WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
FIRST SESSION
1998

LEGISLATIVE COUNCIL

Tuesday, 16 June 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 3.30 pm, and read prayers.

BETTING CONTROL AMENDMENT BILL

Assent

Message from the Governor received and read notifying assent to the Bill.

NURSES' WAGE CLAIM

Petition

Hon Tom Stephens (Leader of the Opposition) presented the following petition bearing the signatures of 10 294 persons -

> To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents of Western Australia support the payment of wages and conditions to WA nurses commensurate with those of their colleagues interstate and request a significant increase to the Health budget.
>
> Your petitioners therefore respectfully request that the Legislative Council take all the necessary steps to achieve equity in the wages and conditions of WA nurses with their interstate colleagues.

[See paper No 1695.]

KWINANA IRON ORE EXPORT FACILITY

Urgency Motion

THE PRESIDENT (Hon George Cash): I have received the following letter addressed to me and dated 15 June 1998 -

> To the President of the Legislative Council
>
> I give notice that today the 16th of June I will move under Standing Order 72 that the House on its rising be adjourned until 4pm on December 24th 1998 in order to discuss the proposal to construct a facility to export iron ore from the Port of Kwinana and the failure of the EPA to formally assess this major project.
>
> Jim Scott MLC
> Member for the South Metropolitan Region

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

[At least four members rose in their places.]

HON J.A. SCOTT (South Metropolitan) [3.35 pm]: I move -

> That the House at its rising adjourn until 4.00 pm on 24 December.

I raise this matter today because I am concerned, firstly, that a major new project has been proposed for Cockburn Sound in the Kwinana area. This area is already overloaded with nutrients, according to the south metropolitan coastal waters study, and contains many contaminants. According to the Department of Environmental Protection these waters should not suffer further intrusion of nutrients or toxic matter.

The Environmental Protection Authority has chosen not to formally assess this project because it decided the project was very much the same as the ore loading facility built at Esperance. I should point out that the current proposal for Kwinana comes from three proponents: Koolyanobbing Iron Pty Ltd, the Fremantle Port Authority and Westrail.

Hon B.K. Donaldson: Can you explain for the uninformed what is going on at Kwinana?

Hon J.A. SCOTT: It is intended to build an export facility that will consist of a berthing jetty and ship loader, constructed as a southern extension of the existing bulk cargo jetty, an access jetty supporting an enclosed conveyor, a rail line along the existing service corridor, a railcar dumper, a storage shed, and enclosed conveyors.

Hon B.K. Donaldson: It works well in Esperance, so what is the problem?

Hon J.A. SCOTT: From an environmental point of view, the development at Esperance and the proposed development at Kwinana are two completely different situations. In fact, it is proposed that more than double the amount of ore will go through the Kwinana facility than the 1.5 million tonnes per annum currently shipped from the Esperance facility. It is estimated that 4 million tonnes per annum will be handled at Kwinana. At Kwinana, 200 000 tonne ships will be loaded, which require a much bigger turnaround space than the 60 000 tonne ships used at Esperance. The conveyors and loading equipment proposed for Kwinana will be different from those used in Esperance.

Hon Kim Chance: Was Esperance subject to formal assessment?

Hon J.A. SCOTT: Yes, it certainly was. Esperance went through one of the most critical and close observations by the EPA. My colleague Hon Christine Sharp was one of the board members at the time, and she is fully aware of the high interest and level of assessment which took place in that area to ensure a state of the art facility. I understand the people of Esperance wanted to keep the beaches the way they were - pristine. They wanted to ensure the iron ore dust did not get into the wheat being exported through the port. There was a whole range of concerns, including the trucking of the ore through the town. Since that time the town of Gibson has sought to have the rail line moved away from the town because of noise and dust created by the train.

That brings me to the situation at Cockburn Sound. As I said, we have been warned to watch the inputs to the waters of Cockburn Sound. Holistically we must also look at the other facilities being built in the area - the Fremantle Port Authority facility and the private port, which will be constructed at Challenger Harbour and James Point, as well as the facility at Jervoise Bay. We do not have a single proposal, but four additional new facilities in the area, which is already overloaded. The loader to be built at Kwinana, unlike that at Esperance, will have a much longer conveyor and will be constructed side-on to the prevailing wind conditions. Considerable dust will be blown from the conveyer. There is always dust and spillage from the very large conveyors.

Hon Peter Foss: Is iron ore a nutrient or a contaminant?

Hon J.A. SCOTT: It is an essential element for growth.

Hon Ken Travers: He's a bit rusty on that issue!

Hon Peter Foss: It's neither a nutrient nor a contaminant.

Hon J.A. SCOTT: This is another protrusion - this issue probably concerns me most - into Cockburn Sound.

Hon J.A. Cowdell: The Attorney General will know about protrusions.

Hon J.A. SCOTT: A berthing jetty, an access jetty and a ship-loader are being constructed. Two extra jetties will go out to the water. There will be a huge seawall for the private and the FPA ports and the additional 3.5 kilometres of seawall at Jervoise Bay in an area where there is already a mass of problems with the movement of water through Cockburn Sound because of the construction of the Garden Island causeway.

Hon Peter Foss: What have you done about it?

Hon J.A. SCOTT: For a start, I have been pushing both this Government and the Federal Government to do something about the causeway, with a bit of public spending to put better drainage into the causeway, rather than providing moneys to private enterprise.

Hon E.J. Charlton: You want to close down Kwinana and Fremantle.

Hon Peter Foss: If you are worried about it not being assessed, why not appeal?

Hon J.A. SCOTT: I shall.

Hon Peter Foss: That's it, then. It solves the problem. It's under control.

Hon J.A. SCOTT: That is not the whole problem. We have the environmental problems which will be exacerbated by having three proponents instead of one. Who will be responsible for the compliance requirements for all aspects of each project? As well as that, the trains - members should remember that the town of Gibson has already asked for the rail line to be moved - will be rumbling through towns like Kellerberrin and Cunderdin in the middle of the wheatbelt areas. There will be more trains.

Hon John Halden: They will back load them.

Hon J.A. SCOTT: They will back load them with rubbish from the distant electorates, such as that of Hon Greg

Smith. The Environmental Protection Authority has said that this facility is the same as the one in Esperance. It is not; it is double the size, and will have double the output, use different equipment, be in a different position and at a different place on the coast, and be affected by different prevailing winds. It will be put into an area already overloaded with inputs not only to the waters of Cockburn Sound but also into the air. In the Kwinana area, Governments - this one and previous Governments - have been irresponsible by not turning either the Kwinana A or the Kwinana C power station over to gas, as they should have been left years ago.

Hon Peter Foss: All Governments are responsible.

Hon J.A. SCOTT: Scrubbers have not even been put on the chimney now that coal is being used. The levels of asthma are much higher in this area as a result of the dust in the area. This dust is a contaminant and will add to the pollution.

Hon Peter Foss: Do you want them to go through Doodlakine?

Hon J.A. SCOTT: Yes; they will be going through Doodlakine.

Hon Peter Foss: I see your interest in that case.

Hon J.A. SCOTT: The trains will go through Merredin, and all those country towns.

Hon PETER FOSS: I used to hear them at night going past at Meckering.

Hon J.A. SCOTT: I do not want to name these towns, one by one. I will provide -

The PRESIDENT: Order! Hon Jim Scott is addressing the Chair and I am having difficulty hearing him.

Hon J.A. SCOTT: We have a failure to look at the cumulative impacts of the Jervoise Bay industrial facility, the Kwinana industrial area, the private port and the FPA facility as well as this iron ore loading facility. It is getting beyond a joke for the people in that area. They see access to the coast being cut away at a very rapid rate, and they are getting very angry about it.

What is even worse is that there is no reason to go down this path. Why are we doing this? About three years ago, this Government and the Federal Government together spent about $10m to upgrade the rail line from Koolyanobbing to Esperance and to assist with the construction of an ore loading facility at Esperance, which required increasing the power requirements in Esperance. Even though at that time I said I did not think Esperance was an appropriate place for this facility and that it was closer to Kwinana -

Hon Derrick Tomlinson: Do you support it? Have you changed your mind?

Hon J.A. SCOTT: At that time we did not have the proposed facility for Jervoise Bay and two other ports going in -

Hon Derrick Tomlinson: Jervoise Bay has always been there.

Hon J.A. SCOTT: For the benefit of Hon Ljiljanna Ravlich I will pronounce it as Jer-vis Bay.

Hon Derrick Tomlinson: It is Jerv-woir!

Hon J.A. SCOTT: In any event, it is undergoing a major expansion. We have a project going into an area which will change substantially from that which was first proposed for Esperance. I have no worries about defending my saying at the time that to put this facility in Esperance was a bad decision. This Government miscalculated the size of ships that would be required to go into Esperance. Now it is walking away from an investment of millions of dollars, yet wanting to throw away money by having exactly the same sort of facility in Kwinana. We are also faced with the Environmental Protection Authority not wanting to assess the project, saying that the project will be virtually the same as the one in Esperance, when clearly it is not.

I raise this matter today to ascertain where is the good management of this Government when it sees the huge community outcry about the way in which the access of ordinary people to Cockburn Sound has been cut off when the Government is allowing one after another of these projects to be plonked on the edge of Cockburn Sound without any overall social or impact studies of the cumulative effects of those projects. We are told that each project is a stand-alone facility, and each knows nothing about the other. Yet all these projects will have very significant impacts not just on each other, but also on the environment and the community in that hinterland.

I want to ensure that the Government is aware that the community is not happy about the way it has been left out in the cold with regard to their access to a beach which has safe conditions in which to bathe and is not completely surrounded by dust, grime and toxic waste. It is time this Government started governing for all the people who live in the South Metropolitan Region, instead of looking after the interests of Portman Mining and Mr Copeman and his

like, and gave something to the general community. The Government should approach the Federal Government to do something about putting proper drainage into the causeway to Garden Island, because since that was constructed, the worst damage has occurred in Cockburn Sound due to the lack of circulation of water. That is very much needed in that area.

HON MAX EVANS (North Metropolitan - Minister for Racing and Gaming) [3.51 pm]: The urgency motion concerns the facility to export iron ore from the Port of Kwinana and the failure of the Environmental Protection Authority to formally assess the major project. The proposal involves additional berth extension at the Fremantle Port Authority bulk cargo jetty, additional access jetty and enclosed conveyor, a rail car dumper, enclosed ore storage shed and enclosed ore handling facilities. Koolyanobbing Iron Ore Pty Ltd currently exports 2 million tonnes per annum of ore through the Port of Esperance, has restrictions on rail wagon load of 60 tonnes per wagon, has train speed restrictions on the Kalgoorlie to Esperance line, has restricted port stockpile capacity, and is restricted by vessel size of 55 000 dead weight tonnes able to access the Esperance Port.

The company proposes to increase production at Koolyanobbing to enable the export of up to 4 million tonnes per annum of iron ore through Kwinana. Shipping through Kwinana will enable the company to increase wagon loads to 74 tonnes per wagon, to load 100 000 dead weight tonne vessels, to decrease its rail haulage distance by 100 kilometres, and to reduce sailing time by two days. That is the reason that this has been brought forward. Westrail is involved with the Fremantle Port Authority and the EPA. The EPA deferred its decision on the level of assessment pending a site inspection. The Kwinana Export Facility was advertised in *The West Australian* on Saturday, 13 June 1998, as not assessed to be managed under part V of the EPA Act. The project is subject to works approval and licensing. That advertisement appears on page 49 of *The West Australian* on Saturday, June 13, and under "Not assessed - (Requires Works Approval and/or Licence)", point 8 reads, "Kwinana export facility, Kwinana."

In addition to that, it is going through that process and it explains more in the letter that I will read out. The Department of Environmental Protection wrote letters to Koolyanobbing Iron Ore Pty Ltd and the Fremantle Port Authority as follows -

> The Environmental Protection Authority understands that you wish to undertake the above proposal which has been referred to the Authority for consideration of its potential environmental impact.
>
> This proposal raises a number of environmental issues. However, the overall environmental impact of the proposal is not so severe as to require a formal assessment by the Authority, and the subsequent setting of formal conditions by the Minister for the Environment.
>
> The Department of Environmental Protection will process the proposal in accordance with the Works Approval and Licensing provisions of the Environmental Protection Act.

Further on, the letter states -

> Some members of the public may have preferred that the Authority undertake a formal assessment of the proposal. By law they have a 14 day period, closing on Friday, 26 June 1998, during which, on payment of the $10 appeal fee, they may ask the Minister for the Environment to consider directing the Authority to conduct a formal assessment.

The Attorney General advised that to Hon Jim Scott, who said he would lodge an appeal with his $10. A slightly similar letter was sent to the chief executive officers of the Town of Kwinana and the City of Rockingham. I will quote the first part because it is very similar to the other letter -

> This proposal raises a number of environmental issues. However, the overall environmental impact of the proposal is not so severe as to require formal assessment by the Authority, and the subsequent setting of formal conditions by the Minister for the Environment.
>
> The Department of Environmental Protection will process the proposal in accordance with the Works Approval and Licensing provisions of the Environmental Protection Act. If you would like to comment on the proposal, please provide your comments to the Department within 21 days of the date of this letter.
>
> Please note that construction cannot commence until the Works Approval has been issued and approval from other decision making agencies has been obtained. If this proposal involves the construction of a wastewater treatment plant, approval is required to be gained from the Executive Director Public Health, via the Local Authority.

I leave the quote there. I gather it is a statement put in most of these letters. The letters further state -

> Some members of the public may have preferred that the Authority undertake a formal assessment of the proposal. By law they have a 14 day period closing Friday, 26 June 1998, during which, on payment of the $10 appeal fee, they may ask the Minister for the Environment to consider directing the Authority to conduct a formal assessment.

It shows that the Government has done exactly what it should in the whole situation; a request was made, and it decided not to do a formal process. However, the public can make an appeal by paying a fee of $10 and putting their case as to why the process should be changed. That is the first thing that needs to be considered.

The Town of Kwinana and the City of Rockingham have their opportunities to put in their proposals and I presume they will do that with respect to dust and water pollution and things like that. The Government has been very responsible in what it has done.

HON J.A. COWDELL (South West) [3.56 pm]: The Australian Labor Party is also concerned about the proposed iron ore loading facility to be located on Rockingham's doorstep. Serious environmental matters need to be considered. I looked at the report of the proponents to begin with. Of course, if members looked at the particular headings which were matters of concern - noise, dust, ballast water, and marine spillages - they would see why concern has been raised in the Rockingham area about this project. I acquaint members with some of these factors - which are in the report to the proponents. There is potential for dust to be generated during the operation of the project, although the consultants state that, based on its experience at Esperance, KIPL is confident that the dust levels can be controlled to below acceptable levels.

Hon J.A. Scott interjected.

Hon J.A. COWDELL: There is the potential for the discharge of ballast water from ships using the facility to pollute the waters in Cockburn Sound. The discharge of ballast into port waters currently requires the approval of the harbourmaster, who takes account of FPA regulations and guidelines produced by the Australian Quarantine and Inspection Service - not entirely reassuring to the ratepayers of Rockingham. There is a potential for spillages of materials into Cockburn Sound as a result of the export activities which may be minimised by certain measures. I have concerns, and these are the views put by the consultant to the proponents. Heaven knows what the reality of the situation is. We are not to have a full EPA assessment, so we probably will not know what the reality is; only the views of the consultant to the proponent. We must ask, why does Esperance get a full environmental assessment, yet Rockingham and Kwinana do not? If it is good enough for Esperance, then it is good enough for Rockingham and Kwinana. I realise that this Administration probably views the citizens of Rockingham as second class citizens. It certainly treats them as such.

Hon N.F. Moore: Leave it in the ground.

Hon J.A. COWDELL: I read the sixth report of the Standing Committee on Constitutional Affairs and Statutes Revision which dealt with this matter as a result of a petition presented by Hon Bruce Donaldson. That report pertained to the operation in Esperance and it raised matters and legitimate concerns presented by the citizens of Esperance which are shared by the citizens of Rockingham. These concerns need to be addressed. The sixth report of the committee stated with respect to Esperance -

> If the export of iron ore through the port cannot be achieved without protecting the environment, then it should be abandoned, irrespective of the commercial consequences to the parties involved in the project.

We are not going that far and saying that. We want an assessment to ensure that the concerns of the people of Rockingham are satisfied. The report continues -

> . . . the technology involved in the project with respect to the control of iron ore dust emission has not previously been tested elsewhere on a similar scale . . .

We want to see if anything has eventuated from the Esperance experiment. The committee visited Port Hedland. The comment in the report was -

> The Committee, having recently visited Port Hedland and witnessed first-hand the discolouration caused to that town by the export of iron ore could not help but share the concerns of the petitioners.

