Hon W.N. Stretch
Hon Max Evans

Question thus passed.

DAMPIER TO BUNBURY PIPELINE BILL

Receipt and First Reading

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

Second Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [1.45 am]: I move -

That the Bill be now read a second time.

As part of the ongoing reform of the Western Australian energy sector, the Government has decided to sell 100 per cent of the Dampier to Bunbury natural gas pipeline or, as it is known in the gas business, the DBNGP. There will be a number of major benefits to the State arising from such a sale. Firstly, the sale proceeds are expected to be substantial and will allow the retirement of a significant amount of state debt. This will have major benefits for the State, helping to hold down interest costs on borrowings and freeing up scarce capital for other much needed social and industrial infrastructure.

Secondly, separating the ownership and operation of the Dampier to Bunbury natural gas pipeline from the other business units of AlintaGas will foster a more competitive environment. The separation of ownership of the pipeline from interests in trading in gas is consistent with the national access code for gas transmission systems which this Government will adopt for this pipeline on 1 January 2000.

Thirdly, the provision of a wider gas corridor will help to facilitate future gas transmission pipeline developments and lead to the greater availability of low cost and environmentally friendly natural gas. The sale of the pipeline will also keep Western Australia at the forefront of energy reform in Australia.

I have pleasure in introducing this Bill which is to provide the legislative authority for -

- AlintaGas to sell the Dampier to Bunbury natural gas pipeline;
- the State to retain the existing Dampier to Bunbury gas corridor and for the corridor to be expanded;
- the establishment of a "land access Minister", who shall be the Minister for Lands, to retain the existing corridor, to acquire additional corridor rights and to be responsible for ongoing administration of the strategic corridor;
- access rights to allow the existing pipeline to be expanded and for additional pipelines to be built if required;
- compensation for "injuriously affected" land holders;
- rate equivalent payments to local government;
- a transitional third party access regime for the Dampier to Bunbury natural gas pipeline until the national access code is adopted for the pipeline;
- setting a maximum price structure for gas transportation in the pipeline and allowing for negotiability below that maximum; and
- protecting the interests of residential and small business gas and electricity consumers in the south and midwest of the State.

This Bill is another step in the Government's ongoing reform of the energy sector in Western Australia which to date has had a tremendous impact on the State's economic development. This is evidenced by strong growth in minerals and minerals processing projects making use of low cost natural gas.

The process of reform commenced on 1 January 1995 with the splitting of the State Energy Commission of Western Australia and the formation of AlintaGas and Western Power. This provided direct head to head competition between gas and electricity and clear commercial objectives for both corporatised businesses.

Access by third parties to the gas transmission and distribution capacity of AlintaGas has since been provided in a staged process on a manageable schedule. As of 1 January 1998 any consumer in the south or midwest who uses more than 250 terajoules per annum at a single site will be able to choose a supplier, confident that access for transport is provided for in the transmission and distribution systems. This level will reduce by 1 January 2000 to consumers taking more than 100 TJ per annum.

Similarly, third party access to the electricity transmission and distribution networks of Western Power has been provided in a staged process. From 1 January 1997 any consumer has had the right to access the high voltage electricity transmission network. As at 1 July 1999 any consumer who uses an average of 5 megawatts at a single site will have access to the distribution network. The current distribution access level is 10 MW and the Government intends to accelerate the deregulation process to provide distribution access to 1 MW consumers in the near future. One of the major outcomes of these changes has been the enhancement of competition in the energy sector. This has led to the construction of privately owned and operated gas transmission pipelines within the Pilbara, and from the Pilbara to Kalgoorlie.

The reform of the energy sector has also led to a surge in private investment in electricity generation in the Pilbara and in the goldfields. Across the State since January 1995, some 1 400 megawatts of new power generation capacity either has been completed, is under construction or is committed to - an increase of 34 per cent, with 63 per cent of this increase achieved through private sector investment. The provision of cheaper energy has also encouraged projects such as the Kingstream project, the \$900m expansion at Worsley Alumina Pty Ltd, nickel mines at Murrin Murrin and Cawse, the nickel smelter at Kalgoorlie, and co-generation plants at BP Oil, Worsley and Tiwest Pty Ltd.

An integral part of the reform of the energy sector was the disaggregation of the North West Shelf gas contract and the total deregulation of gas sales in the Pilbara.

As a result, gas prices in the Pilbara fell by around one half. This has contributed to Broken Hill Proprietary Co Ltd developing its direct reduced iron project and others considering a range of downstream processing projects. Gas prices in the Pilbara are now recognised as among the lowest in the Asia-Pacific region.

Gas prices have also reduced in the south west and passage of this Bill will contribute to further economies. On 1 January 1995 it cost \$1.27 per gigajoule to transport gas at 100 per cent load factor to Perth. This will be reduced to less than \$1.24 per GJ on 1 January 1998 and will fall to less than \$1.12 per GJ on 1 January 1999 and to about \$1 per GJ on 1 January 2000. This is a reduction of 27 per cent in transmission costs, a major component of delivered gas prices. Those charges over the next two years are maximums only, and will be legislated in the access regulations flowing out of this Bill.

Prior to the construction of the Dampier to Bunbury natural gas pipeline, gas was supplied to Perth from the Dongara area gas fields and through the Wang pipeline. In the late 1970s, the Dongara field was producing to capacity and it was expected this field would be depleted in 1986. Restrictions were being imposed on industrial sales and expanding industries were required to use imported oil or coal.

The discoveries of large quantities of gas off the North West Shelf opened up the opportunity for new supplies of gas to the domestic market. The Government of the day played a major role in underwriting the development of the gas fields by entering into the North West Gas Development (Woodside) Agreement 1979. This agreement involved the then State Energy Commission of Western Australia contracting for around 414 terajoules of gas per day over a 20 year period with 95 per cent of this quantity being on a take or pay basis and SECWA's having the exclusive market for this gas in Western Australia. This agreement was negotiated during a period of high oil prices and risks to oil supplies from the Middle East. The demand for gas was expected to grow as Western Australia developed its resources.

This agreement had a number of benefits for Western Australia. It provided a long term secure supply of an environmentally friendly source of energy. It also contributed in a fundamental way to the development of Western Australia's vast gas reserves in the Carnarvon Basin. Today we are benefiting from this project through exports, jobs and royalties.

To transport the gas from Dampier to Perth the State, through its agency, SECWA, constructed a 1 500 kilometre pipeline. This involved borrowing approximately \$1b when interest rates were historically high and when the Australian dollar had a high value on the world money market. The borrowings and the take or pay gas commitments involved considerable risk and represented a substantial investment by the State.

The construction of the pipeline commenced in 1983 and in August 1984 gas from the North West Shelf was transported for the first time. In 1985 the installation of five compressor stations marked the completion of the initial construction of the pipeline. Subsequently, a further four compressor stations have been built.

As I indicated earlier, the Government has decided to sell the pipeline as part of its ongoing process to reform the energy sector. It was appropriate 14 years ago for the State to construct and own the pipeline, in order to underwrite a major development and guarantee gas supplies to the community. However, it is no longer necessary for the State to retain ownership.

The separation of the gas transportation function from AlintaGas and its sale to a private owner and operator will enhance competition in downstream and upstream markets. Provisions are contained in the Bill to ensure the new owner is not involved in any conflicting manner in the upstream or downstream gas business and thus the new owner will have straightforward goals to maximise use of the pipeline. It is expected the new owner will focus on optimising and expanding the capacity utilisation of the pipeline.

I am confident that the sale will deliver a substantial return to the Western Australian community. It has the potential to realise the highest sale price for a state-owned asset in Western Australia's history.

On the basis of the level of interest shown by potential buyers, I expect the sale price to be substantially above the book value of the pipeline. This will allow the State to pay back debt in addition to the debt associated with the pipeline. Not only existing state debt is impacted by the sale. The transportation of gas is not a core function of government and with the private sector providing this service, it reduces the need for the State, through its corporation, to borrow large sums of money to maintain and expand this service.

When the pipeline was first built, the private sector was not prepared to raise the risk capital and secure debt funding for such a massive infrastructure project. It required foresight and leadership by the Government of the day. We are at a stage now where the State's best interest is clearly served by selling the pipeline to the private sector and by moving towards an open access regime for all users of the pipeline.

I turn to the provisions of the Bill. Part 1 deals with some preliminary issues and defines necessary terms. Part 2 deals with the sale process. It provides legislative power for AlintaGas to sell the Dampier to Bunbury pipeline and for the Minister to issue directions in this regard. A direction may also include the setting up of a committee to conduct the sale, and for the disposition of the proceeds from the sale. All directions issued are required to be tabled in both Houses of Parliament.

Part 2 relieves the Auditor General of his obligation not to disclose information so that he may provide information to facilitate the sale process. Part 2 also provides for a penalty for any person who unlawfully discloses information obtained through the sale process. It also provides protection from liability for the directors of AlintaGas when complying with any ministerial direction in relation to the sale.

Part 3 deals with the assignment of the pipeline system to the new owner. It allows the Minister to make orders to

effect the transfer of the assets and liabilities of the system. Part 3 also validates pre-existing contracts and allows them to be transferred to the new owner. It also converts internal arrangements between AlintaGas' transmission business and its trading business into formal contracts between the new owner and AlintaGas.

Part 3 requires the new owner to offer to vary the price for access contained within the pre-existing contracts, that are not exempt contracts. Such a price offer is not to be more than the statutory price, which is the maximum price structure to be set out in the regulations, beginning at less than \$1.24 per gigajoule on 1 January 1998. Thus, following the sale of the pipeline, existing shippers such as AlintaGas and Western Power will immediately benefit from the expected lower prices.

Part 3 contains a provision for the Treasurer to issue an indemnity or guarantee should there be, for example, an obligation on the State that cannot be transferred to the new owner or which AlintaGas is unable to fulfil due to selling its transmission system. Part 3 also allows for rectification of transfer orders, making of regulations for the transfer and allowing the assets to be further assigned, subject to the approval of the Minister.

Part 4 of the Bill deals with the pipeline corridor, the issuing of access rights and compensation. This part provides for access to land to allow the construction and operation of multiple pipelines. It is probably the most complex part of the Bill, but is essential to the future energy policy of the State.

A land access Minister is created to take AlintaGas' rights over the Dampier to Bunbury natural gas pipeline - DBNGP - corridor, to expand that corridor from about 30 metres, as it is currently, to approximately 100 metres wide and to administer that corridor. The Government will recommend to the Governor that the land access Minister should be the Minister for Lands. The Act Minister, intended to be the Minister for Energy, retains ultimate authority over the corridor so that he or she is instrumental in this aspect of energy policy for the State.

Part 4 creates state corridor rights which are the rights that allow a pipeline operator access to the land to construct, operate, or enhance a gas pipeline in the corridor. The land access Minister will be able to designate additional land to be in the corridor provided the land is intended in the future to be available to confer rights on a pipeline operator to build and operate a gas pipeline. The land access Minister, when requested by the Act Minister, will confer rights for access to the land in the DBNGP corridor for constructing, operating and enhancing a pipeline for transporting gas.

The Governor can make regulations detailing any default of conditions of that conferral of rights as being an offence and subject to a maximum fine of \$500 000 or \$50 000 per day. These are substantial penalties to ensure that a holder of access rights does not prevent or obstruct another holder of access rights from building or operating a gas pipeline in competition to him. The land access Minister may charge the holder of access rights a periodic fee to recover the administration costs and a reasonable return on the current value of the State's investment in that corridor.

When land becomes part of the DBNGP corridor, it cannot be used in a way that is inconsistent with a gas pipeline being placed on it. Injurious affected landowners and native title holders will be able to seek compensation. A portion of the proceeds from the sale of the pipeline will be used for these compensation payments.

A DBNGP corridor trust account will be created to hold moneys from the sale proceeds, fees for access rights and any moneys appropriated by Parliament. This account will be used to pay compensation to injuriously affected landholders and administration costs. There is also provision for the Treasurer to transfer money to the consolidated fund.

Part 5 and schedule 1 of the Bill deal with access and pricing provisions for the pipeline. These provisions are transitional and will be repealed when the State moves to the national access code for this pipeline from 1 January 2000. Part 5 and schedule 1 are similar to the existing access provisions of the Gas Corporation Act, except they provide for a more negotiable and less prescriptive regime.

Provisions have been specifically incorporated to protect the interests of residential and small business gas and electricity consumers. AlintaGas will have a mandatory right to access below the prescribed minimum threshold level because it is already an aggregator and needs this access to service residential and small business consumers. If the Act Minister thinks it is in the public interest he can also exempt Western Power from this minimum threshold level when it, for example, requires gas supplies to generate electricity for new residential developments.

The owner of the pipeline must provide access to spare capacity, unutilised capacity and developable capacity on a non-discriminatory basis. For spare and developable capacity this is to be on a first come, first served basis, as is currently the case. This maintains access provisions which are arguably still the fairest in Australia.

If the Coordinator of Energy considers it is in the public interest the coordinator can direct the owner to make capacity available outside these principles; for example, in order to protect gas supplies to residential consumers.

The access regulations made under this Bill will be transitional until 1 January 2000 and will provide for setting maximum prices for the various transmission services such as full haul, part haul and back haul. From 1 January 1998 the maximum price for full haul at 100 per cent load factor will be less than \$1.24 per gigajoule and will decline to about \$1 per GJ on 1 January 2000. After that date an independent gas pipeline access regulator will set reference tariffs. The owner and shippers will be able to negotiate prices below these maximum prices.

For the transitional regime an access manual will contain most of the prescriptive procedural and technical requirements of the existing Gas Transmission Regulations 1994 and the owner will be able to amend these with the approval of the Coordinator of Energy. Disputes concerning access will be heard by the gas referee, as is currently the case.

Part 6 enables the Governor to make regulations preventing the new owner from engaging in upstream or downstream gas businesses and regulations dealing with related party transactions. These provisions will require the owner to ring fence the pipeline operations from its other businesses, if any, and to provide financial statements to the Coordinator of Energy. This is generally consistent with the ring fencing to be required under the national access code.

Schedule 2 deals with the procedures for paying compensation if land has been injuriously affected by the designation of it being in the gas corridor or the subsequent issue of access rights for a new pipeline. Compensation may be monetary compensation or other valuable consideration.

Schedule 3 deals with supply system emergencies, essentially conferring those powers on the Coordinator of Energy which currently reside with AlintaGas under the Energy Corporations (Powers) Act 1979 in respect of the management of supply via this pipeline.

Schedule 4 deals with consequential amendments to various Acts, such as the Energy Corporations (Powers) Act 1979, the Gas Corporation Act 1994, the Land Acquisition and Public Works Act 1902, the Land Administration Act 1997, the Local Government Act 1995 and the Petroleum Pipelines Act 1969.

The amendments to those Acts are not substantial, but are designed to give legal recognition to the transfer of ownership of the pipeline and to accommodate the creation of a gas corridor from the Pilbara to the south west. They also enable the payment to local government of amounts equivalent to rates payable on land in the corridor based on the land's unimproved value.

The Bill is very comprehensive and this is essential in order for the sale to be effected in a proper manner and for the State's long term interests in securing gas supplies to be protected.

In conclusion, I reiterate that the sale of the Dampier to Bunbury natural gas pipeline is a further step in the progressive liberalisation of the State's gas market, which began on 1 January 1995 and which is being continued in manageable steps.

This Government is committed to ongoing energy reform which has the aims of reducing energy costs to consumers, promoting the development of a vibrant and competitive energy sector and enhancing further economic development, particularly by adding value to the State's vast mineral resources.