The committee's report indicates that considerable concern was felt. These are concerns which are legitimately held by the citizens of Rockingham.

Hon Jim Scott mentioned the cost to the State. We should ask these questions. The Esperance Port Authority spent $5m, $16.5m was spent by the Commonwealth on the rail upgrade, $2.8m was spent by the State for Esperance to go through this process. A detailed analysis was presented to Parliament telling us that we were all wrong, that it was

stupid to go to Kwinana, that we had to spend over $20m to go to Esperance, that this was the way to go. Four years later, the Government is telling us the exact opposite.

Hon E.J. Charlton: That is not right.

Hon J.A. COWDELL: Why did we spend $20m on Esperance if we are now going to Kwinana? We should have gone to Kwinana in the first place if that was the case. Nevertheless, we provided some upgrades and a facility in Esperance. The key question is, will Esperance still be used to the same level? Or will most of the iron ore exports go through Kwinana now because of the cheapness of using Kwinana? People have a right to ask why we need a new jetty at Kwinana Beach right on Wells Park, which is the only public access the people of Medina and Kwinana have to the coast. For 15-odd years, at least, iron ore was shipped through the BHP jetty. It is not on Rockingham's doorstep; it is considerably removed from Rockingham. I want to know from the Government why, when that facility was adequate for 15 years, we will now go to the expense of creating a new jetty instead of using the facilities which were used previously and publicly accepted? Of the three or four options, I argue that this is the most favourable. Hon Jim Scott said time marches on and when the BHP jetty was acceptable Cockburn Sound was not in the state it is today. Of course, the other planned projects will lead to a further deterioration in Cockburn Sound.

We need answers from the Government. The citizens of Rockingham are justifiably concerned that this facility will be put on their doorstep. They will experience iron ore dust, the degrading of their swimming beaches through increased shipping traffic and the possibility of mishaps. These problems need to be addressed. We certainly need to know why Esperance is no longer suitable given the amount of money spent on the upgrade. We need to know how much this little exercise will cost and whether this is another whim, another accommodation of $20m of public money for a private firm. Finally, we need to know why we are building on Rockingham's doorstep when there are other jetties, other wharves, which could be utilised just as adequately. The citizens and electors of Rockingham are asking these questions, which need to be answered. They do not want every industry dumped on their doorstep. Rockingham has 50 000 citizens, who deserve an adequate buffer zone. This puts it on their doorstep.

HON E.J. CHARLTON (Agricultural - Minister for Transport) [4.06 pm]: This is not a Government initiative. It has nothing to do with the Government exercising any interest in bringing this product to Kwinana. That is the first point that needs to be understood. The company has decided that, if it wants to participate in a very competitive iron ore market, it needs to maximise the amount of tonnage that it exports and minimise the cost of getting that product on board a ship. The company has decided to investigate more viable or economic options for the export of its product.

Hon John Halden: If that is the case, is the Government putting in any money?

Hon E.J. CHARLTON: The Government has not been asked to put in any money. The Government does not put any money into ports. The port authorities in Western Australia run on their commercial operations. They borrow money where necessary and the profit made from the users of the port is put into paying off those debts. All Western Australian ports are in that position.

With regard to where we are at, remembering that this motion is about getting an environmental assessment, the Fremantle Port Authority is not in a position to start a high level environmental assessment because at this stage it is only possible the company will want to export its product out of Kwinana. My advice is that a feasibility study is being done of the amount of reserves the company has at Koolyanobbing. It expects it will have sufficient reserves, otherwise we would not be going down this path. If it does, then it must ascertain the capital infrastructure it needs to put into Kwinana to enable that process to be progressed.

Hon J.A. Cowdell: What happens to Esperance?

Hon E.J. CHARLTON: I will come to that in a tick. Members need to acknowledge that a company decision will be made at the end of the day. When it has done its sums and its financial feasibility it will make a decision. This will be based on the prices it receives from Westrail to cart to Esperance or Kwinana and the shipping rates out of Kwinana versus Esperance. Obviously Kwinana will provide cheaper rates because it is a greater service out of Kwinana. The company will also consider the cost of putting that product across the jetty at Kwinana or the wharf at Esperance. It will then be in a position to make that decision. The company has asked Westrail to estimate a price from Koolyanobbing to Kwinana and the Fremantle Port Authority has been asked to estimate a price to place the product over the wharf at the bulk cargo jetty. That information will be considered. The Fremantle Port Authority has indicated that the project is a possibility at Kwinana and has asked for the necessary level of assessment. All the issues are well known. The product is already being mined and transported to Esperance, so that process can proceed.

The Esperance line was not upgraded for Koolyanobbing Iron Ore. The line is used to transport minerals to Esperance from Leonora and surrounding areas; it also takes grain to Esperance and fuel from Esperance to

Kalgoorlie and beyond. The Labor Party has never wanted to spend money on that sort of infrastructure, and that is why railway lines have been closed in the past rather than upgraded.

Hon J.A. Cowdell interjected.

Hon E.J. CHARLTON: The member is correct. The Commonwealth Government did pay for the upgrade. It provided $16m for that purpose. That was the famous One Nation package!

Several members interjected.

The PRESIDENT: Order!

Hon E.J. CHARLTON: The One Nation package was a wonderful idea, Mr President. We should have a One Nation package every year so that we can have some capital infrastructure in Western Australia. We may have received $16m for that purpose, but the remainder of Australia received $260m for other projects. In Victoria, the railway sleepers are still lying alongside the track!

Hon Kim Chance: Those Victorians are hopeless!

Hon E.J. CHARLTON: Absolutely.

Hon J.A. Cowdell interjected.

Hon E.J. CHARLTON: The member would know about funds coming from Canberra. We could add it up in about five seconds flat, because we receive very little! The situation will change with One Nation, because that party will ensure that the States receive extra money!

Members should wait and see how the operations of Koolyanobbing Iron Ore proceed. We will know where we stand then. During discussions with the Fremantle Port Authority I suggested that the authority should wait and see what the company does. We cannot compare the current situation with what happened five or 10 years ago, because the costs of operation in Esperance have changed, just as mining costs have changed, and rail freight to Esperance and Kwinana has decreased by about 36 per cent in the past three years. A 36 per cent reduction on a high quality standard gauge line from Koolyanobbing compared with the line to Esperance means that trains can run faster, and economies of scale must be considered. I urge the member to keep his eye on what is happening.

HON JOHN HALDEN (South Metropolitan) [4.13 pm]: I wish to canvass again some environmental concerns, and to address the comments by the Minister for Transport regarding finance for the project. As Hon John Cowdell stated, the Federal Government provided $16.5m for the project to transport iron ore from Koolyanobbing to Esperance; the State Government contributed about $2.8m, and the Esperance Port Authority contributed about $5m. The total contribution by taxpayers of Western Australia was about $24m.

When I asked the Minister for Transport how much the State Government and taxpayers would contribute, he said that they would not contribute. He said that port authorities can borrow money and pay dividends to the State Government, and they are corporatised bodies. Of course they are corporatised bodies, and of course they pay a dividend to the State Government under the tax equivalent regime. However, the State Government returns to those authorities a large proportion of the amount paid under that regime. In 1997-98 the amount returned was about $12m. When authorities borrow money, the return to Treasury is reduced because it reflects a reduction in profit by the authorities. However, even so, the money is returned to the authorities. The taxpayers of Western Australia are the losers in that process, because the taxpayers directly fund such projects. The Minister for Transport knows that any deficit is funded by the taxpayers; and any profit is returned to the port authority. In many cases the port authorities have not made a profit for some time.

The question is how the money is spent. The Minister for Transport knows that. Hon John Cowdell queried whether we need this facility, and whether we could use the facility at the BHP site. However, no assessment has been made on that point. The Government is trying to remain at arm's length from the process; but it cannot, because the Fremantle Port Authority and Westrail are government agencies. The Minister may try to run away from that fact, but he cannot.

Hon J.A. Scott: No accountability!

Hon JOHN HALDEN: Exactly. There is no financial accountability in this State. It does not end there. The Government stated that the Environmental Protection Authority must remain at arm's length as well. The EPA is so removed from the situation, it may as well get into bed with the developers! It is far removed from the Government and from the people of Western Australia, but not from the proponents of the development.

The report by the proponents of the project highlighted areas of concern during the development stage; that is, the

generation of noise and dust; the disturbance of flora and vegetation; the disturbance to marine life; erosion in the water and on the land; waste disposal, and the impact on land and marine users of the area. After that phase, when the wharf is being used, the concerns listed include the impact on the visual amenity of the area; noise and dust generation; ballast water management; potential for spills; and dust generation and impact on other land users in the area. Those concerns are outlined by the proponents' report. However, the EPA has stated that a formal assessment is not required. This is one of the most degraded areas of Western Australia, as a result of industrial development, yet it does not require a formal assessment. It will impact on 50 000 voters within a five to eight kilometre radius, and another 50 000 under the age of 18; that is, 100 000 residents of Western Australia, but the area does not require a formal assessment!

This project will not operate in isolation. There is potential for many more projects on that coastline, behind this project, and we cannot say with any degree of sense or rational and logical planning that we would not want to manage each step of the process to consider its environmental impact on the sound, on the coastal areas and on the people living behind the project, or that we would not want to make sure that the highest standards of environmental management are enforced. What nonsense! In all honesty, the EPA brings itself into further disrepute by virtue of those sorts of statement. This not a once-off development on an isolated piece of coastline. I am not saying that it should not require formal assessment. However, in terms of population and industrial development this is a degraded area. The extent of the degradation and the deterioration of the sound is reported on repeatedly. What do we hear from the environmental watchdog? One could almost swear, in terms of the standard of thought that went into the EPA's answer, that the area does not require formal assessment. That is not good enough for the State or for the people who live there. Albeit that the EPA is an agency of this Government, this area must be subject to the highest environmental protection that is available. It is all very well for some to say, as the Attorney General said by way of interjection, that an appeal can be lodged.

Hon Peter Foss: That is the whole idea.

Hon JOHN HALDEN: It is a good idea. I thought it might also be a good idea for the EPA in the first place and the Government in the second place to get to the nub of the issue -

Hon Peter Foss: The idea is that you listen to both sides.

Hon JOHN HALDEN: That is, that this piece of coastline and region of Western Australia has significant problems. It is as though the fact that Cockburn Sound has the odd problem came like a bolt out of the blue to the EPA.

Hon Peter Foss interjected.

Hon JOHN HALDEN: This is not an issue on which I will dally with the Attorney General at this moment. The proponents have identified the areas of concern. The requirement to deal with those areas of concern should not be left to the proponents but to the publicly charged body that is provided with suitable resources to assess this matter.

Hon J.A. Scott: Therein lies the rub.

Hon JOHN HALDEN: Yes, is that public authority appropriately funded? I cannot answer that question. It brings no joy to the people of Kwinana and Rockingham to think that this is the acceptable standard for the development of Cockburn Sound. Cockburn Sound is a spectacular piece of coastline, the vast proportion of which is lost through industrial development. We cannot turn back the clock. However, we can ensure a management regime that is responsible and appropriate not only to environmental concerns but to the public. In this case that has not been the hallmark of the activities that have been presented to the people of Western Australia. It is now incumbent upon the Government and the EPA to look at the appeals that will emanate from this decision. A formal assessment is not only warranted and justified but absolutely essential.

HON PETER FOSS (East Metropolitan - Attorney General) [4.23 pm]: The important thing about this issue is that environmental matters should not be determined on emotion or amateur environmental ideas, but properly in accordance with the process that has been set down by this Parliament. I happen to be familiar with that process. I also know that the EPA takes its responsibilities very seriously. It receives many referrals on a daily basis and it must decide whether it should assess those. It has an efficient mechanism to decide whether a matter requires assessment. There are all sorts of emotional reasons that people might like to see this area environmentally assessed, and there may be some good environmental reasons for it. However, the proper way to deal with this is to deal with those environmental reasons in the proper process.

I am surprised to hear the Greens (WA) bypassing this process. One of the matters they have always been so keen on and have always said is important is that the proper process should take place in environmental matters. The Greens are meant to be the great defenders of the right of any individual in the public to refer a matter to see whether it should be assessed and the third party right of appeal if it is not to be assessed. The Greens have always been the

ones who have said there should be such a process, who have defended such a process and who have championed such a process. Yet early in the piece, before that process has been completed, the Greens come into this House and suggest that as a matter of urgency we should be expressing our doubts about what has occurred. I agree with the Greens about process. Process is very important. I do not understand how the Greens can debate an urgency motion before they have even tried to appeal.

The urgency lies in the appeal, and for the Greens to put forward these arguments. I am sure that the Minister and the appeals convener will listen to the argument they put forward and also to the arguments as to why it should not be assessed. Surely everyone would like to see the arguments on both sides put forward so that everybody has an opportunity to express their view and see those arguments looked at in a rational, scientific and proper way. I hope that will be the process that will be followed. That process should not be waylaid by members coming into this Parliament before they exercise that due process, to try to build up an emotional storm. All I can see from the arguments put by each of the members who have spoken against this is that it is to build up an emotional storm.

I know that Hon Jim Scott is against anything happening in this country, and in particular anything that might possibly raise some money. I notice that it is mainly members of the left wing of the Labor Party who have been speaking in support of this motion. We all know they are against capitalism and people making money. I had hoped all members would support the process, in particular, the Greens.

Hon Christine Sharp: Can we infer that you hope the appeal will be upheld and there will be due process?

Hon PETER FOSS: I hope the appeal will be properly dealt with and decided correctly according to its merits. I do not know where the merits lie. I am one of the few people willing to admit that, instead of saying that I know. Having listened to the arguments I am not hugely impressed by statements by Hon John Cowdell and Hon John Halden about Cockburn Sound. Having made a wonderful statement about concerns about nutrients and contaminants, Hon Jim Scott did not tell us whether iron ore was either of those things. I do not think that it is. In any event he did not deal with the fact that one of the differences between Esperance and Cockburn Sound is that we have the opportunity to see how the situation in Esperance works. All the dire consequences that were predicted for Esperance, which did not occur because of the provisions that were put in place, are exactly those to which members opposite have referred.

Hon Christine Sharp: That is probably a direct result of the level of assessment that occurred because we raised the issue.

Hon PETER FOSS: It may be that people can do that again. I am not trying to decide this appeal. All I am saying is that I find it extraordinary that a party which has been the public champion of the public involvement process has avoided that process and, as far as I can tell, has not even started that process and instead has brought the matter in here as a matter of urgency. Frankly, if members have such concerns - they may well have, and I have no problem with that - they should deal with them by using section 100 of the Environmental Protection Act to lodge an appeal. It will cost members all of $10, and the matter will then be properly dealt with. It cannot be properly dealt with in this Chamber, as it is not the proper place to carry out the necessary scientific evaluation of this project. I do not pretend to be able to form a proper scientific appreciation of the project. I know that the appeals process is taken seriously, and that the EPA has a system for initial determination of assessment which is a good, check list system. People misunderstand it, but it generally works well. It has the ability for exemptions to be picked up by the appeals process.

Motion lapsed, pursuant to standing orders.

MINING AT JANGARDUP SOUTH - GOVERNMENT'S COMMITMENT

Statement by Minister for Mines

HON N.F. MOORE (Mining and Pastoral - Minister for Mines) [4.31 pm]: During debate on mining at Jangardup South on 27 May 1998, I undertook to investigate and confirm the extent of the respective commitments of the Government and Cable Sands (WA) Pty Ltd to revegetate Nelson location 12897 to acceptable native vegetation standards with local native species which would allow that location, together with Nelson locations 7226, 13471, 13472, 13473 and 13474, to be incorporated in the D'Entrecasteaux National Park at a later date.

In the event of approval being given for mining of the Jangardup South ore body, Nelson location 12897 will be donated to the State by Cable Sands. Parliament's agreement to the excision from the national park of land containing the Jangardup South ore body, and my ministerial statement of 27 June 1996 relating to this project, were given on the understanding that the Government is committed to ensuring that all those parts of Nelson location 12897 disturbed by mining, and the remaining cleared and partly cleared areas, will be revegetated to acceptable native vegetation standards with local native species to allow those areas to be incorporated in the national park.

One of the purposes of my ministerial statement of 27 June 1996 was to confirm the Government's commitment to ensuring that all those parts of Nelson location 12897 requiring revegetation are revegetated as outlined in the ministerial statement. What was not mentioned in that ministerial statement, but was agreed in 1994 between the Government and Cable Sands, was that Cable Sands would revegetate all those parts of Nelson location 12897 disturbed by mining; and the Government would, through the Department of Conservation and Land Management, revegetate the remaining cleared and partly cleared parts of Nelson location 12897. As Cable Sands has never been committed or required to revegetate all of Nelson location 12897, there has been no reduction in the company's commitments in respect of this project.