The State will benefit considerably from the sale of the pipeline through -

- the retirement of debt;

- the retention and reallocation of capital which would have been needed to expand the pipeline;

- lower gas transport costs to be prescribed for the transitional period to 1 January 2000 and available thereafter under the national access code; and

- the creation of an expanded gas corridor from the Pilbara to the south west, allowing construction of enhancements and of further gas pipelines.

This Government is committed to calling for expressions of interest for additional pipeline capacity to the south west by 1 July 1998, so there will assuredly be competitive pressures on a private owner and operator of the existing pipeline to service the gas transport needs of this State.

The process of energy reform since 1995 has delivered considerable benefits to this State and the package of reform measures associated with this sale will continue to deliver those benefits. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

FUEL SUPPLIERS LICENSING AND DIESEL SUBSIDIES BILL*Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon E.J. Charlton (Minister for Transport), read a first time.

Second Reading

HON E.J. CHARLTON (Agricultural - Minister for Transport) [2.05 am]: I move -

That the Bill be now read a second time.

This Bill is the first of two Bills necessary to complete the legislative requirements arising in Western Australia from the High Court decision on state franchise fees.

Members will recall that on 5 August 1997 the High Court ruled that franchise fees on tobacco in New South Wales were unconstitutional on the grounds that they were an excise. Under section 90 of the Australian Constitution, only the Federal Government can impose an excise. Solicitors General subsequently advised that the decision meant that the validity of franchise fees on tobacco in all States, and also on fuel and liquor in all States, was doubtful. This gave the States little choice but to stop collecting them.

Under the safety net arrangements negotiated with the Federal Government, the Federal Government has increased its excise rates on tobacco and fuel and its sales tax rates on liquor to replace the state franchise fees on these products. An amount equivalent to the additional revenues raised by the Federal Government is being shared between the States on an agreed basis, calculated by the Commonwealth Grants Commission, in the form of revenue replacement grants. Importantly, the Federal Government is constitutionally bound to keep its tax rates uniform in all jurisdictions. In the case of fuel, an excise surcharge rate of 8.1¢ per litre has replaced franchise fees in all jurisdictions, on both petrol and diesel fuel.

The 8.1¢ per litre surcharge exceeds Western Australia's previous franchise fee rates on diesel fuel. Off-road diesel fuel was previously exempt from Western Australia's franchise fee, while on-road diesel fuel was subject to a franchise fee rate of 7.45¢ per litre. Under the safety net arrangements, Western Australia has undertaken to keep price impacts to a minimum, and in particular to avoid any increases in the price of fuel.

To achieve this, Western Australia is paying fuel companies a subsidy of 8.1¢ per litre on off-road diesel fuel, and 0.65¢ per litre on on-road diesel fuel. In effect, a general subsidy of 0.65¢ per litre can be claimed on all diesel fuel, with an additional 7.45¢ per litre able to be claimed on off-road diesel fuel. The subsidies are subject to the fuel companies passing on the full benefit to consumers. I note that the use of the term "subsidy" to describe the payments to the fuel companies reflects the advice of the parliamentary draftsman. It does not imply any lack of commitment by the Government to ensuring that the benefit provided to diesel fuel users continues.

Subsidy payments have already commenced under the interim authority of the Appropriation (Consolidated Fund) Act (No 4), which Parliament passed in September, and individual contracts between the Government and the fuel companies. The appropriation Act provided sufficient funding for only six months.

This Bill contains the permanent subsidy arrangements for both off-road and on-road diesel fuel, including standing appropriations. The cost of the subsidy arrangements is estimated to be \$209m per annum in the case of off-road diesel fuel, and \$4.5m per annum in the case of on-road diesel fuel. However, apart from some transitional losses in the current financial year, these costs, and the loss of the fuel franchise fee itself, are expected to be fully offset by the revenue replacement grants from the Federal Government. Notably, no subsidy applies in respect of petrol, as the 8.1¢ per litre excise surcharge is less than the previous state franchise fee rate of 9.67¢ per litre.

This Bill also reconstitutes licensing arrangements for fuel suppliers, and exemption certificate arrangements for off-road diesel fuel users. A cost recovery based administrative fee replaces the previous ad valorem franchise fee on fuel suppliers.

The proposed diesel subsidy legislation is designed to recognise the industry practices established for the purposes of providing fuel franchise fee exemptions to off-road diesel users, and to ensure that the transition from the franchise fee scheme to the new subsidy arrangements is as seamless as possible.

The scheme requires all suppliers who "first supply" petroleum products in Western Australia to be licensed, in order to be able to receive a subsidy on the sale of off-road and on-road diesel. "First supply" is supply that is entered or delivered for home consumption under the Customs Act or Excise Act, or supply by a person outside Western Australia into Western Australia.

The off-road diesel subsidy is payable in respect of supplies to all off-road users who hold the necessary certificates

in Western Australia. Certified users are required to use all diesel purchased under their certificate for off-road purposes. Off-road purposes are purposes other than for propelling a road vehicle on a public road. Certified users cannot on-sell diesel purchased under the certificate. Either "licensed suppliers" or "authorised distributors" can supply certified users. Authorised distributors are those persons who purchase fuel from licensed suppliers, or other authorised distributors, to sell to certified users.

The subsidy is passed on to certified users by requiring licensed suppliers or authorised distributors to sell to them at a price reduced by the off-road subsidy.

Licensed suppliers are able to apply for a subsidy in respect of the supply of diesel either directly or indirectly to certified users. Where an authorised distributor has supplied a certified user with a quantity of diesel fuel, the distributor is able to claim compensation of the amount of the off-road diesel subsidy from either a licensed supplier or another authorised distributor, after showing certain records.

The proposed legislation provides that all applications for subsidies are to be made to the Commissioner of State Revenue. Interjurisdictional arrangements have been included to ensure that subsidies are not able to be claimed in different jurisdictions in respect of the same supply of diesel.

Licence, authority and certificate holders are able to amend claims within 21 days where either supply, a claim for compensation or usage is outside the conditions stipulated for the respective holder. Examples include where -

a licensed supplier has submitted an overstated application for off-road subsidy due to an administrative error;

an authorised distributor has claimed compensation in respect of diesel supplied to other than a certified user; or

a certified user has used diesel to propel a road vehicle on a road.

Where a licence, authority or certificate holder does not make a correction, the commissioner can impose a penalty amount at double the subsidy rate. The commissioner can also estimate the amount where records are unavailable. The amount of the penalty may be reduced by up to half at the commissioner's discretion. The commissioner may also impose conditions on or cancel licences, authorities and certificates as required. A decision by the commissioner on these matters is able to be reviewed by the Minister within 60 days. The commissioner is able to investigate licence, authority and certificate holders to ensure their compliance with the legislation. Should the safety net arrangements be no longer required, the Minister has the ability to issue an order to ensure the scheme no longer applies.

As I have stated before in this House, the decision of the High Court has highlighted the need for fundamental reform of the national tax system and commonwealth-state financial relations. As a consequence of the decision, Western Australia has lost about 15 per cent of its own source revenues, and has seen its reliance on federal grants correspondingly increased.

The Government will continue to work closely with other State Governments and the Commonwealth to redress the imbalance, and to secure a more robust revenue base for the State that can better meet growth in demand for state services and infrastructure. In the short term the Government will also support a thorough review at the national level of the section 90 safety arrangements to enhance their efficiency in any way possible. I commend the Bill to the House, and for the information of members I table an associated explanatory memorandum.

[See paper No 1063.]

Debate adjourned, on motion by Hon Bob Thomas.

ADJOURNMENT OF THE HOUSE - SPECIAL

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.12 am] - without notice: I move -

That the House at its rising adjourn until 2.00 pm today (Thursday).

I have an undertaking from the Leader of the Opposition that when the House commences its business at 2.00 pm, he will agree to a motion I will then move that the House immediately move to Orders of the Day.

Question put and passed.

ADJOURNMENT OF THE HOUSE - ORDINARY

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.13 am]: I move -

That the House do now adjourn.

Adjournment Debate - Sport

HON BARRY HOUSE (South West) [2.14 am]: I am sorry to delay the House at this late hour; however, I believe the House should take note of the front and back pages of *The West Australian* for Thursday, November 20. It indicates two contrasting attitudes to sport in this country. On the front page there is a photograph of Peter Matera joking with some of his team mates and putting the trauma of his recent decision behind him. On the back page there is an article about Mark Taylor being ready to join the players' strike. The article on the front page refers to Peter Matera's decision to re-sign with the Eagles and forgo an offer from the Melbourne Football Club; in effect, he has forgone the opportunity to earn another half a million dollars in player payments.

Peter Matera's decision is based on loyalty to his club and his team mates. It indicates that the game is bigger than the individual. The article on the back page of *The West Australian* refers to the disagreement between the Australian Cricket Board and the Australian Cricketers' Association. What the players intend to do is based on greed and indicates a belief that they are bigger than the game itself.

The Australian cricketers have lost the plot. In an article in this newspaper Dennis Lillee sets out some of the statistics that are relevant to this argument. He states that when he signed for Kerry Packer's World Series Cricket organisation he was one of the highest paid players, receiving \$35 000 a year. That equates to about \$115 000 in today's money. Today's top bracket test players earn \$450 000 a year just to play cricket. On top of that they are allowed to endorse products, write books, get involved with the media and pursue their earning potential to pretty significant amounts. Dennis Lillee also compares player payments, which have increased 106 per cent since 1992-93 from \$4.6m to \$9.5m, representing 18 per cent of the Australian Cricket Board's total revenue. The players are claiming 40 per cent of the Australian Cricket Board's total revenue. I hope it is an ambit claim. In total it represents \$21.6m of total revenue. They have conveniently forgotten that Australian cricket last year lost \$2.5m and Australian cricket cannot necessarily support those sorts of demands.

Their attitude is becoming pretty boorish and selfish. It has always been an honour and privilege to play sport for one's country. The Australian cricketers have lost that and they are obviously more interested in playing for themselves than playing for their country. We have already seen one defection from the players' side. Dean Jones has said that he would be prepared to play cricket under any circumstances. If the current Australian team were to pull the pin I am sure Australia very quickly could put a pretty useful side into the field. If one looks around at Australian cricketers one sees Queensland players Matthew Hayden, Adam Dale, Martin Love; from NSW, Stuart MacGill, a former Western Australian; from South Australia Darren Lehmann; from Western Australia Justin Langer, Martyn, Moody, Gilchrist, Julian and Hussey, all of whom would make worthy Australian representatives, as would Ian Harvey from Victoria and Michael Di Venuto from Tasmania. They would probably jump at the idea of playing for their country, where the feeling about playing for one's nation is more important than playing for oneself.

My real fear is that the current attitude of the Australian cricketers, led by the best paid test players, will affect interest in the Perth test which starts today, Thursday. I feel that many people will not go to the cricket for the reason that they are not prepared to watch people playing for themselves. They want to watch people play for their nation, not their own pockets.

Hon Tom Stephens: You will have us so exhausted we will not be able to watch the cricket.

Hon BARRY HOUSE: Even if I had the opportunity to go, my interest has been diminished by the boorish attitudes of the current Australian cricketers. The Perth Test is under enough threat with the problems experienced with the pitch and attendances in past seasons. This current situation will only create further difficulties in attracting decent attendances at the Perth Test.

Hon Kim Chance: The ACB is hardly blameless.

Hon BARRY HOUSE: Certainly, the Australian Cricket Board has traditionally been an inflexible organisation. I am not saying the ACB is blameless, but in this case the Australian public want to watch cricketers play for their nation. They do not want to watch cricketers who are more interested in earning an extra \$100 000 a year. They want the average Sheffield Shield players to be paid more. That is fair enough. I know a little about cricket administration, and am aware that one of the major problems with the game in England is that many good cricketers are in a comfort zone playing county cricket. They are paid very well and they have no incentive to take the extra step and play for their country. That is part of the problem with English cricket as I see it, and many cricket administrators in England are also starting to see it that way.

The Australian Cricketers' Association, in trying to improve the deal for Sheffield Shield players, may inadvertently be creating a situation that keeps young players from first class cricket longer as older players stay in the game longer because they are in a much better comfort zone. In that case young talented players will not advance through the ranks, and this has been the hallmark of Australian cricket for many years. I find the attitude of the Australian

cricketers, led unfortunately by leading Test players, somewhat boorish. They are placing themselves above the game, and no individual is bigger than the game.

Adjournment Debate - Legislative Program

HON NORM KELLY (East Metropolitan) [2.22 am]: I did not oppose the special adjournment until two o'clock later today for obvious reasons, which become even more obvious as every minute passes. I also point out that there are currently 15 motions on the Notice Paper which, ideally, should be dealt with. Some of those motions have been on the Notice Paper for more than three months, and I would like at this late stage of the session to see some multi-partisan support for expediting some of those matters.

Hon E.J. Charlton: I think that is what we did between 7.30 and 2.30.

Hon NORM KELLY: I am talking about motions rather than Orders of the Day.

Hon N.F. Moore: Do you want to take over the whole place? We spent all night dealing with a Bill for you people, and you now say we should deal with all the other things. I have already indicated the difficulty of getting the legislative program finished. If you want to sit for another three or four weeks, just put your hand up.

Hon NORM KELLY: I intended to speak for only a minute.

Hon N.F. Moore: I will help you.

Hon NORM KELLY: I am talking about motions which the Minister may find totally irrelevant, but which some members may think are totally relevant. There is a need to debate them. I obviously do not have the support of the Leader of the House, judging by his leaving the Chamber.

The PRESIDENT: Order! It is not usual to refer to members, whether they are in or out of the Chamber.

Hon NORM KELLY: I hoped there would be some sense of urgency about dealing with some of these motions. Unfortunately, it appears from the non-leadership of the Leader of the House that that will not be the case.

Question put and passed.

House adjourned at 2.24 am (Thursday)

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

SCHOOLS - FEES

Compulsion to Pay

667. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Education:

- (1) Can the Minister for Education confirm whether he is aware of the Auditor General's statement to the effect that school fees are not the same as enforceable debts, and schools have no legal basis to compel payment?
- (2) If so, can the Minister confirm whether the Education Department includes this advice in the information forwarded to schools dealing with departmental policy and legislation relating to school fees and charges?

Hon N.F. MOORE replied:

- (1) Yes, however the Crown Solicitor's Office, which has been consulted on the matter, has disagreed with the statement by the Auditor-General. The term 'school fees' has come to develop two meanings during the life of the current Education Act 1928. The first, typically referred to as 'fees', refers to tuition by teachers. These fees are not currently levied by government schools. The second, commonly referred to as 'charges', regards the provision of resources to support the instructional program of schools. Charges are currently levied by government schools, and are considered an enforceable debt. A \$9.00 voluntary contribution, which is requested for students in primary schools, is not enforceable.
- (2) Specific information regarding the recovery of school charges was sent to government schools and District Offices early in Term 4, 1997. These instructions include statements to the effect that:

sensitivity to financial hardship is essential;

only after every reasonable effort to obtain payment has been made, should debt collection measures be considered; and

extra-curricular activities may only be used as sanctions for the non-payment of school charges if the activity is subsidised by the school.

GOVERNMENT CONTRACTS - EXCESS OF \$10M

Number and Details

954. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Commerce and Trade:

- (1) How many contracts over \$10m have been awarded by any Government departments or agencies within the Minister for Commerce and Trade's portfolios since February 1993?
- (2) Will the Minister list those contracts?
- (3) What was the value of each of these respective contracts?
- (4) What is the duration of each of these contracts?
- (5) Who is the contract entered into with?

Hon N.F. MOORE replied:

Department of Commerce and Trade

- (1) None.
- (2)-(5) Not applicable.