Following my ministerial statement of 27 June 1996, Cable Sands sought clarification of the Government's position on Nelson location 12897. In response to the company's request, and with the intention of clarifying only Cable Sands' obligations in respect of Nelson location 12897, I made a further ministerial statement on 14 May 1997 to the effect that the environmental assessment of the project will include a condition that Nelson locations 7226, 13471, 13472, 13473 and 13474, and all those parts of Nelson location 12897 disturbed by mining, will be revegetated to acceptable native vegetation standards to allow those areas to be incorporated in the national park.

I now concede that there is an inconsistency between my ministerial statements of 27 June 1996 and 14 May 1997 regarding the question of how much of Nelson location 12897 will be revegetated. With the benefit of hindsight it is clear that there would have been no inconsistency if my later ministerial statement had outlined the previously agreed commitments of Cable Sands and the Government to respectively revegetate the mined and cleared, including partly cleared, parts of Nelson location 12897.

I now briefly comment on the matter of when the various parts of Nelson location 12897 will be incorporated in the national park. That part of the location already containing native vegetation will be incorporated in the national park if and when Cable Sands obtains environmental and all other approvals to mine and commence its production. The Department of Conservation and Land Management will have responsibility for deciding when any of the balance of the location has achieved a satisfactory level of revegetation to be incorporated in the national park.

I also take this opportunity to correct an error in an answer to question without notice 447 on 10 June 1997. The answer stated in part -

> . . . Cable Sands is to restore a 500 metre wide strip of partially cleared land along the southern margin near Lake Jasper . . .

This answer should have in fact referred to a 300 metre wide strip of partially cleared land to be restored along the southern margin near Lake Jasper, as agreed in 1994 between the Government and the company.

Finally, the cost to the Government of revegetating the cleared and partly cleared parts of Nelson location 12897 will be more than outweighed by the benefits gained from incorporating the whole location of over 10 square kilometres in the national park. A claim made by some that this land has no conservation value is clearly unfounded. The eastern third of Nelson location 12897 already contains native vegetation of equivalent value to that in the national park. The remaining cleared and partly cleared areas will, after their revegetation, be valuable additions to the national park. Another benefit will be that this land, which is within the surface catchment of Lake Jasper, will increase the buffer between the lake and nearby farmland from the existing 0.3 kilometres to 2.6 kilometres which will provide improved protection for the lake's water quality.

CRIMINAL LAW AMENDMENT BILL (No 1)

Second Reading

Resumed from 12 March.

HON N.D. GRIFFITHS (East Metropolitan) [4.36 pm]: The Bill has the support of the Australian Labor Party in this House. It is the type of measure which deserves bipartisan support. I go further: It is essential that legislators give the lead to the community on how we deal with these important issues of law and order. If we fail to do that, we will allow people with extreme positions to assume the running and lead our community into a state of dysfunction which it does not deserve.

This Bill arises from a process which commenced several months ago. A Bill dealing with various aspects of the Criminal Code, the Sentencing Act and the Sentencing Administration Act was split. The Criminal Law Amendment Bill (No 1) went before the Legislation Committee for comment on three areas, and that Bill now comes before the House. The three areas which went before the Legislation Committee were whole of life sentencing, the taking of bodily samples and the issue of stalking.

Regarding whole of life sentencing, I note that Western Australia has no death penalty, which is a measure of our

civilisation. Many jurisdictions have had the death penalty for much of their history, and many jurisdictions still have a death penalty. Many of those jurisdictions are barbarous from our point of view, and others are considered to be civilised.

The fact that we do not have a death penalty is a measure of our state of civilisation. Other measures of our state of civilisation exist. Given that we do not have a death penalty, it is very appropriate that in the most serious of cases very severe sentences be imposed to send a message to our community that we do not take human life lightly. In fact we value human life so much that where these extreme cases exist it is necessary that we have effective whole of life sentencing. That is what this part of the Bill seeks to do. If we do not have a strong whole of life legislative regime we will open the door to those who advocate the death penalty. They will have the running and we will be swept aside by some silly extremist movement. People on the extreme right of politics have a blood lust mentality. I do not say this with respect to any group in the Chamber. However, some people on the extreme left of politics who seem to be well intentioned have bleeding hearts and seem to engage in basket weaving. Insofar as they are successful, when dealing with legislation they hand the political agenda to the blood lusters on the extreme right.

Our community does not deserve that. Therefore we must play it straight down the line when matters are serious. We must ensure we have legislation that sends that strong message to the community that we as legislators are not only listening but also acting on community concerns and dealing with important law and order issues in a strong, proper, straightforward manner. In that respect, the Australian Labor Party is seeking to do the same thing. I hope it is successful.

What gave rise to this part of the legislation was one of the worst examples of criminal behaviour in our State's history. I recently reacquainted myself with it but I will not reveal the detail of it to the House. However, I refer the House to the decision of the Court of Criminal Appeal in the case of Mitchell reported in 72A Crim R 200. In that context I refer to the judgment of Justice Kennedy. In referring to the nature and circumstances of the offences he found -

> . . . the offences were . . . so serious as almost to defy description. The offences were horrific and must rank with the very worst series of murders ever committed in this State.

We need only read the judgment to agree. I will not read that because His Honour's words should be taken by us as an accurate reflection of the facts. I do not think anyone would disagree with that. He makes the following comment -

> It is only in relatively recent times that the Parliament has again empowered judges to impose whole of life sentences.

That was part of the process of getting rid of the death penalty. As a trade-off for getting rid of the death penalty in the worst of cases we must have effective whole of life sentencing. They go together. If we want to keep out the extremists we must be firm and that is what this legislation seeks to do. That is why the last Labor Attorney General was very strong and keen to give effect to that sentencing regime. Justice Kennedy went on to say -

> It is a power which it is intended should be exercised in a proper case, and it is the responsibility of the court to exercise it once it is satisfied that it is appropriate to do so. In my opinion, the nature and circumstances of the offences were intended by Parliament to be major factors in the determination of whether it is appropriate to order that a prisoner not be eligible for parole. When full weight is given to them, and to the possibility of the respondent offending again if released, personal considerations such as the possibility of rehabilitation must give way.

When commenting on the previous legislation re-enacted in the Sentencing Act his brother judge, Justice Ipp, at page 225 of the report said the following -

> In my opinion, the overriding factor in determining whether the court should exercise its powers under s 40D(2a) is risk to the community, not matters relating to the punishment of the offender . . .
>
> In my opinion the correct question is not whether the objective factors relating to punishment outweigh the offender's potential to be rehabilitated through parole, but, as I have stated, whether the offender constitutes such a risk to the community that the power of the Governor to grant parole should be withdrawn.

That was understood to be the law in Western Australia. That is the law in Western Australia that I wish to see in place. We discovered it is not the law, however, as a result of the case of Mitchell v The Queen. That case is reported in volume 184 at page 333 of the Commonwealth Law Reports. I note the comment of the five justices at page 347 as follows -

> The legislation does not, contrary to the view advanced by Ipp J, indicate any particular "overriding factor".

That is what we are addressing. The sooner we address it, the better. I hope a case never arises again causing this provision to be implemented. However, the provision must be in the Statutes because it is right to have such a provision and because I do not want to have stupid extremists running our community in an uncivilised direction.

When dealing with the wording of legislation it is very important that we scrutinise it and do not have extravagant language in place.

The next area of policy deals with the taking of bodily samples. A curiously named case, King v The Queen, gave rise to the knowledge that certain practices were no longer acceptable insofar as the law is concerned, particularly the taking of blood samples against consent. Therefore, legislation is before us to enable the taking of bodily samples in appropriate, lawful ways. When that matter is considered in its detail we must note that safeguards must be implemented. No doubt that will be addressed down the track.

The last issue concerns stalking which, in the Criminal Code, is relatively new. These amendments involve a recasting and additional offences.

The matter has been considered by the Legislation Committee. What is before us in this Bill does not do the job. More needs to be done, and the sooner it is done the better. When we are dealing with stalking we are, among other things, considering its relationship to restraining orders. I note the very pertinent recommendation 4.11 of the Legislation Committee, the second part of which reads -

> The Committee recommends that further work be undertaken to examine the issue of stalking so that all likely manifestations of stalking are included in the legislation. Appropriate measures should be included to ensure that breaches of restraining orders under the *Restraining Orders Act 1997* and breaches of bail conditions under the *Bail Act 1982* trigger appropriate offences under stalking legislation.

The unsatisfactory nature of the wording of the Bill gave rise to a view that what is really before the Parliament is not something which should be seen to be permanent and that improvements need to be done. The sooner that is done the better. For the moment we are dealing with this Bill and the issue of stalking. It is important to note that the Bill does afford increased protection, which is something potential victims in our community require. Increased protection is welcomed and, therefore, the Bill and its principles are deserving of support. They have the support of the Australian Labor Party.

HON B.K. DONALDSON (Agricultural) [4.52 pm]: The referral of this omnibus Bill was divided into three sections; one concerned with DNA procedures, one with stalking and the third with whole of life sentencing. It has been a most absorbing and interesting challenge to the committee. This is not the end of this legislation or any amendments; it is just the beginning. The wider community has certain expectations in these three areas that are causes for concern.

We greatly appreciated the assistance and information we received from the Attorney General and a number of senior behavioural scientists. We also had the opportunity to meet Alastair Ross from Melbourne. Many members may have read in the newspaper that he was looking at the DNA procedures which the police commissioners around Australia would like to see implemented; that is, the taking of samples prior to somebody being charged.

Hon J.A. Cowdell: There is an urgent need for further inquiry.

Hon B.K. DONALDSON: I was coming to that.

Hon Peter Foss: The enthusiasm of the committee is very gratifying.

Hon B.K. DONALDSON: We received anecdotal evidence from the United Kingdom, where there is a national database. It was not surprising to see the resolution rates for some crimes solved by the use of DNA. From the use of fingerprints over the past 90 years we are moving into an area of technology where DNA profiles and procedures are very important in realising the community's expectations, especially with regard to breaking and entering and home invasion. In many cases a fingerprint is not identifiable or is smudged and cannot be matched with fingerprints on record, but the perpetrator may have left a DNA sample behind. Some criminals started with burglary and moved into more serious crime. That could probably have been nipped in the bud much earlier if those people, who had not left a clear fingerprint but a DNA sample, had a DNA profile on file. The Commissioner of Police said that the DNA procedures were better than nothing. If we do not accept the challenge and look at ways and means of ensuring that the checks and balances are in place so that we can move with the new technology to assist the police services, I liken it to giving a carpenter the task of building a house and saying that he cannot use a hammer. It makes it pretty difficult. The committee is going tomorrow to the pathology laboratory as part of its ongoing investigation.

Hon N.D. Griffiths: Where?

Hon B.K. DONALDSON: The pathology laboratory at Sir Charles Gairdner Hospital.

Hon N.D. Griffiths: I thought the committee was travelling abroad again.

Hon B.K. DONALDSON: We are staying right here in Western Australia. We are looking at the DNA procedures. I am delighted that one of the committee members, Hon Derrick Tomlinson, has put his hand up to offer a buccal swab to see how invasive it is.

Hon Derrick Tomlinson: From whatever orifice they choose.

The PRESIDENT: Order!

Hon B.K. DONALDSON: Hon Derrick Tomlinson has given a wide ranging brief to the technicians. We are very serious and very committed to crime solving in Western Australia. As I said earlier, the police commissioners want to set up a DNA database across Australia in a similar fashion to the database in the United Kingdom. Germany will be the main database area for Europe. People are moving into this technology.

We also learnt a great deal from the behavioural science unit in Virginia and Washington and from the Federal Bureau of Investigation. The issue is most absorbing. I believe that in the long term we will see DNA profiling in a similar way to our use of fingerprints. I am a little more radical and would like to take it further, but I will not discuss it in the House at present because I may be misreported. The fact that we have to charge somebody before we can take a DNA sample is really antiquated. The United Kingdom has a number of offences which qualify for a DNA profile subject to a court approval. It enables medical practitioners to take a sample from a person where there is a good chance that person may be the perpetrator of a crime. There are fundamental problems in using courts to give police approval for that to occur. We could look at other ways to ensure in the longer term that safeguards are put in place. The committee believes that we must look carefully at the storage of the DNA profile and the storing of the bodily samples that are taken and how that is achieved.

One of the aspects that has caused some problems is the destruction of the material that has been taken where a person is innocent. Section 50AA of the Police Act states quite clearly that if someone has his fingerprints taken and is acquitted or proved to be not guilty, he could apply to have those fingerprints destroyed. I would like the Attorney General to look at this. I am sure we will be investigating this issue. To save the confusion and the detail that is probably not warranted in the Criminal Code or the Police Act, South Australia has passed the Criminal Law (Forensic Procedures) Act 1998. The committee is very keen to travel to South Australia later this year to address that aspect, including how the checks and balances are achieved and how records are stored, and so on. There is an ongoing need. This is just a start, and that is the reason the committee has generally supported the changes made by the Attorney General.

[Continued below.]

VISITORS TO PARLIAMENT HOUSE

Statement by President

THE PRESIDENT (Hon George Cash): I welcome to the President's Gallery Mr Reuben Chibambo, the Chief Clerk Assistant of the National Assembly of Malawi, who is in Perth this week to gain some knowledge of Western Australia's parliamentary system. Next week he will visit Canberra to learn about the federal system from various members of Parliament and officers in Canberra.

[Applause.]

[Questions without notice taken.]

CRIMINAL LAW AMENDMENT BILL (No 1)

Second Reading

Resumed from an earlier stage.

HON B.K. DONALDSON (Agricultural) [5.34 pm]: The Standing Committee on Legislation is keen to assist in the development of DNA procedures. It is an issue which will be in the public arena over the next 12 months as crime fighters around Australia look at all the possible tools of trade they may employ to solve many minor crimes and some more serious crimes.

We still have a problem with the legislation even with the amendments the Attorney General has indicated. We believe the law is still fairly silent on the use of the forensic material and on how such material can be used, stored

or destroyed. However, we realise that this is probably only an interim measure. The committee picked up the broader picture in looking at that part of this omnibus Bill.

The second part is the stalking provisions. The committee acknowledges the Attorney General's recognition. He made it clear that this is likely to be an interim measure. The Attorney General has concerns about its effect on restraining orders and the Bail Act. The issue of stalking was brought to our notice by the evidence given by Dr Pullela who is, I think, a senior psychiatrist with the Health Department.

Hon Peter Foss: He is a senior forensic psychiatrist from the Ministry of Justice.

Hon B.K. DONALDSON: Thank you. It was interesting to have evidence given by Dr Judyth Watson, a former member of the Legislative Assembly. She brought forward a number of cases of people who probably would not come before the committee. She presented evidence on their behalf. She gave us some background on the women in the field in which she is now involved. The extent of some of the stalking and harassment that takes place in our society today was eye opening to all of us. Obviously, there has been an increase in this activity. We welcome the Attorney General's comments in his report to the Government saying that he would be very keen to work with us on this issue. During our trip to South Australia we will be looking at some of the stalking legislation they have. I believe it is pretty good.

Hon Peter Foss: It is the procedures, I think, as much as anything. This came out of the debate.

Hon B.K. DONALDSON: Yes. Hon Nick Griffiths has alluded to much of what I am talking about with DNA and stalking. I acknowledge that he also recognises the need for us, as members of Parliament, to ensure that the wider community has some security of mind and that the law does not allow people to be subjected to this type of stalking harassment. We need to ensure that the heavy, pent up demand in our community for crimes to be solved is met.

The Standing Committee on Legislation welcomes the removal of the word retribution from the area of whole of life sentencing. Many people in the wider community would like to see that remain in the legislation because they want to see retribution. I picked up the fact that Hon Nick Griffiths alluded to the Mitchell case. It was an horrific and heinous crime. We have had others like it, not similar in nature but the Birnies come to mind.

Hon N.D. Griffiths: There are not many of them but they are horrific.

Hon B.K. DONALDSON: There are not many of them. I welcome the comments of Hon Nick Griffiths. The committee felt that we needed to ensure that there is a suitable punishment and a deterrent for that type of crime. Whether it acts as a deterrent is arguable; it could be debated forever.

When I presented the report I omitted to say that a minority report on clause 6, the whole of life sentencing, was prepared by Hon Giz Watson. I apologised to her afterwards. I should have drawn the attention of the House to that report, which was tabled a while back.

I know the Attorney General and other speakers will also wish to comment on this omnibus Bill. If they have not already done so, I encourage members to look at the report which was tabled in May 1998. A tremendous amount of work was done by our advisory research officer, Michael Smythe. As the Attorney General said, the points of reference on the final two pages demonstrate the amount of in-depth reading Michael did to help the committee compile the report.

I firmly believe we are getting on the right track with this issue. I welcome the changes which, in the near future, the Government may make following the recommendations of this report. It has been recommended that the committee investigate DNA procedures and stalking and report back to the Parliament. That would be of assistance to not only the Parliament, but also the Government. Other members of the committee - I cannot speak for Hon Giz Watson - have indicated to me that they will accept the changes proposed by the Attorney General, although he did not pick up all the issues the committee raised. However, this is only an interim measure, given that two of the recommendations are still outstanding. As the commissioner said, procedures for DNA testing are better than nothing. I believe the committee will support the changes indicated by the Attorney General.

HON GIZ WATSON (North Metropolitan) [5.42 pm]: I acknowledge the opportunity I have had as a member of this committee to go into these matters in some detail. It is a very interesting area. The committee has given it thorough consideration. As has been said, this Bill looks at three issues: First, the taking of forensic samples; secondly, stalking; and, thirdly, whole of life sentencing. I will speak at some length about the taking of forensic samples. I believe the House must make legislation that is a balance between providing a very useful tool for crime fighting, solving crimes and excluding possible accused in a criminal situation, and the necessity to protect the rights of the public and also the person in custody.

We must acknowledge the positive sides of this technology. It is an important way to catch criminals and, in

particular, to address volume crimes or violent sexual criminals. It has a tendency to ease the difficulty to convict criminals in courts of law. It has a high degree of popularity because it has the potential to solve a large bulk of crimes. I can quite happily acknowledge that the community is very keen to see a better crime clearance rate, and we share that concern. Law and order is high on the priority list of public concerns.

Nevertheless, I am very much aware that we, as members of this place, should pass only responsible legislation which demonstrates, through an investigation of all the issues, that the Government has looked thoroughly at all the facets of taking DNA samples.

In the committee I raised some matters to do with civil liberties. I still have concerns that, although the Attorney General has accepted some of the committee's recommendations, some matters have not been taken up. I note some of the concerns about the drawbacks of what is being proposed with this move to accept DNA sampling procedures. There are some very serious considerations to do with common law rights; for example, the right to remain silent and the presumption of innocence. I am hopeful that, when we consider more matters to do with forensic sampling, the committee will also take into consideration some of the human rights charter. Article 5 refers to cruel or degrading treatment or punishment. Article 11 refers to rights of the presumption of innocence until proved guilty. Then there are privacy rights with the management of any data banks of genetic information; control of what information is generated; control of how much information is used and by whom, both now and in the future; and access to remedy if any control or protection fails. The committee has touched on all these matters. As it stands, the amendments do not put in place the detail of how those rights will be adequately addressed. Clear cut rules must be enshrined in the legislation.

I am concerned that to some extent we are rushing with this amendment when we need a much more comprehensive piece of legislation, such as that in Victoria or South Australia. I will use the Victorian legislation by way of example. It goes into a lot of detail in spelling out a reasonable code of conduct which must accompany DNA sampling. I will give members an idea of the range of considerations in that legislation. In the conditions covering intimate sampling, the legislation lists such things as the person being required to give a sample having the ability to request a doctor of the same sex to carry out the procedure, or a doctor of his or her own choice; the assisting officer being required to be of the same sex as the suspect, if practicable; and the assisting officers not being involved in the suspect's investigation. Special conditions are also prescribed in relation to juvenile suspects. There is a provision for video recording, upon the suspect's consent, and the procedure can be witnessed by an independent medical practitioner or one chosen by the suspect. Quite a comprehensive set of requirements is involved in the procedures. That is what we must put in place in Western Australian legislation.

I also raise the matter of the destruction of samples, which has already been touched on by other speakers. The Victorian Crimes (Amendment) Act includes provisions for the destruction of samples and the related data of those acquitted or not charged, and the penalties to apply if those requirements are not met; for legal immunity for the medical staff involved in the procedure; for quarterly reporting by the Police Service to the Attorney General; for disclosing details of samples taken, such as the dates on which the samples were taken and also those on which the samples were destroyed. There is a full listing of all offences for which intimate or non-intimate forensic samples may be taken.

That is by way of example what needs to be looked at to fully address the issue of DNA sampling.

The committee recommended that this be an interim measure. I seek an assurance from the Attorney General that this will be an interim measure and that the Government will look at more comprehensive legislation.

Hon Peter Foss: The Minister for Police will do that.

Hon GIZ WATSON: The committee also identified that legislation must be clear about who should take samples and how those authorities were defined. I believe the amendments largely address that concern. I do not believe we adequately tackled the definition of or the distinction between what is an intrusive or intimate sampling technique. That needs to be clarified and provisions put in place that will prevent a person, even when in custody, from not being given rights and respects that are owed to him.

Hon B.K. Donaldson: We will find out from Hon Derrick Tomlinson tomorrow.

Hon GIZ WATSON: Our impression of what police custody might be like is quite different from that of others depending on whether they have experienced being in police custody. It is not acceptable to differentiate between somebody who is in custody and somebody who is not. People in lawful custody still have rights. I still have some questions about whether that area has been addressed adequately. The issue of the destruction of records and samples will be adequately addressed in the amendments and I leave that matter until it arises in the Committee stage.

My second area of concern relates to whole of life sentencing. I draw the attention of the House to the minority

report which is attached to the standing committee's report on the Criminal Law Amendment Bill (No 2). I refer to that to allow members the opportunity to understand why I took that position. I am of the belief that sentencing judges should not be limited in their discretion.

Hon Peter Foss: The High Court said they do not have a discretion because if there is any possibility of rehabilitation, the offenders must be given parole. That is why the chief judge complained about it; the High Court took it away from them.

Hon GIZ WATSON: The information I have been provided from legal circles is that judges have discretion to impose a whole of life sentence.

Hon Peter Foss: They have not. They can exercise it only under the High Court rules, which state that rehabilitation must be the primary thing. It cannot be said about anybody that he or she will not benefit from rehabilitation.

Hon GIZ WATSON: I agree with that. My understanding is that judges must give account for the possibility of parole.

Hon Peter Foss: The rule is that one cannot say anybody will not benefit.

The PRESIDENT: Order! I am sure this will become an interesting area of discussion during the Committee stage.

Hon GIZ WATSON: As I have stated in this minority report, I do not agree with the views of the majority of the committee on clause 6 of the Bill. I make reference to the recommendation of the report of the review of remission and parole prepared for the WA Ministry of Justice. It states that the sentencing court should be given greater discretion to determine that an offender is ineligible for parole and that statutory provision be made to that effect.

Hon Peter Foss: That means we should overrule Mitchell v The Queen; that is what they are asking us to do.

Hon GIZ WATSON: The proposed amendments to section 91(3) of the Sentencing Act 1995, to be found in clause 6 of the Bill, provide a guided discretion which limits the range of factors which a sentencing judge may consider in exercising his or her discretion whether to sentence the offender for whole of life. Such sentences will be imposed only by judges of the Supreme Court, who I believe are invariably persons of great experience and sound judgment. It is appropriate that the sentencing judge therefore exercise discretion having regard to all relevant factors, and not be constrained either in the range of factors to be considered, or in any other way, in exercising that discretion.

Hon Peter Foss: Only if the High Court had not stuck its rule in.

Hon GIZ WATSON: I would like to add to that issue. It is a response to a community demand for "let us get tough on this".

Hon Peter Foss: It was in response to a High Court decision which took away what you said as the basis and said, no, the rehabilitation comes first, and you cannot say of anybody that he could not be rehabilitated, so nobody ends up with a whole of life sentence. It is a crazy situation.

Hon GIZ WATSON: We had a very lengthy debate within the committee on this issue; the committee looked at some detail of the judgments. In any area of law, there is that debate, but I feel that the discretion should be left with the judges.

Hon Peter Foss: We would love to do that. The Full Court tried it and the High Court knocked it on the head.

Hon GIZ WATSON: I will not add any further comments to the issue of stalking, other than I think the committee's recommendations are good. I acknowledge that we need to do more work in the area of stalking legislation. In the Committee debate, I look forward to addressing that because it is an area of enormous concern and also a very difficult matter to legislate with the issue of the interface between the liberties of people and the interpretation of behaviour. To a large extent, legislation is just one part of the means of dealing with the issue within our community. When I was living in London, I worked on the issue of violence and on trying to find solutions that do not necessarily end up with people in court, but change people's behaviour. We must do more in that area in this State because sometimes legislation is ultimately lacklustre; however, we must have it. Other ways of addressing those issues are available.

Hon Peter Foss: Early intervention.

Hon GIZ WATSON: Yes, and recognising the sorts of behaviour patterns before they develop into a criminal offence. I support the majority of the amendments.

HON J.A. COWDELL (South West) [5.58 pm]: I commend the forty-second report of the Legislation Committee to the House. In response to the report, the Attorney introduced some amendments that are on the Supplementary

Notice Paper. The amendments are useful as far as they go. However, we hope to support some other views of the committee that the Attorney has not been able to take up in the form of the amendments.

The first area we looked at was that of forensic samples. The Attorney General will move to take out the ambiguity in an amendment to section 236 pertaining to any person acting in good faith in his aid and under his direction. It was unclear in that section whether it applied to the direction of the medical practitioner or the police officer.

Sitting suspended from 6.00 to 7.30 pm

Hon J.A. COWDELL: The Attorney General's amendments are useful as far as they go. I am happy to see that they embody to some degree the recommendations of the Legislation Committee which, in turn, may embody some of the ideas of the Attorney General himself. I refer to the first provision on forensic samples. The Attorney General's amendment, in terms of clarifying whether one is coming to the aid and under the direction of a medical practitioner or a police officer, is helpful because we were confused by that provision and members of the public may have been confused also.

The committee was concerned, firstly, that there be some greater protection of the person and, secondly, about category (c) persons taking samples. They are referred to as "any other person suitably qualified to do so". Members will see that the relevant section of the committee report states that clause 3 of the Bill contains no definition of "any other person suitably qualified". The committee recommends that a definition of "suitably qualified" be included in the Bill. By implication a person "suitably qualified" would not hold a medical or nursing qualification. The committee is concerned that the clause provides for the taking of intimate and intrusive forensic samples and that such samples may be taken by a person who is not in possession of a nursing or medical qualification. The committee therefore seeks to restrict the sample to non-intrusive and non-intimate procedures which a suitably qualified person in the third category could take.

The Government has not accepted the need for this; therefore, we have no protection in the definition of that category and no restrictions on what samples may be taken. Some members of the committee were concerned that, after a two day course, police officers may qualify under that category. That was the area in which the committee thought there needed to be greater protection. If no greater protection can be offered, it may be the view of many in the Chamber that that category ought to be removed.

Hon Peter Foss: I would prefer that.

Hon J.A. COWDELL: That may be the solution.

Concern was expressed as to the destruction of samples or records upon acquittal. We ascertained from our public hearings that there was no objection on the part of the Commissioner of Police to such a procedure; that is, the destruction of samples or records upon acquittal. If members read the report, they would know the committee felt that such a provision would enhance this Bill.

On this section, it is obvious, as our Chairman said, that it is better than nothing. But there is a far more substantial claim here and an obvious necessity for a far greater use of forensic samples, certainly with developments in the United Kingdom and the United States of America. This section will need to be amended extensively in the not too distant future to take account of international trends and as an aid to law enforcement. I look forward to that further reform. That is probably why the committee did not go into great detail in seeking evidence from civil libertarian groups, realising that this was a very small and limited grant of power. However, that sort of evidence will have to be taken and the checks that are apparent in other jurisdictions will need to be considered if a wider grant of power were given.

With respect to stalking, the Attorney General has taken into account some of the concerns of the committee, and there are some amendments on the Supplementary Notice Paper. There is now general acceptance of the need for the lesser offence. It is obvious that there can be stalking and there ought be an offence of stalking without requiring the proof of intent. We look forward to further work in this area linking restraining orders and other pieces of legislation with stalking protection.

Finally, in the area of strict security life imprisonment, all members know there is no such thing, because ultimately the Executive can release any prisoner, and a pardon is always possible. However, obviously concern exists that the category of strict security life imprisonment ought to be stricter than it is.

In the past decade or so we formally abolished capital punishment, so we must provide the very real alternative of strict security life imprisonment, meaning life imprisonment. This problem arose with a recent judgment in the Mitchell case in which a judge was of the opinion that a range of factors needed to be considered. As the Attorney has already stated, rehabilitation had to be considered. There could be no precluding of parole because rehabilitation is always possible. This Bill reduces the factors to be considered while removing the category of retribution.

However, that may be defined by the courts. That is an improvement. Nevertheless, the Legislature is clearly indicating its will that judges, particularly in the case of heinous crimes, should not consider a full range of factors but a limited number of factors in determining whether there should be strict security life imprisonment.

In the case that caused the matter to be considered no limit was placed on parole; therefore parole is available after 20 years, with not even the imposition of the upper limit of 30 years. The judge did not feel that he could use his discretion by imposing a non-parole sentence. This Bill gives a clear indication of the view of the Legislature that in certain categories of crime we expect a prisoner never to be released, such is the threat to the community and the nature of the crimes committed. I look forward to the progress of this legislation. The Attorney's amendments as far as they go will enhance this Bill, and I believe that other amendments that may be moved that will implement the recommendations of the Legislation Committee will further enhance this Bill. I support the Bill.

HON HELEN HODGSON (North Metropolitan) [7.42 pm]: I was pleased to read the report of the Standing Committee on Legislation, which is a very good report. It looks at the three issues that this Chamber identified when it split the Bill as requiring some further work. The report makes some very good recommendations in most of those areas. I participated in the inquiry and although I was the first member to be allowed to be involved in deliberations I was not a signatory to the report. In that sense I am happy at this stage to put my feelings on the three issues on the record.

First, I agree that further investigation is required into the issue of deoxyribonucleic acid testing and I support the desire of the committee to continue to inquire into this matter. It is obvious that the police must have the evidence to ensure that the appropriate person is being charged with a crime, and forensic sampling has for a long time been part of that collection of evidence. In this issue, given that the Western Australian legislation is looking specifically at verifying information after somebody has been charged with a crime, I do not have any serious problems about saying that forensic evidence should be useful as part of the proving of a case. However, I would be concerned if we reached the point at which it became part of the prima facie evidence. This Bill limits its use to after somebody has been charged. Therefore, it is appropriate to say that it should be a tool available to the police in that situation.

I am concerned with the issue of privacy of individuals who have been arrested and charged with a crime, because a person is innocent until the crime has been proved. For these reasons people's rights to privacy must not be infringed in the way in which the samples are collected, handled and dealt with after the matter has been dealt with by the courts. We must weigh the competing interests of the civil liberties of the individual and the requirements for police to have adequate powers to prove a case.

I was looking specifically at the matter of the destruction of the samples after somebody has been proved innocent. I started this line of thought when the original Bill came before the House, and I asked whether these samples would be destroyed. The original information was that the Police Act covered situations like this. However, we found that the Police Act was not sufficiently up to date to include forensic sampling, because it is limited to older forms of technology, being finger and palm prints and similar evidence. We must go a step further to ensure that the more modern form of testing, being DNA testing, has the same protection. It is also appropriate that the protection be in the same piece of legislation as the power that is given to the police to take those forms of samples. It is appropriate for the authority for DNA testing and the protection of the rights of the individual to be kept together in the one piece of legislation.

The scheme before the House tonight is that DNA testing will be in the Criminal Code. Therefore, it is appropriate that the protection of rights also be kept in the Criminal Code together with the prime issue. It is also worth noting that the proposal is limited to destruction where a person has been proved innocent in the courts. That is because, by that stage, if a person has been cleared of a crime there is no good reason to keep this sort of intimate information on file.

Other issues that were raised before the committee related to invasive sampling or, as it is described in the Commonwealth scheme and in South Australian legislation, invasive and intimate sampling. That opens up a whole world of its own. For example, if somebody cuts a hair that is not an invasive or intimate procedure. If somebody pulls a hair out by the root, even if it is from one's head, it is an invasive procedure but not an intimate procedure. However, if hairs are pulled out from other parts of one's body it might well become an intimate procedure.

Hon Kim Chance: Like your nose?

Hon HELEN HODGSON: I do not let many people look up my nose. This issue needs to be addressed, and this Bill does not address it. I note an amendment on the Notice Paper which looks at the type of person who is qualified to take samples. If it is a person who is medically qualified or who has nursing training, an invasive procedure or even an intimate procedure should not cause a problem, because those people are trained to deal with that sort of circumstance. However, I would have a problem if someone were confronted in a lockup by a police officer, even

if that officer was of the same sex as the person having the sample taken, who then demanded an intimate sample. Protections need to be built in that area. The Bill before us does not contain those protections.