Small Business Development Corporation

- (1) Nil.
- (2)-(5) Not applicable.

International Centre for Application of Solar Energy (CASE)

- (1) Nil.
- (2)-(5) Not applicable.

Technology Industry Advisory Council (TIAC)

- (1) Nil.
- (2)-(5) Not applicable.

Gascoyne Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Goldfields-Esperance Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Great Southern Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Kimberley Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Mid West Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Peel Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Pilbara Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

South West Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

Wheatbelt Development Commission

- (1) Nil.
- (2)-(5) Not applicable.

GOVERNMENT CONTRACTS - EXCESS OF \$10M

Number and Details

956. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Primary Industry:

- (1) How many contracts over \$10m have been awarded by any Government departments or agencies within the Minister for Primary Industry's portfolios since February 1993?

- (2) Will the Minister list those contracts?
- (3) What was the value of each of these respective contracts?
- (4) What is the duration of each of these contracts?
- (5) Who is the contract entered into with?

Hon E.J. CHARLTON replied:

With the exception of the Grain Pool of Western Australia, no other agency/department has let any contracts in excess of \$10m.

Grain Pool of Western Australia:

- (1) One.
- (2)-(5) Contract between the Grain Industry and the WAGR.
- (3) Varies according to transport task to move grain by rail.
- (4) 5 years (1/11/94 - 31/10/99).

MINISTRY OF JUSTICE - COURT PROCEEDINGS

Change of Geographical Location - Policy

1139. Hon MARK NEVILL to the Attorney General:

- (1) What is the policy of the former Crown Law Department and the Department of Justice in respect of the removal of court proceeding to other geographical locations?
- (2) Are reasons required?
- (3) Are approvals required?
- (4) Is there a policy for handling of charges against public figures because of the need to avoid impropriety or the perception of preferential treatment?

Hon PETER FOSS replied:

- (1) In each case the considerations taken into account primarily involve issues of costs and convenience to the Crown and to prosecution witnesses.
- (2)-(3) Once a matter is before the court, the decision to transfer the matter to another location is one for the Magistrate. Magistrates usually require justification upon application.
- (4) All defendants are treated fairly and impartially.

FISHERIES - TREVOR AND KINGSLEY PORTER

Transfer of Hearing to Perth

1140. Hon MARK NEVILL to the Attorney General:

I refer to the recommendation of Fisheries Department officers to prosecute both Senior Police Officer Kingsley Porter and Trevor Porter in respect to offences against then *Fisheries Act 1905* which occurred on October 21, 1992 and the hearing scheduled in Geraldton in May 1993 -

- (1) What happened to the summons that was drawn up and or issued for the charge to be heard in Geraldton?
- (2) Will the Attorney General table the documents relating to the decision to move the hearing of the charges from Geraldton to Perth?
- (3) What was the department's prosecution policy at the time in respect of the transfer of the hearing of this charge from Geraldton to Perth?

Hon PETER FOSS replied:

- (1) A summons was drafted but not filed at the Court in Geraldton as notification of intention to plead guilty and consequent request for the matter to be heard in Perth had been received from the defendant.
- (2) No.
- (3) The hearing was not transferred from Geraldton to Perth.

COURTS - MAGISTRATES

Workload

1152. Hon MARK NEVILL to the Attorney General:

In respect of the workload of the magistrate -

- (1) For each individual magistrate in Western Australia, how many charges were dealt with on Friday, October 31, 1997?
- (2) How many individual cases were brought before the court on Friday, October 31, 1997?
- (3) Which court was each magistrate presiding in?

Hon PETER FOSS replied:

(1)-(3)

Magistrate	No. Charges (Q1)	No. Cases (Q2)	Location (Q3)	Jurisdiction
S Heath	15	10	Perth	Petty Sessions
G Cicchini	81	31	Perth	Petty Sessions
K Moore	79	2	Perth	Petty Sessions
P Cockram	11	6	Perth	Petty Sessions
P Heaney	218	70	Perth	Petty Sessions
R Burton	228	34	Perth	Petty Sessions
P Michelides	85	13	Perth	Petty Sessions
D Bennett-Borlase	6	6	Perth	Petty Sessions
G Calder	1	1	Perth	Petty Sessions
W Tarr	8	6	Perth	Petty Sessions
J Musk	3	2	Perth	Petty Sessions
N Roberts	33	12	Perth	Petty Sessions
M Wheeler	27	21	Perth	Petty Sessions
N Pillay	183	49	Perth	Childrens Court
P Thomson	5	5	Perth	Childrens Court
P Thobaven	128	73	Fremantle	Petty Sessions
S Malley	14	11	Fremantle	Petty Sessions
S Gordon	13	5	Fremantle	Childrens Court
I Brown	53	5	Midland	Petty Sessions
F Cullen	26	19	Midland	Petty Sessions
T McIntyre	137	70	Armadale	Petty Sessions
R Black	87	46	Joondalup	Petty Sessions
S Vose	25	11	Joondalup	Childrens Court
R Gething	10	8	Mandurah	Petty Sessions
P Malone	9	9	Rockingham	Petty Sessions
R Glynn	22	11	Albany	Petty Sessions, Childrens Court
K Fisher	45	23	Bunbury	Petty Sessions, Childrens Court
D Jones	10	6	Geraldton	Petty Sessions
K Boothman	15	6	Kalgoorlie	Petty Sessions, Childrens Court
J Packington	12	8	Carnarvon	Petty Sessions, Childrens Court
T Bloeman	40	16	Port Hedland	Petty Sessions, Childrens Court
C Roberts	2	2	Broome	Petty Sessions
Total	1631	597		

DETENTION CENTRES - JUVENILE

Rangeview Remand Centre - Increased Daily Muster

1158. Hon CHERYL DAVENPORT to the Attorney General:

- (1) Is the Attorney General aware that the daily muster at Rangeview Remand Centre is now over 50 juveniles?

- (2) Has the "three strikes" law led to the increase in numbers?
- (3) Is the increase caused by bail conditions not being met?
- (4) Given that these high numbers are well above the original 30 for which it was planned and built, what capacity can Rangeview accommodate before a new facility is required?

Hon PETER FOSS replied:

- (1) Yes. On 12 November 1997 the muster at Rangeview Remand was 50. However, it varies significantly on a daily basis. For example, on 14 November 1997 the muster was 39.
- (2)-(3) No.
- (4) Rangeview was built to accommodate 48 detainees. A further eight cells were converted to double cells after the Centre opened providing standard accommodation for 56 detainees. A further 11 beds are available in the Special Purposes Unit if required.

LEGAL AID - COMMISSION

Bunbury - Mr David Smith's Appointment

1159. Hon DERRICK TOMLINSON to the Attorney General:

- (1) Has David Smith, the previous Member for Mitchell, been offered a position with the Legal Aid Commission?
- (2) If so, is this position as a Junior Law Officer with the Legal Aid office in Bunbury?
- (3) How many candidates were there for the position, and how did their qualifications for the position compare with those of Mr Smith?
- (4) Was this appointment the result of a vacancy or is this a new position?
- (5) In which area of the law will Mr Smith be expected to work?
- (6) What experience was required for the position in question?
- (7) How long has it been since Mr Smith practised law?

Hon PETER FOSS replied:

- (1) Yes, a contract position from 18 November 1997 until 30 June 1998.
- (2) Yes (Level 7).
- (3) Five candidates.

Candidate 1 advised she has only six months post restricted year experience.

Candidate 2 advised he practised primarily in commercial litigation, mining and insurance law and native title claims.

Candidate 3 indicated that he had no family law experience.

Candidate 4 had some six and a half years experience in basic areas of criminal, family and civil law, but did not want to do trial work. He would also have preferred a part time position.

Candidate 5 Mr Smith, was admitted to practice in 1967, was a partner in a major Bunbury law firm for 12 years, had extensive experience in criminal, family and civil law, and was a competent trial lawyer.