The other issue the committee's report raised, which has not been addressed, is a record of the taking of samples. There is nothing before the House today dealing with that, so we shall rely on the police procedures which have those sorts of mechanisms built in. I am interested in the Attorney General's comments on that when he responds.

The second part of the Bill before the committee was the chapter about stalking. I have no problem with setting two different levels of stalking offences. It is clear from the legislation that stalking behaviour involves both the victim and the perpetrator. Quite often, the victim is being stalked and believes she is, and yet the perpetrator says he has no ulterior motive. For these reasons, I think it is appropriate to set two levels of offences. It is clear this area requires a lot more work, and I understand public submissions are currently being received on the operation of the Restraining Orders Act, which will significantly overlap this Bill in the stalking area.

The committee was very concerned about the definition of stalking behaviour. I note that some of those concerns have been picked up by the amendment proposed by the Attorney General. However, I do not believe the amendment is wide enough, because all sorts of behaviour constitutes stalking in the mind of the victim and instils fear that is sufficient for that person to require protection. These forms of behaviour have been described as esoteric communications, for example. One hears of cases in which a person finds a footprint outside the window. The victim knows whose footprint it is and what it signifies, but the perpetrator could not be described as having sent a message, made any formal communication, or left a gift. It does not fit into any of those categories, but the victim knows she is being watched. Consideration must be given to that fear when stalking behaviour is defined. These issues must be addressed on a case by case basis. Whenever a definition specifies circumstances, it limits the ability to consider matters case by case. Therefore, a move should be made from a limiting definition of stalking behaviour to an inclusive definition which would allow a court to decide whether a particular situation constituted stalking behaviour.

The third issue is whole of life sentencing. We have already heard from Hon Giz Watson that there was disagreement in the committee about the whole of life sentencing issue. If I had been a voting member of the committee, I would have agreed with the minority report on the issue of whether there should be whole of life sentencing. Criminal justice must be considered as one of the institutions of society, and we must look at the overall purpose of the criminal justice system. Is it to do with punishment or rehabilitation? It is a matter on which there are diverse opinions. In this case I am on the side that says one cannot look at criminal justice without considering the prospects of rehabilitation.

Traditionally, according to the criminal law context, there are five reasons for sentencing. The first is deterrence; that is, setting sentences sufficient to deter offending. The second is rehabilitation, which is sentencing based on resocialising the offender. The third is incapacitation, which is simple restraint rendering the offender incapable of reoffending. The fourth is the just deserts theory, where the seriousness of the crime is the chief consideration and the offender deserves to be so punished; and, fifthly, there is restoration or reparation where the primary aim is to compensate the victim and society.

That is a fairly academic analysis of criminology and punishment, but none of those factors can be looked at in isolation from the rest. From research and studies, it can be seen that an increase in punishment does not necessarily correlate to a decrease in crime rates. Telling people that they will be locked away for the rest of their life if they commit a murder, does not mean that no murders will be committed. They still happen.

I appreciate that this relates to the more severe cases, but the legal system already provides for a judge to impose very lengthy sentences which are basically whole of life. However, it cannot be done without considering the possibility of parole and rehabilitation. That is only a possibility, so it means the offender must go before a parole board at the appropriate time, which will consider the circumstances of the case. That means the offender may not, should not or probably will not be granted parole. However, the matter should be at the discretion of the various judicial panels at different stages; that is, at the court stage and when the parole board discusses these particular situations.

Hon N.D. Griffiths: You are agreeing with Hon Giz Watson's minority report.

Hon HELEN HODGSON: I have already said that if I was a member of the committee, I would have signed off on the minority report and not the majority report in this case.

Hon Peter Foss interjected.

Hon HELEN HODGSON: I am sure the Attorney General will have an opportunity to respond in detail, but I am giving my reasons for disagreeing with whole of life sentencing. The judicial process must be allowed to consider the stage of development of the criminal at different times. If a criminal has been rehabilitated and has been imprisoned for so long that he is physically incapable of committing crimes, is there any reason for keeping him

locked up? In some circumstances whole of life sentencing is not necessary and it does not serve the interests of the community. On this issue I do not agree with clause 6, although I agree with the rest of the Bill. Further matters will be discussed in Committee, particularly with respect to clause 6.

HON DERRICK TOMLINSON (East Metropolitan) [7.57 pm]: It was not my intention to speak on this Bill, but I have been provoked to do so by some of the comments I have heard.

Hon N.D. Griffiths: You are easily provoked.

Hon DERRICK TOMLINSON: Yes, I am easily provoked. I am a very sensitive man and when I am provoked I fly into a blind rage!

I listened with some interest to the argument presented first by Hon Nick Griffiths and, to some extent, extended by the Hon Helen Hodgson, about the intention of a sentence in a criminal Act. Hon Nick Griffiths argued that the fact that there is no longer a death penalty on WA's Statutes is a mark of our civilisation. I suppose there is some truth in that. At the time of colonisation of New South Wales in 1788, 220 crimes in British Statutes were punishable by death.

Hon John Halden: It has been a downhill slide since then.

Hon DERRICK TOMLINSON: I will not comment upon the morality of British society because I have never visited the place.

Hon Peter Foss: He will shortly.

Hon DERRICK TOMLINSON: I took note of that point of view. I listened also to Hon Helen Hodgson say that the purpose of penalties is not punishment. It is true that a prime intention of incarceration, for example, is to rehabilitate the offender. I support that. Some offences, I emphasise, are truly offences. A couple of recent examples in Western Australia were the infamous Birnie case and more recently the Greenough murders. The details of those heinous crimes are not known to most of us, but the community was deeply offended by them. So much so that a sentiment of outrage was expressed demanding retribution, not punishment, expressed in biblical terms as an eye for an eye. So outraged was the community that many people felt it was appropriate that those offenders be punished in a way appropriate to their crime - that the punishment fit the crime, in the terms of *The Mikado*. They were calling for more than an example to be made of these people to deter others from similarly offending - not for a punishment as a deterrent nor as an introduction to rehabilitation, but as retribution.

That civilisation to which Hon Nick Griffiths referred was so offended by the crime that the veneer of civilisation which says thou shalt not was put aside and it said that under these circumstances people of that depth of depravity do not warrant the consideration of a civilised human being. They have behaved in such a way they have denied their right to be called civilised human beings. Then the civilised society called for retribution. Retribution is not a principle of punishment under Western Australian Statutes, nor is it a principle of Western Australian law. However, from time to time the sentiment in the community calls for retribution. It is called for in the most extreme cases. I do not believe that any deterrent would have prevented the Birnies from doing what they did. They were depraved people. They committed depraved and heinous crimes which were probably without precedent in the Western Australian experience. Mitchell's case was an inexplicable act of absolute depravity. We could not talk about any punishment that might have prevented him from indulging in what he did. We put aside deterrent as a principle of punishment there and put aside the principles of civilisation in cases like that. We truly do start to talk about retribution.

In some cases courts decide that an offender should be incarcerated at the Governor's pleasure. Several High Court decisions have determined when an offender may be released under Governor's pleasure. One of the principles that the High Court decided in respect of Governor's pleasure was that for a prisoner to be released it must be demonstrated that the probability that the person would reoffend was low. Some such prisoners are never released because there is never the assurance that they will not reoffend.

Hon John Halden: In some cases of Governor's pleasure, there has never been a verdict either way.

Hon DERRICK TOMLINSON: There have been High Court decisions.

Hon John Halden: But in this State's jurisdiction Governor's pleasure has been placed on prisoners who have never been found guilty of their crime but have been placed there by virtue of insanity.

Hon Peter Foss: That is different.

Hon DERRICK TOMLINSON: We will not argue about whether it has been applied in Western Australia.

Hon John Halden: We will in a minute.

Hon DERRICK TOMLINSON: I will take Hon John Halden's advice on it. The point simply is that some cases exist for which the law decides a person should be incarcerated to protect society against him or her. Irrespective of whether the person has pleaded insane or been found guilty, that person is locked away from society and kept there on the principle that society must be protected from that individual. Until it can be demonstrated that the individual represents no threat to society, the individual remains incarcerated. That is the case of Governor's pleasure or indeterminate sentencing.

In the case of whole of life sentencing the principle that applies is that the offence is so offensive to the principles of a civilised society that person should be denied the right to live in a civilised society. Only in those extreme cases do I not agree with the positions argued by Hon Helen Hodgson and Hon Nick Griffiths.

I argue there are some instances in which society truly wants retribution, even though it is not a principle of Western Australian law and it is not a principle that the committee wanted to be enshrined in this Act.

Hon N.D. Griffiths: Are you disagreeing on that point?

Hon DERRICK TOMLINSON: I am making a point.

Hon N.D. Griffiths: You did not put in a minority report.

Hon DERRICK TOMLINSON: I did not; I am making a point.

I will make another point which I also made to the committee. In clause 5, proposed section 338E defines a stalker as a person who pursues another person with intent to intimidate that person or a third person. The argument relates to intention that a person may pursue but if the person is pursuing without intent to do those things, the person cannot be found guilty of the crime of stalking. That becomes the difficult argument of demonstrating or proving intent. The proposition I put to the committee and which I present to the House is that perhaps the more appropriate word is harass. Macquarie's dictionary, albeit inadequately, defines harass as -

> **1.** to trouble by repeated attacks, incursions, etc., as in war or hostilities; harry; raid. **2.** to disturb persistently; torment as with troubles, cares, etc.

I suggested to the committee that rather than "pursue" the word should have been "harass", because quite clearly if one demonstrates that a person is being harassed, the person who is the harasser is doing it with intent. One gets around the unfortunate argument that "pursue" is an inadequate word.

I did not put in a minority report. I made the point in the committee and I make the point now. I accept the committee's judgment; likewise I accepted the committee's judgment on the question of retribution. Every time I accept the committee's judgment, I will not put in a minority report.

Hon N.D. Griffiths interjected.

The PRESIDENT: Order!

Hon DERRICK TOMLINSON: However, that does not prevent me from standing up in this place and presenting a point of view. Because we are members of the committee and the committee comes down with a majority report to which we are signatories, we do not become blind adherents to the principles espoused in the report. We still remain thinking individuals - or some of us do - in this place.

Several members interjected.

The PRESIDENT: Order! This is a serious debate.

Hon DERRICK TOMLINSON: The final point I wish to raise is the question of the so called buccal swab to obtain a non-invasive sample.

Hon J.A. Cowdell: Courageous!

Hon N.D. Griffiths: Red blooded courage!

The PRESIDENT: Order!

Hon DERRICK TOMLINSON: It is to obtain a non-invasive and non-intimate sample.

Hon N.D. Griffiths: Is that what is to happen tomorrow?

The PRESIDENT: Order! Hon Nick Griffiths will come to order.

Hon DERRICK TOMLINSON: It is appropriate to explain why I requested that when the committee visits the laboratory tomorrow I have a buccal swab. I do not know what a buccal swab is.

Hon Peter Foss: It is related to buccas.

Hon DERRICK TOMLINSON: I do not care whether it is related to buccas, buckets or bouquets. I want to know what is the procedure. When the Commissioner of Police raised this question and I asked him what it is he said, "It is just like that - simple. It is the sort of thing you saw on television when the taxi drivers volunteered to have their saliva swabbed for DNA testing to see whether they could be eliminated as suspects for the Claremont serial killings." I am a suspicious individual. That did not satisfy me. The argument was that that process of placing an object in a person's mouth to take a specimen for the purposes of forensic analysis was neither invasive nor was it a non-intimate procedure. I regard putting something in another person's mouth as invasive. There are some instances where it can be quite pleasant but it is still invasive. As to the argument that it is not intimate, I would suggest that each member think of circumstances in which they would allow somebody to place something in their mouths.

Hon Bob Thomas: You are putting words in our mouths.

Hon DERRICK TOMLINSON: I am not putting words in members' mouths.

Several members interjected.

The PRESIDENT: Order!

Hon DERRICK TOMLINSON: I am suggesting that members should not dismiss lightly the notion that simply because the orifice being invaded is the mouth it is neither intrusive nor non-intimate. Add to that the provisions of the Bill. We are not talking about voluntarily offering oneself to be swabbed. We are talking about circumstances where that sample may be taken by force if necessary. We then go to the question that if I do not want somebody to place something in my mouth and I clamp my mouth shut thus, and he tries to take a sample -

Hon John Halden: He is still not quiet!

Hon DERRICK TOMLINSON: He tries then to use a buccal swab to get a specimen of tissue from my mouth for the purposes of forensic analysis. What then of the argument of intimacy when somebody is trying to force the mouth open so that the buccal swab can be taken?

Hon Peter Foss: He would take it from your armpit.

Hon DERRICK TOMLINSON: They would take a buccal swab of saliva from my armpit - "Ying tong diddle i po". I understand that the procedure is not simply taking a sample of saliva. The question was asked: Could the person not spit onto a slide or could there not be a sample of saliva taken some other way? The answer was no; it is not the saliva that they want. It must be a sample of tissue from inside the mouth. We are not gently putting in a swab. We are taking a sample of tissue from inside the person's mouth against his will in some instances, hence I want to know what is the procedure.

Several members interjected.

Hon DERRICK TOMLINSON: Members opposite are making light of this.

Hon John Halden: They are on your side as well.

The PRESIDENT: Order, members!

Hon DERRICK TOMLINSON: I am asking members to think seriously about this piece of legislation. That is the very matter that the justices of the court alluded to when they argued that there were some doubts about the current law. Their doubts about the current law led to the Government taking the initiative to make lawful those things about which the judges expressed the opinion that they may not be lawful. Why may they not be lawful? It is because they constitute an invasion or intrusion upon civil liberty. If they are an intrusion on civil liberty, then how can we take them lightly as we are taking them lightly now? All I suggest is that the members in looking at this piece of legislation do not regard it as trivial. It may be in the words of the Commissioner of Police "useless" but when looked at as a piece of legislation which gives an individual the right and the power to invade a person's body for the purposes of taking a sample of tissue from that person's body, we are not giving that person a power which should be taken lightly. All I ask is that the members of the House consider this legislation seriously indeed.

HON JOHN HALDEN (South Metropolitan) [8.19 pm]: It was not my intention to rise in this debate, but after the comments of my colleague on the other side who has just spoken, I rise to comment on them.

I am interested in the concept to which the member referred, that retribution is not a principle of the Western

Australian Act as we understand it today. If ever there was a piece of nonsense, that is it. Retribution, of course, is a central principle behind the incarceration of people. We can disguise it by saying that it is rehabilitation or that a process of rehabilitation will occur while a person is incarcerated, but why do we incarcerate a person? We incarcerate a person for retribution.

Hon Derrick Tomlinson: Do you make a distinction between retribution and incarceration?

Hon JOHN HALDEN: Yes, I do. Retribution and punishment are quite clearly defined in the Act because a person can be punished in a series of ways which form mild retribution. The consequences of retribution as a term of imprisonment are quite severe. We are considering the increasing of penalties in this Bill, some of which are justified and some about which one must wonder. The issue of whether we agree to that must rely on the most severe examples of whole of life sentences. Hon Derrick Tomlinson raised some very severe cases relating to this matter and I would not disagree with him. The two examples he pointed out were barbaric and one would not want those people released into the community until such a point in their lives when they are old and obviously incapable of committing any offence again. I remember, as a very young employee of the Department of Corrections some 22 years ago, that "Governor's pleasure" then, as is the case now, implied that a person could remain in gaol forever.

Hon Peter Foss: Yes, that is correct.

Hon JOHN HALDEN: Besides the indoctrination or introduction to life in Fremantle Prison, my first role was working with Aboriginal prisoners. I worked with between 150 and 200 of these prisoners. A number of them had Governor's pleasure, which had the potential to keep them in prison forever. For many, their most serious repeated crime was unlawful use of a motor vehicle and no motor driver's licence.

Hon Peter Foss: You could not get Governor's pleasure for that.

Hon JOHN HALDEN: A person could then, Minister. I remember dealing with a prisoner who was -

Hon Peter Foss: Most are rape.

Hon JOHN HALDEN: I agree with the Minister. However, I would like to make this speech without his assistance, if he will allow me that courtesy. I remember dealing with an Aboriginal prisoner who was an articulate, gentle person who had committed a number of offences. The most serious of these offences was unlawful use of a motor vehicle, of which there was an exorbitant number, and no MDL. I doubt if he had ever committed an offence against a person.

Hon Derrick Tomlinson: Were these people sentenced to Governor's pleasure?

Hon JOHN HALDEN: Yes, this one in particular -

Hon Peter Foss: You cannot be sentenced to Governor's pleasure.

Hon JOHN HALDEN: He was in 1973, let me assure the Minister. For breach of parole and committing the same offences, he received Governor's pleasure because he was an habitual criminal as defined then under the Act. He was not a person who was likely to commit an offence against a person. Before he was committed to Governor's pleasure, he had accumulated, by some very silly actions, a sentence of 13 years and 8 months' imprisonment. Hon Derrick Tomlinson mentioned that at the time of colonisation there were some 220 offences for which a person could be hanged. In 1973, this person had committed no serious offence against a person. I concede that he had committed offences against property; he had been particularly silly and he did have a drinking problem. The point was reached where he would be imprisoned for up to 14 years. What was the purpose of that? The purpose was that, as a community, we required retribution. It is very silly in terms of what we needed to do with this individual. Retribution was not required. What was required was that we deal with the issues that were presented. Yes, he lived in a culture in which cars were stolen and alcohol was predominant and which had been victimised for a significant period of time. The cost of what we were doing as a community to this individual was enormous. Due to the length of his sentence, he was confined to Fremantle Prison. With a sentence of that length at the time I left and went to the Department of Community Services, he could expect to spend a number of years in Fremantle Prison with all the costs associated with a maximum security prison. For what purpose? For the purpose that he kept breaching the law to a minor extent. Our system could not deal with this person at that level. We could not deal with it because we could not break out of wanting retribution. We did not want, as the Act might say and as we all might glibly say, to rehabilitate. We do not, in essence, know how to rehabilitate; that is the problem.

Hon Derrick Tomlinson: That is the inadequacy of our justice system.

Hon JOHN HALDEN: Exactly, the honourable member has hit it on the head, and that is the reason for my rising in this debate. We talk about rehabilitation -

Hon N.D. Griffiths: We have never spent the money on rehabilitation and Governments of whatever persuasion have never seriously provided incentives.

Hon Derrick Tomlinson: By the same token, there are some criminals who, in the eyes of society, are beyond rehabilitation. Not the case that Hon John Halden has argued; that was injustice. However, in some cases society will call for the ultimate penalty short of death.

Hon N.D. Griffiths: That is called justice.

Hon JOHN HALDEN: Thank you for allowing these interjections, Mr President, because they support what I am trying to say. I do not want to make any case for certain heinous crimes and the people who commit those crimes. However, our system does not cope with other people, and that is a great tragedy.

Hon Derrick Tomlinson: It does not cope with many at all.

Hon JOHN HALDEN: The member is right. It copes with very few, because in essence the system is about retribution and not rehabilitation.

Hon Derrick Tomlinson: I agree. It is about punishment rather than rehabilitation. I do not know that I would take it to the extreme of retribution. In some instances, retribution is the principle.

Hon JOHN HALDEN: According to my personal experiences, which are now somewhat dated and have probably lost clarity, the internal workings of that system have nothing to do with rehabilitation.

Hon Derrick Tomlinson: I visited Casuarina yesterday, and it has not changed.

Hon JOHN HALDEN: I am sure that is the case. Some 20 years ago, it had nothing to do with rehabilitation or punishment but had to do with a self-imposed desire to seek retribution on the basis that that was what the community wanted - undefined, unsolicited; nevertheless, that is what happened. I appreciate the comments made by Hon Derrick Tomlinson, because in my view, and from discussing it with other people, in 20 years it has not changed. That is very unfortunate. There is a significant need for a cultural change within our prison system.

I will move on a little, because I had this discussion with other members outside of this place recently, and will talk about this issue of retribution or punishment. We have had an experience in this Parliament for some time where both parties have believed it necessary to increase the length of incarceration, which has, of course, meant that incarceration rates have become higher.

Hon Peter Foss: After a period of time.

Hon JOHN HALDEN: If the period of incarceration increases, the rate of incarceration per 100 000, which I think is the formula that is used now, becomes higher.

Hon Peter Foss: It is interesting that Victoria has longer sentences but smaller rates of incarceration.

Hon JOHN HALDEN: It also has shorter periods to reach the minimum sentence.

Hon Peter Foss: I think it is 50 per cent.

Hon JOHN HALDEN: No. I am sorry, Mr President, I could probably have an interesting discussion with the Attorney General, but until recently Victoria's rate has been low and continues to be the lowest incarceration rate in the nation.

Hon Peter Foss: The lowest rate, but the longest sentences.

Hon JOHN HALDEN: At the extreme end.

Hon Peter Foss: The average.

Hon JOHN HALDEN: Mr President, it would be better if the Attorney General and I discussed that privately. The problem we face is that both parties in this Parliament are getting to the point of continually increasing incarceration rates. Will that be successful? I have heard every argument to suggest that we should imprison people for as long as possible - that gaol is good - and that we should stamp out antisocial behaviour. However, at the end of the day, as I keep pointing out to people, what do we do about the classic example of the United States of America, which has the highest incarceration rates in the recorded world?

Hon Peter Foss: The civilised world.

Hon JOHN HALDEN: Where they record these things - recorded rather than civilised.

Hon Simon O'Brien: I believe the prison population has just topped the one million mark.

Hon JOHN HALDEN: It is much higher than that. It is two million.

Hon Peter Foss: If your figures are more than 12 months old, they are out of date.

Hon JOHN HALDEN: Is it more than two million?

Hon Peter Foss: I think it is rising at a rapid rate.

Hon JOHN HALDEN: Yes. The Attorney and I agree with each other. The United States of America has the most severe penalties.

Hon Peter Foss: Do not talk about rehabilitation in the American prison system.

Hon JOHN HALDEN: No; they do not talk about rehabilitation. An enormous number of American citizens are in gaol. My understanding is that the number of people in gaol exceeds two million people, but the crime rate, on the other hand, is the highest in the recorded world. I need to keep qualifying it, because I want this to be a legitimate debate. The rate is the highest in the recorded world. Earlier this evening, other members asked how we could justify a situation where the most severe penalties are applied, yet the most severe crime rate exists. I accept the point made by the Attorney General that rehabilitation is not part of the process, even at its most fundamental, in the United States of America. We have a problem, and I think we all understand that, because the simplistic solution - the United States' solution - clearly does not work. It did not work, as Hon Derrick Tomlinson said in his contribution, when a person could be hanged for 220 offences in 1788.

Hon Derrick Tomlinson: A person could be hanged for one.

Hon Peter Foss: We are dealing with a slightly different kind of offence, are we not?

Hon JOHN HALDEN: Exactly. The point I am trying to make - the Attorney should not trivialise this; it does not require his innate ability to do that, but requires an uplifting of his ability - is that we have a serious problem. We can endeavour to make the law so difficult and so punitive that people spend inordinate amounts of time in gaol but we do not resolve the underlying problem of criminality. We as legislators need to come up with a better solution than that. We can all smile about that, because I do not have the answer -

Hon Peter Foss: It is the best solution for this kind of offence.

Hon JOHN HALDEN: At the end of the day, what is required is that we become a lot more careful about how we categorise offences and how we categorise people, and for what purposes we imprison people. Members - I will not make this a political attack - need to analyse the reason that more than one-third of our prison population, and probably more than 40 per cent, is Aboriginal.

Hon Peter Foss: It is a social problem. That is the biggest single problem we have. That is why I keep saying we need to tackle the social problem.

Hon JOHN HALDEN: We agree. The Attorney General should not be defensive.

Hon Peter Foss interjected.

Hon JOHN HALDEN: The success rate is a dismal failure.

Hon Peter Foss: When one tackles that sort of problem one cannot expect a short term solution.

Hon JOHN HALDEN: The Attorney General is being very defensive, and he does not need to be.

The PRESIDENT: If Hon John Halden were to direct his comments to the Chair there would be no need for interjections. At the rate we are going it will be next week before we finish the second reading stage.

Hon JOHN HALDEN: I would be very happy if we were to conclude the debate next week if we came up with a solution, but I am not holding my breath.

The PRESIDENT: Hon Derrick Tomlinson is getting ready to interject.

Hon Derrick Tomlinson: Let the punishment fit the crime; the punishment fit the crime!

Hon JOHN HALDEN: I think the member has left the Chamber!

Hon Peter Foss: He wants Hon John Halden to join him in the strangers' bar.

Hon JOHN HALDEN: This is a serious matter and it requires that we look at the direction in which we are heading.

No-one will object to a whole of life sentence for the most heinous of crimes. I refer members to the 1970s and what we then allowed in respect of the independence of the judiciary to make decisions. We have removed that independence. I understand that significant criticisms have been levelled at the Children's Court and the liberty it then had with penalties for young offenders. However, in difficult cases when the court is not sure whether the offence is at the extreme end of the scale or some degree less than that, I do not understand how we as legislators can prescribe an offence.

Hon Peter Foss: The judges must still determine which ones fall within it.

Hon JOHN HALDEN: The Attorney General should stop interjecting and allow me to continue. I understand there is an element of discretion, but in certain cases there is none. There is still an element of uncertainty as to whether it should be whole of life or strict security for 20 years or 25 years.

Hon Peter Foss: It depends on the situation.

Hon JOHN HALDEN: Bearing in mind the weighing up of the individual circumstances, that discretion should be allowed for the judiciary.

Hon Peter Foss: It is.

Hon JOHN HALDEN: I understand; the Attorney General should not keep boring me with his interjections. I am suggesting that the discretion should be broader. The extent of the variables considered in a case of this nature is enormous. We are talking about murder or very severe sexual abuse. To allow the maximum penalty to be imposed we should include the maximum punishment options. We should not be prescribing or defining the minimal punishment. We should be describing this in the broad range but we should not be too prescriptive. We have been too prescriptive in the past.

I do not want to make this a political point. Both major parties are responsible for this situation. However, when we are dealing with this sort of penalty involving citizens of this State we should allow the judiciary to have that discretion. There is a separation of powers and this is where it will most impact upon a citizen. We should allow that discretion to its ultimate.

I refer members to the crediting of time in remand for sentences of detention. I note mention in the second reading speech of a court's giving credit for time spent in custody on remand by reducing the sentence it wishes to impose or by backdating the commencement of the sentence and so on. I am pleased to see that the amendment proposes to bring into line the Young Offenders Act and the Sentencing Act. I can relate this situation to a personal circumstance. Except for the grace of God, I may well have been in custody. Some 20 months -

Hon Helen Hodgson interjected.

Hon JOHN HALDEN: I am advised that I am not referring to the appropriate Bill.

Hon Helen Hodgson: It was split and that was dealt with in Criminal Law Amendment Bill (No 2).

The PRESIDENT: I understood the member was covering very general ground.

Hon JOHN HALDEN: It would be particularly general if I were to pursue that line. The shadow Attorney General gave me a copy of a speech which I thought related to this matter.

Hon Peter Foss: Unfortunately I made one speech and we split the Bills. My second reading speech relates to both Bills.

The PRESIDENT: That is why I understood the member was making very general remarks.

Hon JOHN HALDEN: I do not wish to contravene the standing orders or impose upon the indulgence of the House. However, in respect of time spent in remand, I am pleased to see that the same provisions will be applicable to both adult and juvenile offenders. That is the abridged version of my comments.

Hon Peter Foss: That is now law.

Hon JOHN HALDEN: I am very pleased about that. I will never again trust the shadow Attorney's notes.

Hon Peter Foss: They were very good at the time.

Hon JOHN HALDEN: I am sure they were.

The issues confronting the House are very important and very difficult. Bearing in mind recent events such as the Queensland election, we have dealt with this legislation in a particularly constructive manner rather than going over

the top. Some fundamental issues still must be addressed in legislation in the western world and outside it, including whether imprisonment is about retribution or rehabilitation and whether they are possible in the context of imprisonment. How do we fit the crime to the punishment without playing God?

People will understand what I mean by that. They are very difficult issues. Although we want to remove from society the most heinous criminals, eventually even the most serious criminals will return to society. What sort of individuals do we want back? We want back individuals who will not reoffend to previous levels. I do not think we have achieved that balance in this legislation. I do not mean that as a criticism of the Government; I refer to us all.

We need to work out a better system to meet the competing interests on this issue. That probably involves working out a range of new options to deal with people regarding punishment, rehabilitation or retribution. As we become more intent as a community on retribution, we create enormous problems to be resolved in legislation and practice in a manner far different from the proposals before us tonight. However, the specific provisions of this Bill deal with increasing the penalty for grievous bodily harm -

Hon Peter Foss: That is the other one.

Hon JOHN HALDEN: The notes keep referring to the wrong Bill.

Hon Peter Foss: It could be said that you have already said enough!

Hon JOHN HALDEN: I hope I have encapsulated the general principle rather than the details. The notes clearly relate to the first Bill.

Hon Peter Foss: This Bill's first incarnation.

Hon JOHN HALDEN: Yes. In this debate, one must look at the first principle. This debate is more about events and the pressures we were, and remain, under. We must look as a society at whether we have the strategy right. I do not think we have.

Regarding our desire to remove from the community the most heinous criminals, we must get that aspect right. Some steps must be taken. We must get the measures right for serious criminals, but this Bill does not achieve that aim. The Attorney General interjected about the social problems and how we might address those. Sadly, none of us has the answer to those problems. It is a matter of ascertaining how we address them more competently and humanely.

I support the Bill in its general principle, but we will need to return to this issue. I thank the Attorney General for his advice regarding the second reading speech. Some of my comments might have been inappropriate, but the principles to which I refer are appropriate. We must decide how to deal with these complex matters which will be debated repeatedly for a long time as we try to arrive at some security that what we are doing is right or wrong. I support the Bill.

HON PETER FOSS (East Metropolitan - Attorney General) [8.56 pm]: Had I known the extent and length of this debate, I would have brought in a useful book titled *Punishment.*

Hon John Halden: You could have given it to me before.

Hon PETER FOSS: It presents an interesting point of view as many of the ideas raised and questioned in this House are answered in that book.

Until the beginning of the nineteenth century, retribution was probably the most significant part of sentencing. One need only look at the most serious penalty imposed at the time; namely, that of hanging, drawing and quartering. This was an act of barbarity and was only one of the range of sentences of death available. A sentence of death should be enough, but no; in those days they had a range. The best way to die was considered to be beheading; the second best way to die was hanging; and the worse death was hanging, drawing and quartering. Hanging, drawing and quartering was so terrible because its important part was the pain. One would kill the person anyway. However, it was important to prolong and maximise the pain before death.

That is totally foreign to us; we are incapable of understanding that attitude. However, it was logical in that time: It was considered in those days to be inhumane to lock people up for lengthy periods, so they wanted more immediate punishments, such as branding, stocks and lopping off pieces of people. Hanging and so forth, from their perspective, was more humane than locking a person up. Some argument can be mounted that locking up people for long periods is akin to hanging, drawing and quartering; that is, it extends the duration of the punishment. Retribution was an important part of punishment.

I draw members' attention to the Sentencing Act we passed in 1995. For the first time, we put together in one Act all the principles relied upon by the court in arriving at a sentence. Section 39 contains a range of sentences for a

natural person. It refers to allowing a spent conviction, an order for the release of an offender, a fine and so forth. It goes right through to imprisonment. Section 39(3) states -

> A court must not use a sentencing option in subsection (2) unless satisfied, having regard to Division 1 of Part 2, that it is not appropriate to use any of the options listed before that option.

Therefore, it sets a sentencing hierarchy. One must work through that list and arrive at imprisonment only as the last option because no other alternative can be turned to. For certain crimes, Parliament has said what the punishment will be.

Section 282 of the Criminal Code deals with the punishment for wilful murder and murder. It states that a person who commits the crime of wilful murder is liable to a mandatory punishment of strict security life imprisonment or life imprisonment. Therefore, immediately a choice is provided. Once the jury has determined that a person is guilty of wilful murder, the sentencing judge has an immediate choice to make it either life imprisonment or strict security life imprisonment. A person who commits the crime of murder is liable to a mandatory punishment of life imprisonment.

Does it mean that that person will stay there for life? We find the answer to that by going to the Sentencing Act. That is why this amendment, which we have been talking about at length, deals with the Sentencing Act. Section 91 states -

> A court that sentences an offender to strict security life imprisonment must, unless it makes an order under subsection (3), set a minimum period of at least 20 and not more than 30 years that the offender must serve before being eligible for release on parole.