- (4) The position became vacant when the incumbent solicitor resigned.
- (5) Criminal, family and civil law.
- (6) Several years experience and appropriate ability in criminal, family and civil law.
- (7) Mr Smith practised law full time from 1967 until he entered Parliament in 1983, practised part time while a member of Parliament, and practised full time from December 1996 until the present.

QUESTIONS WITHOUT NOTICE

COURTS - SUPREME

Fees Review Committee - Treasury's Request

1056. Hon N.D. GRIFFITHS to the Attorney General:

What are the terms of Treasury's request in 1996 to the Supreme Court Fees Review Committee to review fees?

Hon PETER FOSS replied:

I thank the member for some notice of this question. The request from Treasury was in relation to the provisions of section 55 of the Financial Administration and Audit Act which require each accountable authority to, at least once a year, review fees and charges.

STATE FINANCE - GOVERNMENT DEPARTMENTS

Operating Trust Accounts - Balance in Aggregate

1057. Hon TOM STEPHENS to the Minister for Finance:

- (1) Will the Minister make available to the House the balance in aggregate of departmental operating trust accounts for the months of August, September and October?
- (2) If not why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The balance in aggregate of departmental operating accounts for the months of August, September and October was \$301m, \$263m, and \$343m respectively. The figure for October is preliminary.
- (2) Not applicable. The member can give that answer to Anne Burns now.

LOCAL GOVERNMENT - CITY OF WANNEROO

Inquiry - Cost and Public Submissions

1058. Hon TOM STEPHENS to the Minister representing the Minister for Local Government:

- (1) Will the public be invited to make submissions to the inquiry panel into the City of Wanneroo?
- (2) What protections apply to witnesses appearing before the panel?
- (3) From whose budget will funds for the operation of the panel and the remuneration of its members be drawn?
- (4) What is the estimated cost of the panel's operations and its members' remuneration?

Hon E.J. CHARLTON replied:

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

WATER RESOURCES - FORRESTDAL-BANJUP AREA

Private Properties - Ground Water Tests

1059. Hon NORM KELLY to the Minister representing the Minister for Water Resources:

- (1) Has the Water and Rivers Commission recently conducted tests on ground water quality on private properties in the Warton and Forrest Roads area of Forrestdale/Banjup?
- (2) If so, on what dates were samples taken, and when will the results be available?
- (3) What contaminants are being tested for in these samples?
- (4) What is the normal time taken for compiling test results on water quality samples?
- (5) Has the commission investigated possible sources of contamination in this area, and if so, can the Minister table the results of these investigations?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Yes.
- (2) Samples were collected from existing bores between 6 and 17 November 1997. Results from the chemical laboratory are expected within 10 working days.
- (3) Samples were submitted for testing for the following chemical contaminants: Total nitrogen, ammonia, nitrate, heavy metals, petroleum hydrocarbons, industrial solvents and pesticides. Samples were also collected to test for the presence of pathogenic micro-organisms.
- (4) Generally, test results are available from the chemical laboratory within 10 to 15 working days.
- (5) Yes, the commissioner has investigated possible sources of contamination in this area.

I seek leave to table the document.

Leave granted. [See paper No 1056].

ENVIRONMENT - MALLEE FOWL

Translocation - Francois Peron National Park

1060. Hon J.A. SCOTT to the Minister representing the Minister for the Environment:

- (1) As the Minister for the Environment stated in answer to question on notice 829 of 27 August 1997 that all translocation proposals must be approved by the Animal Experimentation Ethics Committee, why was approval granted by the AEEC for the translocation of mallee fowl to the Peron Peninsula on 25 September 1996, two months prior to the translocation proposal being completed?
- (2) Was the application for approval document the only information given to the Animal Experimentation Ethics Committee on which to make a decision on the translocation of mallee fowl? If not, what information was provided and will the Minister table that information?
- (3) The translocation proposal states that the release site will be in acacia scrub land within a 15 km radius of Peron homestead, an area from which both foxes and cats will have been eradicated. As the response to the Legislative Assembly question on notice 2638 from Dr Edwards on 11 September says that the feral cat population has been reduced by 80 per cent, why have the mallee fowl been released when 20 per cent of cats remain?
- (4) What number of cats does that 20 per cent of the remaining cat population represent?

The PRESIDENT: Order! This is not directed at Hon Jim Scott. Standing Order 140(a) requires questions to be concise and not to contain various other matters. It is the conciseness that I am interested in. I invite members to remember that when they are asking questions.

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The translocation proposal document is not the document used by the Animal Experimentation Ethics Committee to assess translocation proposals as it covers some issues that are outside the scope of the committee. A separate application form that addresses only animal welfare and ethics issues is used. In this case the application form was completed and submitted to the animal ethics committee before the translocation proposal had been completed.
- (2) Yes. Verbal information from the chairman and CALM scientists, both of whom have extensive experience with translocation protocols.
- (3) The translocation proposal states that cat density over the Peron Peninsula would be reduced by 80 per cent and that cats would be eradicated in the immediate vicinity of the release site. These criteria were met prior to the release of the mallee fowl.
- (4) Feral cat survey techniques are not accurate when cats reach low densities. However, it is estimated that 20 per cent of the remaining cat population represents about 75 cats distributed over the 1 000 square kilometres of the Peron Peninsula. They breed fairly fast, I suppose.

TIDAL POWER STATION - DERBY-WEST KIMBERLEY

1061. Hon GIZ WATSON to the Leader of the House representing the Minister for Resources Development:

With regard to question 988 of 12 November regarding the Derby tidal power project, is the Government considering a state agreement Act to cover this project?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. Not at present.

LOCAL GOVERNMENT - CITY OF WANNEROO

Auditors and Solicitors

1062. Hon TOM STEPHENS to the Minister representing the Minister for Local Government:

In each of the years from 1983 to 1997 who were the auditors and the solicitors of the City of Wanneroo?

Hon E.J. CHARLTON replied:

I ask that the question be put on notice.

HEALTH - CERVICAL CANCER SCREENING SERVICE

Accreditation Program for Nurses

1063. Hon CHERYL DAVENPORT to the Minister representing the Minister for Health:

- (1) Has the Health Department implemented an accreditation program for nurses providing cervical cancer screening services?
- (2) If not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Yes. A pilot study was conducted earlier in the year in conjunction with the Royal College of Nursing Australia. Based on the recommendations of this project, the Health Department is updating an operational instruction which will facilitate nurses to be credentialled as pap smear providers. These guidelines will be completed by mid-December 1997. A review panel comprising representatives from the Health Department, medical profession, Royal College of Nursing Australia, pathology and nursing education has been set up to manage the process of credentialling the nurses and the accreditation of education programs preparing nurses to be pap smear providers.
- (2) Not applicable.

TOURISM - COMMISSION

Marketforce Contract - Cost Advantage

1064. Hon KEN TRAVERS to the Minister for Tourism:

With regard to the Western Australian Tourism Commission's appointment of Marketforce for a multimillion dollar advertising campaign, I ask -

- (1) As part of its submission for the contract, did Marketforce offer to reduce the commission it would receive for the placement of advertisements from its wholly owned Media Decisions company?
- (2) What was the actual cost advantage that secured Marketforce the contract over the company 303, which had been recommended for the contract by the expert selection committee?

Hon N.F. MOORE replied:

I ask that this question be placed on notice.