Firstly, there is a discretion for the judge, the jury having found the person guilty, to make the sentence life imprisonment or strict security life imprisonment. Obviously the judge will make a distinction based on the sentencing principles. Generally speaking, the gravity of the offence will determine whether it is strict security life imprisonment or life imprisonment. Having decided that the offence is grave enough for the penalty to be strict security life imprisonment, the time for non-parole can range between 20 years and 30 years. Subsection (3) states -

> A court that sentences an offender to strict security life imprisonment may, if it decides it is appropriate to do so, order that the offender is not to be paroled.

That is where the problem arises. Although the Parliament thought, and members on both sides would have thought, that gives the maximum discretion to the court to decide not to allow parole, it has not worked out that way in practice. In the case mentioned earlier of Mitchell, the matter went to the High Court of Australia. After a series of cases, it was held that because of the sentencing principles, the judge had very little discretion. The High Court said that we can never really say now what will be the situation in 20 to 25 years from now. We cannot say that a person - that person may not necessarily get parole - may not benefit by parole. The High Court virtually said that there is no alternative; subsection (3) cannot be used. There is no basis upon which subsection (3) can be exercised because we could never have a case in which it could be said that a person will not benefit by parole.

What appeared to be a discretion ended up not being a discretion. In this amendment, we seek to give back that discretion. Interestingly it has been the plea from the Chief Judge of the District Court to give back the discretion which was virtually taken away from the courts by the High Court. We intend to do that. I would like judges to have some discretion in setting that parole, certainly in other forms of sentencing, but particularly in strict security life sentences. The point raised here is this: What happens if the word "retribution" is included? Is it a relevant matter in this day and age? We have had impassioned pleas asking whether prison is for punishment, rehabilitation, reparation or deterrence. I think it is for all those things.

Hon N.D. Griffiths: Among other things, it is to show the importance our society attaches to human life and human dignity - proportionality, not retribution.

Hon PETER FOSS: We must understand that even when a person is sentenced to strict security life imprisonment without parole, we would seek to rehabilitate that person to the extent that we would seek to give the person some useful purpose in life and seek to change that person's character. We do not write these people off merely because they have been sentenced to strict security life imprisonment. We would also seek to have some reparation. I like to see prisoners doing useful work for society so that in some way they can pay back their debt to society.

Hon N.D. Griffiths: That is nice, particularly with respect to reparation. It is a pious word which is mouthed often. What resources have been put in while you have been in charge?

Hon PETER FOSS: We have been increasing the resources.

Hon N.D. Griffiths: You have done a very bad job.

Hon PETER FOSS: We will not know that until we see the result of the extra courses that have been put in place.

Hon N.D. Griffiths: We have not seen any yet.

Hon PETER FOSS: If the member thinks spending extra money on rehabilitation is a waste of time, perhaps I should look at it again to see whether I am wise in increasing the amount of money being spent on courses.

Hon N.D. Griffiths: That is typical of your mean spirited attitude.

Hon PETER FOSS: No, it is not. I am saying -

The PRESIDENT: Order! This is the right of reply in the second reading stage, not the Committee stage.

Hon PETER FOSS: It should be acknowledged that we do all those things and we have increased resources in this area. A theory relating to incarceration said that nothing works; that it did not matter what courses were in place or how much money was put in, people could not be rehabilitated in gaol. I will give some examples of some of the things that have worked. I always like to use the example of the Bibbulmun track. We have been using prisoners to construct huts and to do other hard work. Then we use minimum security prisoners to put those huts in place. We get reparation in that something which we could not afford to put in place because of other priorities can be afforded simply because it is paid for out of the prisons budget. Prisoners are doing work that they would do anyway. Some of the minimum security prisoners, particularly those involved on the first part of the track at the Kalamunda end, having finished their sentences, came back and continued working on the track because they found considerable satisfaction in what they were achieving from doing that. This project has some rehabilitative aspects as well. Recently I went to the mobile camp in Walpole where prisoners are being used to work on that part of the Bibbulmun track. I got the same feedback from those prisoners. They told me they had never had an experience such as that before. It gave them a feeling of self-esteem which they had not had previously. Whether that will end up in those prisoners being rehabilitated, I do not know. However, that feeling of self-esteem and self-worth is probably the most important thing being done towards their rehabilitation that we can come across.

We are not dealing with that here; we are dealing with the unusual, infrequent cases - Mitchell, the Birnies and, in future, the Claremont murders - where something horrifies the public, which makes people wonder whether the person carrying out those crimes is a human being. Under those circumstances we want to say to the public that those people will not be released. We may say that they will get life imprisonment anyway; that they will not get out until the Governor says so. Of course, that means that they will not get out unless the Attorney General says they will, because the Attorney General gives the Governor advice as to whether they should get out. The important thing is that whenever people become eligible for parole, serious consideration must be given at that time to whether they should be allowed out. It is not a matter of my saying that we will have a policy of never releasing any of these people. Each person who makes an application is entitled to have his application considered seriously.

Hon N.D. Griffiths: You have a duty to perform.

Hon PETER FOSS: That is right. As far as I am concerned, it would be far preferable in a Birnie or a Mitchell case if the court had been able to say that this person does not get out. The duty would not be called upon, and that would be an appropriate situation. It is appropriate to have such a punishment in limited cases. It leads to a different legal situation. It has been suggested in the committee's report that we delete the word "retribution". It is interesting, when a word such as that is deleted, whether we are raising the test or lowering it. Let us look at this situation: If there is no question of any element of retribution, it is arguable that, as presently phrased, the test would not be satisfied. If the word "retribution" is taken out, all that must be met is the community's interest in punishment and deterrents. It is arguable that by removing the word "retribution" the bar is not being raised, but being lowered.

Hon N.D. Griffiths: The argument is really committing that.

Hon PETER FOSS: It probably is. I raise it; I am not trying to solve it.

Hon N.D. Griffiths: I raised it in passing with one sentence.

Hon PETER FOSS: I have accepted that suggestion from the committee, but I do not necessarily agree with it.

One point raised by Hon John Halden was the matter of the Governor's pleasure. If the members who are curious to know what the situation is look at section 98 of the Sentencing Act, they will find the provisions that relate to indefinite imprisonment. That allows, in addition to a term of imprisonment for the nominal sentence, an order to be made that the defendant be imprisoned indefinitely. Indefinite imprisonment must not be ordered unless the court is satisfied on the balance of probabilities that when the defendant would otherwise be released from custody with respect to the nominal sentence or any other term, he or she would be a danger to society or a part of it because of

one or more of these factors. The court must be satisfied that the person would be a danger to society. Generally speaking, the people who are caught by that are multiple rapists.

Hon N.D. Griffiths: I think Hon John Halden is referring to the law as it was a long time ago.

Hon PETER FOSS: I want to reassure members that things have changed since then.

Hon N.D. Griffiths: This is recent legislation.

Hon PETER FOSS: True, but the law as enunciated by the courts preceded that. This merely puts into writing what has become the law. Rapists are the most common ones who are sentenced under that category, although multiple armed robbers with violence also fall into the appropriate category. It is when they are a danger to society that it happens, but it is not usually on one offence that people get sentenced.

Hon N.D. Griffiths: I do not think ever.

Hon PETER FOSS: I do not know of anyone. It is usually not on the first appearance that it occurs, although that is not beyond possibility.

The issue of dealing with people who are mentally impaired is dealt with in the Criminal Law (Mentally Impaired Defendants) Act 1996 and the provisions are contained in that. Both of those are now covered by legislation and I think are now clear. The concerns expressed by Hon John Halden may not be appropriate any more.

I thank Hon Nick Griffiths for his support and I agree generally with his remarks. I give Hon Giz Watson the assurance that another Minister is looking at the question of DNA testing. I do not know the precise content of what he is looking at, but I know it is coming through the ministry of police. I do not know what stage it has reached. Hon John Cowdell gave qualified support to the amendments so far as they go, but looks to more. Hon Helen Hodgson says that DNA testing requires further investigation and I agree with that. I was trying to put back into the Act what we understood was the situation since 1913. We have been trying to say this is how everyone thought the law was. In some parts of Australia, it has been so interpreted. There has been indication that this State will follow one interpretation, rather than the other. The intent of this legislation is to preserve the current situation as people understood it to be, rather than change it. I will deal with the issue relating to samples and the question of suitably qualified people when we get to the Committee stage if members do not mind me doing so.

Hon N.D. Griffiths: That will be better.

Hon PETER FOSS: With regard to stalking, I am pleased to see acceptance that we should have two levels of offence, and we need to look at the wider behaviour. It is because of the degree of care that needs to be taken that I have not moved for major amendments now. I am trying to ensure that we have a regime which we can use, but it is one area in which a cross-party approach and a detailed investigation by the committee would pay off very well. If we can bring it back to this Parliament, carefully examine it and with cross-party support, it would make a big difference.

Hon N.D. Griffiths: When do you envisage that will occur?

Hon PETER FOSS: The committee is carrying out that investigation, so it is not up to me to determine when it should do it, but I hope it will take some opportunity during the break or at the next long break to see if it can gain some information. I will continue certain investigations of my own, but I see the value of the committee looking at it because I would like to come into this House with something that has a degree of cross-party support.

Hon Derrick Tomlinson very properly brought us back to the philosophical basis of why we are looking at some of these terms. One of the important things is that whenever one tries to do these things, it is wise to understand some of the historical basis of why we punish particular crimes in a particular way. We are dealing with only the most heinous of crimes. This sentence is intended to be not just for wilful murder deserving a strict security life imprisonment, nor even a strict security life imprisonment for even a 30 year non-parole period; we are talking about the ones so shocking to our society that we give the ultimate punishment that we can, short of taking that person's life. I do not have any hesitation in agreeing that this is what we will be doing. We will be doing the most severe thing that we can do to somebody in our society. I believe we can justify it in our society to protect our society from these crimes when a demand is made by society that we react. The Government can say to people that there is justice and a proper measure of response. Occasions will arise when people want to know that the person is locked up and will never ever come out; people want to know that their children do not have to worry about that person eventually coming out; when the rage and the horror has gone, people want to know that that person will still be in gaol. If it later occurred that the person became so totally disabled that he could not commit a crime, it may be appropriate for that person to be pardoned and allowed to die outside gaol.

Hon N.D. Griffiths: That can always occur and people forget that. Parole for these serious matters is an executive function in any event, as you pointed out.

Hon PETER FOSS: It is so that the public can rest in their beds at night knowing that that sort of crime does have an appropriate response.

Hon N.D. Griffiths: Knowing that there is justice.

Hon PETER FOSS: I commend the Bill to the House.

Question put and passed.

Bill read a second time.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Thirty-second Report on the Shire of Augusta-Margaret River - Local Law Relating to Wallcliffe Reserve (Reserve 41545)

Hon N.D. Griffiths presented the thirty-second report of the Joint Standing Committee on Delegated Legislation in relation to the Shire of Augusta-Margaret River - Local Law Relating to Wallcliffe Reserve (Reserve 41545), and on his motion it was resolved -

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

[See paper No 1700.]

Thirty-third Report on the Road Traffic Code Amendment Regulations (No 2) 1997

Hon N.D. Griffiths presented the thirty-third report of the Joint Standing Committee on Delegated Legislation in relation to the Road Traffic Code Amendment Regulations (No 2) 1997, and on his motion it was resolved -

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

[See paper No 1699.]

[Resolved, that the House continue to sit beyond 10.00 pm.]

CRIMINAL LAW AMENDMENT BILL (No 1)

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Section 236 amended -

Hon PETER FOSS: I move -

Page 3, lines 8 to 10 - To delete the lines and substitute the following -

Section 236 amended

3. (1) The second paragraph of section 236 of the Code is amended by deleting "his aid and under his direction," and substituting -

aid of, and under the direction of, the medical practitioner,

(2) After the second paragraph of section 236 of the Code the following paragraph is inserted -

The amendment arises from the ambiguity detected by the Legislation Committee. The ambiguity arises not only in the paragraph detected by the committee but also in another - so in each case I have moved to amend the wording.

Amendment put and passed.

Hon N.D. GRIFFITHS: I move -

Page 3, line 22 - To delete the line.

I seek to delete the words "any other person suitably qualified to do so". The definition is too wide. I note the comments by the Legislation Committee.

Hon PETER FOSS: My preference would be to let the words stand as they are. However, if the words are not to stand, I would rather they be deleted. I do not believe the Criminal Code is the place in which we should place a large amount of definition. It is appropriate for the courts to decide who is a suitably qualified person. Therefore, the clause should stay as it is. If one were having a blood sample taken by a phlebotomist rather than by a doctor, one would know the difference. A phlebotomist is the person best able to remove blood painlessly.

Hon N.D. Griffiths: There is no definition, and I rely on nurses to do a good job. I hope that your mob gives them a decent pay rise soon.

Hon PETER FOSS: The main point is to get this legislation going. I prefer the clause to be left as it stands, but, as we will have a more general criminal procedure coming in, I am content to have it stand in this way.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 3, line 24 - To delete "his aid and under his direction" and substitute -

aid of, and under the direction of, the person acting at the request of the police officer,

This is the second of the amendments to overcome an ambiguity.

Amendment put and passed.

Hon HELEN HODGSON: I move -

Page 3, after line 26 - To insert the following -

Where -

(a) a person is found not guilty of an offence in respect of which a sample has been taken under this section; and

(b) the person requests that the sample and any genetic information arising from the taking of the sample be destroyed,

the sample and any genetic information arising from the taking of the sample is to be destroyed in his presence after the time for an appeal from the finding has expired or an appeal from the finding has been resolved in his favour.

I addressed this aspect at the second reading stage. I note that it is not quite the same recommendation as that reported by the committee. However, in the absence of any further proposed amendment by the Attorney General, I opted to leave this amendment on the Notice Paper. The amendment provides that a person who is found not guilty of an offence may request to have a sample and any genetic information destroyed, after the appeal period has expired. I note the committee recommendation was that the process should be automatic, but this amendment will at least keep it in line with the Police Act. It is appropriate that the provision be placed in the Criminal Code, where the matter dealing with the collection of DNA is found in a substantive matter.

Hon PETER FOSS: The main intent of the amendments is to preserve what was believed to be the status quo. This amendment adds a novel element. I am pleased that it appears to be better than the one suggested by the committee, and my response to it. However, I prefer it not be there. It is interesting to see how far it goes. I am pleased that at least it talks about a sample and genetic information. Therefore, it may require samples greater than what we are adding to be taken back. In view of the fact that a person must ask for the sample, and due to the limited nature of the amendment, I can live with it. However, I prefer that it not be added.

Hon HELEN HODGSON: The Attorney General made the point that genetic information may go further than this addition. However, it is genetic information arising from the taking of the sample. Therefore, it is limited to the samples that have been taken as a consequence of this insertion in the legislation.

Hon N.D. GRIFFITHS: This is a change. There is no exclusion of evidence as a result of this. It provides an important safeguard. The fact is that the procedure for taking the sample and the genetic information that will come from it - which will occur as a result of the DNA discussions entered into by the committee - are set out in the Criminal Code. Therefore, there is no good reason that the safeguard from the civil liberties point of view should not be in the Criminal Code. The Australian Labor Party is pleased to support this amendment.

Hon DERRICK TOMLINSON: I would like to share with the Committee what the standing committee learnt of this and allow the Committee to make a judgment upon it. I understood that once the genetic analysis had been made of

a sample, it was no longer needed and important information, such as the DNA profile to be derived from it, was destroyed automatically as a matter of course. When this was discussed, we were told it was preferred in some instances to keep the samples. The reason for that is the scientific information on DNA - the way it can be used, what it can reveal now and what is anticipated it might reveal in the future - is such that if a sample is retained, future forensic examination may reveal information which may lead to a person who was arrested as a suspect and then released being charged again on the basis of new forensic information resulting from subsequent analysis of the initial tissue. The rate of change of knowledge in DNA profiling is such that forensic scientists argue that, in addition to the genetic information derived from the samples, there are circumstances when it is desirable also to retain the tissue. I share that with the Committee. It sounds a bit like splitting hairs; however, there is the instance where people are arrested and charged and charges are not proceeded with, even though there may be a reasonably held suspicion that that person is the offender. If a tissue sample can be retained for future analysis, that person could be brought to justice. It is an issue relating to tissue which the Committee should take note of.

Hon HELEN HODGSON: The member will find that is addressed in the wording, which says -

> Where -
>
> > (a) a person is found not guilty of an offence in respect of which a sample has been taken ...

Therefore, it would not fall within the requirements of the section when charges are not proceeded with.

Hon N.D. Griffiths: And it is at their request.

Hon GIZ WATSON: I support the amendment because the issue of destruction of samples and records is one I also raised in the committee. This is in line with the findings of the Canadian privacy commissioner when he examined the functioning of DNA and forensic sampling in Canada. He alluded to what he described as "functional creep" or the use of DNA samples for purposes other than those for which they were extracted. Privacy and government records are major issues. These issues will occur when we look at the data bank and related matters. However, it is very important to address the issues of privacy in the provision to ensure the destruction of samples. That is very clearly put in this legislation.