SPORT AND RECREATION - JET SKIS

*Swan and Canning Rivers***1065. Hon TOM STEPHENS to the Minister for Transport:**

- (1) Will the Minister detail the number of accidents causing injury that occurred on the Swan and Canning Rivers and involved jet skis in the last 12 months?
- (2) Is the Minister aware of a proposal to increase the areas of the Swan River set aside for jet skis?
- (3) Is there any proposal by the Minister to limit the speed of jet skis within the areas set aside for their use?
- (4) What does the Minister propose to do to ensure the safety of other river users, given the number of incidents involving jet skis?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) Five accidents involving jet skis on the Swan and Canning Rivers have been reported to the Department of Transport over the last 12 months.
- (2) The Department of Transport is undertaking the final public consultation stage for a strategy for management of personal watercraft - jet skis - for the Swan and Canning river systems. The strategy proposes an additional personal watercraft area adjacent to the Narrows Bridge - currently a waterski area - and another upstream of Heirisson Island. If implemented, there will be a total of three exclusive, designated areas for freestyle personal watercraft use. In addition, personal watercraft would be banned from designated waterski areas and the upper reaches of both rivers.
- (3) No, within the designated areas there will be no speed limit, which is consistent with the approach adopted in designated waterski and speedboat areas.
- (4) Outside the three exclusive designated areas, personal watercraft users must comply with all marine safety regulations, including the prevention of collision regulations, that apply to all vessels using the Swan and Canning Rivers. It should be noted that the proposed management strategy prohibits personal watercraft freestyle and wake-jumping activities outside the designated areas.

DEPARTMENT OF LAND ADMINISTRATION - LAND CLAIM MAPPING UNIT

*Native Title Resources***1066. Hon E.R.J. DERMER to the Minister representing the Minister for Lands:**

I refer to the annual report of the Department of Land Administration for 1996-97, and ask -

- (1) What resources from the land claim mapping unit, or any other unit within DOLA, have been dedicated to date for procedures relating to native title in terms of human resources, legislative research, and administrative costs for each financial year from 1994 to the present?
- (2) What increased resources, if any, were allocated specifically to the land claim mapping unit in the light of the threefold increase in plan production reported over the 1995-97 period in terms of human resources, legislative research, and administrative costs?
- (3) If none, why have additional resources not been allocated to this unit?

Hon MAX EVANS replied:

I thank the member for some notice of this question. As it will take considerable time to research and collate the answer to this question, I ask the member to place the question on notice. As he said, additional resources will be required to answer this question.

BUNBURY SILOS - SALE

*Terms of Payment***1067. Hon J.A. COWDELL to the Leader of the House representing the Minister for Regional Development:**

In relation to the proposed sale of the government owned Bunbury silos to a group of local businessmen, I ask -

- (1) What percentage of the purchase price was paid as a deposit by the business group?
- (2) Can the Minister confirm media statements from the South West Development Commission that further payments are required only after approvals have been secured?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) An amount of \$45 000 - five per cent - with \$10 000 payable within seven days of acceptance, and \$35 000 to be paid within six months of the acceptance of the offer.
- (2) Yes. Provided the City of Bunbury and the Minister for Planning approve the rezoning and use of the land requested by the purchaser, the balance of \$855 000 is payable within 21 days of zoning application approval or 22 months from the date of acceptance, whichever is the later.

FLAGS - WESTERN AUSTRALIAN

Tender Price and Local Content

1068. Hon TOM HELM to the Minister representing the Minister for Services:

I refer to tender schedule RFT 465/97 for the supply of 1 000 Western Australian state flags on behalf of the Minister for Justice at a cost of \$45 250, and ask -

- (1) Did the Minister receive a tender of \$35 000 for those flags?
- (2) If so, why was the higher tender accepted?
- (3) How much of the flags is imported content?
- (4) Were the flags manufactured in Western Australia?

Hon MAX EVANS replied:

I thank the member for some notice of this question. First, I clarify that RFT 465/97 relates to a contract let on behalf of the Ministry of the Premier and Cabinet, and not the Minister for Justice as indicated by the question.

- (1) Yes.
- (2) The highest tender was not accepted. The successful tenderer submitted a clearly superior product for evaluation and was selected on the basis of best value for money.
- (3) All materials are sourced from Australian suppliers.
- (4) Yes.

PRISONS - BANDYUP

Extension

1069. Hon HELEN HODGSON to the Minister for Justice:

- (1) How many of the 110 prisoners currently in custody at Bandyup Women's Prison -
 - (a) are held on remand;
 - (b) are held pending sentencing;
 - (c) would be eligible for classification as a minimum security prisoner; and
 - (d) would be eligible for classification as a maximum security prisoner?
- (2) How many prisoners will Bandyup Women's Prison be designed to accommodate after completion of the proposed extensions?
- (3) Will the proposed extensions incorporate accommodation designed specifically for prisoners in each of the categories in part (1) of the question?
- (4) If so, which categories, and how many prisoners in each category, will be accommodated within the prison?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) (a) 17;
- (b) 17;
- (c) 37; and
- (d) 32.
- (2) Ten additional beds, which will bring the standard bed capacity to 95. It should be noted that these are renovations to existing activity rooms and not extensions.
- (3)-(4) Bandyup Women's Prison does not separate prisoners of different categories.

LOCAL GOVERNMENT - ALBANY

Amalgamation of Town and Shire Councils - Referendum

1070. Hon MURIEL PATTERSON to the Minister representing the Minister for Local Government:

Who would be responsible for the cost of a referendum on the proposed amalgamation of the Albany Shire and Town Councils, should it take place?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. The local government that conducts a referendum, or is directed by the Minister to conduct a referendum, is responsible for the cost of that referendum. Thus, if there is a petition for a poll from among electors of the Shire of Albany, the referendum will be held only among Albany Shire electors and the cost will be borne by the Shire of Albany.

PEARLING - BROOME

Transfer of Licence - Domicile of Acquiring Company

1071. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:

- (1) Is it true that one of the companies licensed under the Pearling Act and based at Broome has recently been acquired by another company?
- (2) If yes, which company has been acquired and by whom?
- (3) Is the acquiring company a foreign company or controlled by a foreign company?
- (4) If yes, what is the domicile of that company?
- (5) Following the acquisition, what proportion of the pearl shell quota will be held by the acquiring company and its associates?
- (6) What steps will the Minister take to maintain competition in the pearling industry and Australian control of this valuable resource?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) Fisheries Western Australia has not received any recent application for the transfer of a pearling licence to another company.
- (2)-(5) Not applicable.
- (6) Ministerial policy guidelines have been issued on foreign ownership in the pearling industry. I will arrange for a copy of the guidelines to be made available to the member. Pearling legislation is also subject to reviews under national competition policy agreements.

I seek leave to table the ministerial policy guidelines.

Leave granted. [See paper No 1057.]

FORESTS AND FORESTRY - EMPLOYEES

*Breakdown of Roles***1072. Hon J.A. SCOTT to the Minister representing the Minister for the Environment:**

Now that the figure for employment in the timber industry has been reduced from 20 000 to 18 000, will the Minister for the Environment state -

- (1) How many people are directly employed in -
 - (a) native forest management in -
 - (i) state forest and timber reserves,
 - (ii) conservation reserves;
 - (b) native forest logging - felling and hauling;
 - (c) sawmilling logs from native forest;
 - (d) woodchipping logs from native forest;
 - (e) woodchipping sawmill residue from native forest logs and forest residue from native forest logging;
 - (f) processing native forest hardwoods;
 - (g) plantation and farm forestry management;
 - (h) plantation and farm forestry logging - felling and hauling; and
 - (i) processing plantation and farm forestry logs?
- (2) What multipliers were used to arrive at the figure of 18 000?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The answers to these questions require research and considerable checking of data and I request that the member put the question on notice to allow preparation of a response.

HOMOSEXUALITY - STATISTICS

*Accuracy***1073. Hon GREG SMITH to Hon Helen Hodgson:**

I refer to Order of the Day No 12 and the member's second reading speech for the Acts Amendment (Sexuality Discrimination) Bill in which the member claims that 6 per cent of homosexual men report being bashed in the past 12 months; that between 7 and 13 per cent of the population are homosexual - I have used a figure of 10 per cent as an average for the purpose of this question; and that by the age of 13, most homosexual youths are aware of their attraction to same sex partners. Let us assume that all these claims are correct.

According to the Australian Bureau of Statistics' estimated resident population by sex and age for Western Australia in 1996, the number of males in Western Australia aged 13 years and over is 712 052. If 10 per cent of these were homosexual, there would be 71 205 homosexual men in Western Australia. If 6 per cent of these men had reported being bashed in the past 12 months, that would mean that 4 272 of these men had reported being bashed. I ask the member -

The PRESIDENT: Order! I ask the member to look at Standing Order No 140 when he gets a chance. I must rule the question out of order, firstly because it contains matters of a hypothetical nature, and secondly because it is argumentative.

TRANSPORT - AIR SERVICES

*Perth-Mt Magnet-Cue - Rottnest Island Airlines' Route Protection***1074. Hon TOM STEPHENS to the Minister for Transport:**

- (1) What action is the Department of Transport taking to enforce the route protection that it guaranteed to Rottnest Island Airlines on its scheduled Perth-Mt Magnet-Cue flights?

- (2) Why is no action being taken against Skippers Aviation Pty Ltd, which is breaching that protection by operating several charter flights each week on that route?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1) Havsin Pty Ltd, trading as Rottneest Airlines, is licensed to conduct regular passenger transport flights between Perth, Mt Magnet and Cue. The Department of Transport has not licensed any other airline to operate the same type of service over this route.
- (2) Skippers Aviation has been licensed to conduct flights specifically for the carriage of Hill 50 Gold Mine's company personnel and equipment between Perth and Mt Magnet. There is no limit on the frequency of these flights. The operation is separate and distinct from the regular passenger transport service conducted by Rottneest Airlines in that the Skippers flights are not available to the general public. Accordingly, the operations of Skippers Aviation are not in breach of its licence.

FORESTS AND FORESTRY - GIBLETT BLOCK

Logging - Date of Commencement

1075. Hon NORM KELLY to the Minister representing the Minister for the Environment:

In respect of the Department of Conservation and Land Management's 1998 logging plans for the southern forest region -

- (1) On what dates, or approximate dates, are logging operations in Giblett block due to commence and finish?
- (2) If these dates are not currently known, at what point will they become known?
- (3) Does the area to be logged in Giblett include any areas that are interim listed on the register of the National Estate?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Commencement dates, or even approximate commencement dates, are not known; therefore, the final date is also unknown.
- (2) Dates will become known as market and seasonal circumstances cause current operational areas to become exhausted, inaccessible or inappropriate for the products required. These circumstances are subject to significant change at short notice.
- (3) Yes, all except about 25 hectares.

FIRE SERVICES - ALCOA OF AUSTRALIA LTD

Use of Fire Hydrants to Supply High Pressure Pumps

1076. Hon GIZ WATSON to the Attorney General representing the Minister for Emergency Services:

- (1) Does Alcoa of Australia Ltd or its contractors have permission to use fire hydrants to supply high pressure pumps, identified as 14, 17, 19 and 24, with a flow rate of 235 litres per minute, and 26 and 27, with a flow rate of 258 litres per minute, at any Alcoa sites?
- (2) If yes, who granted such permission and on what grounds?
- (3) If no, will the Minister investigate whether these practices are taking place and take action where necessary?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) Other than when water is used for fire fighting or hydrant water pressure testing, permission for the use of water that originates from water mains is the responsibility of the Water Corporation.
- (2)-(3) Not applicable.

SCHOOLS - REMOTE AREAS

Television Transmission - Federal Government Assistance

1077. Hon TOM HELM to the Leader of the House representing the Minister for Education:

Further to question without notice 1044 that I asked yesterday -

- (1) How much allowance has been made to change the receivers mentioned?
- (2) When will the planning and implementation be completed?
- (3) Will other projects be affected by the allowance?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) \$50 000 has been allocated for the replacement of receivers - decoders - to ensure that schools which currently have satellite reception facilities can continue to receive broadcasts when the service moves to digital transmission.
- (2) Implementation for the replacement of decoders is complete. The implementation is dependent upon the time frame of ABC and GWN to switch to digital transmission. Planning is based on the switch-over occurring between January and March 1998.
- (3) The sum allocated to replace the decoders will not affect other projects, in particular the installation of satellite receivers in 200 rural and remote schools.

HEALTH - CARNARVON

Need for Additional Services

1078. Hon TOM STEPHENS to the Minister representing the Minister for Health:

- (1) Does the Minister accept that there is an urgent and immediate need for additional medical and dental practitioners in Carnarvon?
- (2) What steps is the Minister taking to meet this need?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) No.
- (2) Not applicable.

CRIMINAL INJURIES COMPENSATION - APPLICATIONS

Mandurah, Bunbury, Pinjarra and Collie

1079. Hon J.A. COWDELL to the Attorney General:

How many of the 2 607 applications awaiting processing by the criminal injuries compensation assessors are from people living in -

- (a) Mandurah;
- (b) Bunbury;
- (c) Pinjarra; and
- (d) Collie?

Hon PETER FOSS replied:

I thank the member for some notice of this question. This information is not readily available and I am unwilling to allocate resources from within the Office of Criminal Injuries Compensation to what would be a time consuming task, particularly as it would consume the time of the assessors and their staff.

STANTON PARTNERS - BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND

*Interim Administrator and Internal Auditor***1080. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:**

- (1) During what period was Stanton Partners appointed interim administrator of the building and construction industry training fund?
- (2) During what period was Stanton Partners appointed internal auditor of the building and construction industry training fund?
- (3) Is the Minister aware of the potential for conflict of interest in appointing Stanton Partners to audit its own work?
- (4) How many contracts has Stanton Partners been awarded in this area of ministerial responsibility?
- (5) What is the total value of contracts received?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1)-(5) The answer to this question requires research and considerable checking of data, and I request that it be placed on notice to allow preparation of a response.

FUEL AND ENERGY - GAS

*Dampier to Bunbury Pipeline - Telecommunications Cable Bandwidth***1081. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Energy:**

- (1) Can the Minister confirm that the telecommunications cable that services the Dampier to Bunbury gas pipeline has bandwidth capacity in excess of that needed for the service of the pipeline?
- (2) If so, what is the extent of that surplus bandwidth capacity?

Hon N.F. MOORE replied:

I ask that the member place the question on notice.

SPORT AND RECREATION - AEROBICS CHAMPIONSHIP

*Funding - Cabinet Approval***1082. Hon KEN TRAVERS to the Minister for Tourism:**

Some notice of this question has been given. With regard to the FIG Aerobics Championships staged in Perth in May and June this year -

- (1) Can the Minister confirm that a proposal to fund this event was taken to Cabinet by the Premier?
- (2) If yes, did Cabinet decide to support this event and, if so, what was the agreed level of funding?

Hon N.F. MOORE replied:

- (1) No. As Minister for Tourism, I took the submission to Cabinet.
- (2) Cabinet agreed to support the event. The funding required was found from within the Tourism Commission's own funds and totalled \$100 000.

HEALTH - LAKE GREGORY

*Primary Health Care Nurse - Reduction of Service***1083. Hon KIM CHANCE to the Minister representing the Minister for Health:**

- (1) Is it correct that visits by the primary health care nurse from Derby to Balgo, Billiluna and Mullan - Lake Gregory - have been or will be withdrawn or reduced?
- (2) If so, why was this decision made, particularly in view of the need for preventive medicine in this area?

- (3) Which agencies are or were responsible for the funding of this service?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) Visits by the Derby Royal Flying Doctor Service primary health care nurse to Balgo, Billiluna and Mullan may cease shortly unless the RFDS can obtain funding to continue the service.
 - (2) Lack of funding to continue the service is the primary reason for ceasing visits. Nonetheless, primary health care is the responsibility of the nurses in the service of the Sisters of Mercy, under contract to the Health Department of Western Australia. These services remain in place.
 - (3) The RFDS primary health care nurse concept is an initiative of the RFDS and has been in place for only 12 months on a trial basis. The service to date has been jointly funded by the RFDS and the Kimberley Health Service.
-