Hon B.K. DONALDSON: How do we deal with the situation when a number of people, who have not been charged, volunteer samples, as happened recently with the taxi industry? Were those buccal swab samples destroyed automatically after they had eliminated that suspect? The Police Commissioner states that that occurs with fingerprints. However, with a group of people - such as those in the taxi industry - there could be a period of time when that DNA sample that was taken could be matched with what the police may have found from their investigations into the serial killings.

It concerns me that this is so well specified. It is an issue not so much concerning this Bill but rather the more comprehensive legislation to be put into place on a State by State, Territory by Territory basis; and within a combined national database with different forensic procedures to be looked at to ensure uniformity. I have difficulty with defining this in the Bill. A more in-depth investigation and, no doubt, a more comprehensive report, might find us coming to that conclusion. I see eventually separate legislation with DNA procedures similar to that in South Australia. However, it must be on a national basis.

Hon N.D. Griffiths: I look forward to debating that point at the appropriate time.

Hon B.K. DONALDSON: Very much so. I ask this specific question: When a group of people volunteer -

Hon Peter Foss: Who is the member asking?

Hon B.K. DONALDSON: I am asking the Attorney General. I do not know who else I am asking.

Hon N.D. Griffiths: What a rebellious backbencher he is, cheeky fellow!

Hon B.K. DONALDSON: I cannot support the inclusion of this matter in this Bill because it is an automatic procedure.

Hon DERRICK TOMLINSON: I thank Hon Helen Hodgson for the explanation of her amendment. It caused me to read it closely -

> Where -
>
> > (a) a person is found not guilty of an offence in respect of which a sample has been taken under this section; and
> >
> > (b) the person requests that the sample and any genetic information arising from the taking of the sample be destroyed,

Therefore, the process is that a person is charged, a sample of tissue is taken, it is analysed and information from the analysis is reported. The person then stands trial, is found not guilty, then requests that the tissue and the information be destroyed. What then happens to a person who is arrested on reasonable suspicion, charged, samples are taken, information is reported and the charge is not proceeded with? What Hon Helen Hodgson says is that only a person who is tried and found not guilty can request that the sample be destroyed. Therefore, a person who has not been tried does not have the same right to request the destruction of the sample as the person who has been tried and found not guilty.

Hon N.D. Griffiths: They are still under suspicion. The member knows that.

Hon DERRICK TOMLINSON: Still under suspicion? Likewise, it could be argued that with a person found not guilty a reasonable suspicion can still be held that that person committed the crime. What has been found is that the person is not guilty. There might still be a reasonable suspicion related to that not guilty person. It is only a decision of the court. My point is that in this instance the requirement -

Hon N.D. Griffiths: One cannot please all of the people all of the time.

Hon DERRICK TOMLINSON: I would hope that justice tries to please most of the people most of the time.

Hon N.D. Griffiths: This is a good time.

Hon DERRICK TOMLINSON: I accept what Hon Helen Hodgson said about a person tried and found not guilty. What about the person charged and not tried?

Hon N.D. Griffiths: Move an amendment.

Hon PETER FOSS: There is good reason to keep the sample. We must keep in mind that there may be more than one person under suspicion. If one of those people was arrested, his bodily sample taken and he was later tried and found not guilty, as Hon Derrick Tomlinson points out, he may be the person who committed the crime but it is just that he has been found not guilty. Such a person would have a very good defence if there were any attempt to prosecute him again. However, it might be relevant from the point of view of excusing somebody else. Members may remember the Heaney case. Let us assume that Mr Heaney was charged and not proceeded against, but somebody else was charged and the prosecution failed. However, due to further information at a later stage the evidence was re-examined - that is, the DNA - and it could be shown that the other person was the offender. It could then be of considerable satisfaction to a person such as Mr Heaney to be capable of being exonerated by its being shown that the culprit was somebody else. Members must keep in mind that DNA is not conclusive. It is conclusive about the origin of certain material, but it does not conclude the whole case. The fact that Mr Heaney's DNA might not be found at the scene might not say that he did not do it, just that it was not found at the scene. However, if somebody else's DNA was found at the scene it might have the opposite effect.

Hon Derrick Tomlinson: The interesting thing with Mr Heaney was that the analysis of the DNA indicated that it was 99.99 per cent probable that he was not the offender.

Hon PETER FOSS: That is the useful aspect of DNA analysis over some other evidence.

Hon N.D. Griffiths: DNA analysis is interesting, but it is not perfect.

Hon PETER FOSS: It still requires a linking together. One of the reasons I am not keen on this amendment is that I do not like such prescriptive matters to be in the Criminal Code. I hope if we have a criminal procedure Act that the whole matter will be removed from the Criminal Code.

Hon N.D. Griffiths: None of it belongs in the Criminal Code, but given that the procedure for taking evidence is in there the safeguard should be in there as well.

Hon PETER FOSS: I would rather the whole lot go, and suitably it should. As it is in the Criminal Code I did not want any more added to it, nor did I want to deal with this issue at this point, because of the sorts of issues raised by Hon Derrick Tomlinson. All I was trying to do was to preserve the status quo and keep the situation as was the case before King v The Queen - not ex parte Prince! I have a natural aversion to this, because we have not dealt with some of these issues. I wanted to preserve the law as it is understood rather than to change the law or to bring in new things.

Hon N.D. Griffiths: It is in a Bill in which new things have been brought in, so it is not a bad amendment.

Hon PETER FOSS: I am opposed to that for the reasons I have indicated.

I will respond to Hon Bruce Donaldson's question. All of this is to deal with whether evidence is obtained lawfully or unlawfully - not legally or illegally. If a DNA sample is taken compulsorily it would be illegal as well as being

unlawful because an assault would have been committed in order to obtain that. However, it may be possible to obtain DNA samples by entering a person's house and sweeping up skin samples. Without an authority to do that it would be trespass, and that evidence could not be used. Consider the example of a taxi driver who voluntarily gives a swab. Two things would determine whether that would be destroyed after use. The first is any condition imposed by the taxi driver at the time of giving the swab. If he says that he is giving it only for the purpose of the investigation and he expects it to be destroyed after the investigation that would be the contractual term. The second would be the practice of the police. If it is their practice to destroy the sample it would be destroyed pursuant to that. If there were neither a practice nor a contractual condition there would be nothing to prevent the police keeping it or disposing of it because it had been given to them and they could do with it as they wished.

Hon HELEN HODGSON: I want to clarify a point made by the Attorney General in relation to the difference between DNA collected as evidence and that which is collected from a person who has been charged. There is no suggestion that the evidence will be destroyed under this amendment. It will be destroyed after a person has given a DNA sample and after the person has been charged and the matching process occurs. If the person were cleared of the offence and later there was a potential perpetrator that would be fine because the original sample would be available and the new person could be tested once he had been charged to determine whether he committed the offence.

Amendment put and a division held, with the Chairman casting his vote with the ayes -

Ayes (14)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Helen Hodgson	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Norm Kelly		

Noes (13)

Hon E.J. Charlton	Hon Murray Montgomery	Hon B.M. Scott	Hon Derrick Tomlinson
Hon Max Evans	Hon N.F. Moore	Hon Greg Smith	Hon B.K. Donaldson
Hon Peter Foss	Hon M.D. Nixon	Hon W.N. Stretch	*(Teller)*
Hon Ray Halligan	Hon Simon O'Brien		

Pairs

Hon John Halden	Hon M.J. Criddle
Hon Mark Nevill	Hon Muriel Patterson
Hon Tom Stephens	Hon Barry House

Amendment thus passed.

Clause, as amended, thus passed.

Clause 4: Chapter XXXIIIB repealed and a Chapter substituted -

Hon HELEN HODGSON: I move -

Page 5, line 7 - To delete the word "means" and substitute the word "includes".

This will change the definition of "pursue" to an inclusive definition rather than a precise definition. It is in line with the comments of the Attorney General tonight about the level of prescription in the Criminal Code.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 5, lines 8 to 12 - To delete the lines and substitute the following -

(a) to repeatedly communicate with the person, whether directly or indirectly and whether in words or otherwise;

(b) to repeatedly follow the person;

(c) to repeatedly cause the person to receive unsolicited gifts;

This will pick up some omissions that appear to occur in paragraph (a) in the definition of pursue, which refers to telephone, fax or otherwise but fails to pick up the normal methods of communication. It also indicates whether it is direct or indirect, and uses the word "repeatedly" rather than "persistently" to try to get away from the mental

element. If there is a mental element, it is imposed in the definition of the offence rather than the words within that offence. The amendment tries to deal with the concerns expressed in the committee.

Amendment put and passed.

Hon HELEN HODGSON: I move -

Page 5, after line 15 - To insert the following new subparagraph -

(e) whether or not repeatedly, to do any of the foregoing in breach of a restraining order or bail condition.

This comes from the committee's report indicating that there can be circumstances in which a stalking offence occurs although it is not a repeated offence, simply because a restraining order or bail condition in force has been breached. The amendment indicates it is an offence whether or not it is done repeatedly, and it implements a recommendation of the committee.

Hon PETER FOSS: The Government accepts the amendment. It picks up the point raised by the committee. One of the problems in stalking is not necessarily that the action does not happen repeatedly, but that it must be proved that it happens repeatedly. One of the intents of a restraining order and protective bail condition is to make it easier after that period to show that the person is carrying out that particular behaviour. If a person has been told not to do it but does it in breach of a bail condition or a restraining order, that makes it a form of pursuit. I accept the amendment proposed by the member.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5 put and passed.

Clause 6: Section 91 amended -

Hon HELEN HODGSON: I move -

Page 8, line 8 - To insert after the word "if" the following words -

in the opinion of the court for the protection of the community

In the second reading debate I said I had difficulty with the concept of whole of life sentencing. However, given that the clause will be put as a whole, in the meantime I address a subset which would delete the three words "retribution, punishment and deterrence". The amendment on the Notice Paper would ensure that it was left to the court to decide whether the community's interests were being protected. That is the reason for the amendment. I still do not agree with the whole of life sentencing clause, but at least this gives the opportunity to consider the removal of the issues of retribution, punishment and deterrence in the process.

Hon PETER FOSS: The Government opposes this amendment. I have tried to indicate that the amendments are intended to restore to the courts the capacity to make the decision. One would have thought the previous words gave the courts that decision. However, that is not how it has been read by the High Court. I can almost tell the Committee of the High Court's decision based on the proposed amendment by Hon Helen Hodgson. It will decide there is no way that it can now say it is necessary for the protection of the community that a person not be granted parole. That would take the situation back to where it was before. The courts would have no discretion and would have to give parole. That would totally defeat the intention of this amendment. If it were as obvious in logic as it is in law, the amendment would be contrary to what is sought to be achieved. I oppose this amendment simply because it would be better not to amend it at all than to make this sort of amendment.

Hon N.D. GRIFFITHS: The Australian Labor Party also opposes the amendment. It will introduce effectively a new form of words into the legislation. I note the amendment is moved by an opponent of the concept of whole of life sentencing, and the Opposition and the Government agree with whole of life sentencing, particularly with regard to those awful crimes which have occurred and which I hope will never occur again. This amendment would undermine the concept of whole of life sentencing.

Amendment put and a division held, with the Chairman casting his vote with the noes -

Ayes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon J.A. Scott
Hon Norm Kelly	Hon Giz Watson	*(Teller)*

Noes (23)

Hon Kim Chance	Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch
Hon E.J. Charlton	Hon N.D. Griffiths	Hon M.D. Nixon	Hon Bob Thomas
Hon J.A. Cowdell	Hon John Halden	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon E.R.J. Dermer	Hon Tom Helm	Hon B.M. Scott	Hon B.K. Donaldson
Hon Max Evans	Hon Murray Montgomery	Hon Greg Smith	*(Teller)*

Amendment thus negatived.

Hon PETER FOSS: I move -

Page 8, line 10 - To delete "retribution,".

As I said, I am not absolutely sure that deleting the word "retribution" makes the bar higher before it can be jumped. We are saying that the court should do this if it is necessary in order to meet the community's interests in retribution, punishment and deterrence. If retribution is taken out it will leave only "punishment and deterrence". Therefore it is not necessary to find an interest in retribution before imposing the sentence. Having heard all the debate about retribution it is probably easier not to have it in the Bill. I would hate the High Court to have a similar debate. This will be satisfied after the court is satisfied that it will meet the community's interest in punishment and deterrence. The bar will be a little lower as a result; nonetheless, the legislation will be better.

Hon N.D. GRIFFITHS: I do not share the view that the bar will be lower. However, I agree with the proposition that the legislation will be better. The word "retribution" is extravagant. The committee's report refers to one dictionary meaning equating it with vengeance. We are essentially a civilised society. We should not use extravagant language like that in legislation. I am not aware of it being used in other legislation in this State or in similar jurisdictions, although it may be. I am concerned to get rid of the word. I want to have effective whole of life sentencing without extravagance. In the context of dealing with whole of life sentencing it is a mark of civilisation rather than barbarism and it will be a major barrier to barbarism.

Amendment put and passed.

Hon GIZ WATSON: I oppose this clause, as I stated in a minority report to the committee and in my contribution to the second reading debate. As much as I am first to acknowledge that some crimes deserve whole of life sentencing, the judiciary already has those powers, particularly under section 91(3) of the Sentencing Act. We should not be placing limitations on the discretionary power of the judiciary. We should be allowing judges to take into consideration all relevant factors.

Hon HELEN HODGSON: I also oppose this clause. A few moments ago it was said that I opposed whole of life sentencing. That is simplistic. I oppose it in the form presented before us. However, I believe that the existing section in the sentencing legislation allows for whole of life sentencing and for the judiciary to review it at the appropriate times and to use measures appropriate at those stages. As I made clear in my speech during the second reading debate, I do not agree with the element of taking away any discretion of the judiciary on whole of life sentencing. I therefore oppose the clause.

Clause, as amended, put and a division held, with the Chairman casting his vote with the ayes -

Ayes (23)

Hon Kim Chance	Hon Peter Foss	Hon N.F. Moore	Hon W.N. Stretch
Hon E.J. Charlton	Hon N.D. Griffiths	Hon M.D. Nixon	Hon Bob Thomas
Hon J.A. Cowdell	Hon John Halden	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Cheryl Davenport	Hon Ray Halligan	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon E.R.J. Dermer	Hon Tom Helm	Hon B.M. Scott	Hon B.K. Donaldson
Hon Max Evans	Hon Murray Montgomery	Hon Greg Smith	*(Teller)*

Noes (5)

Hon Helen Hodgson	Hon Christine Sharp	Hon J.A. Scott *(Teller)*
Hon Norm Kelly	Hon Giz Watson	

Clause, as amended, thus passed.

Title put and passed.

Bill reported, with amendments.

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

ADJOURNMENT OF THE HOUSE

HON PETER FOSS (East Metropolitan - Attorney General) [10.15 pm]: I move -

That the House do now adjourn.

World Cup Soccer - Adjournment Debate

HON TOM HELM (Mining and Pastoral) [10.16 pm]: I ask the House to cast its mind back to question time when the Leader of the Opposition asked the Leader of the House a question about the televising of World Cup soccer games. The point was made that people who lived in most parts of regional Western Australia are unable to watch those soccer games on television. I do not know why they would want to watch them but some people do. People in most towns in the north west are unable to watch those games. The Leader of the House was gracious enough to say that he would join with the Leader of the Labor Party in this place to fight to see that those games could be shown before they are over. I understand that the final game will be played in about two weeks' time. Many people in the north west are anxious to see some of the games leading up to the final. We have seen some highlights on television and can perhaps understand why, although I am not a soccer fan.

The DEPUTY PRESIDENT (Hon Derrick Tomlinson): Order! Hon Tom Helm is having difficulty making himself heard because of the level of audible conversation in the Chamber.

Hon TOM HELM: I can see, Mr Deputy President, that some of the members are also not soccer fans and could not care less. However, this is an example of how people in the regions are being treated by Governments of both persuasions. It is good to see that both sides of the House, given the comments of the Leader of the House, would like to join together to see that people in the regional areas do get to watch the games.

At least two towns are watching SBS even as we speak. They are Wickham and Roebourne. I must tell the Attorney General that Robe River Iron Associates, the scourge of the industrial scene, has paid for those two towns to receive SBS. That means that people can share their misery but at least watch soccer on a world scale. The interesting thing about that is the fact that it costs $20 to get a licence to receive SBS. I have spoken to the leading people in Sydney who are responsible for the Australian Broadcasting Authority, which is responsible for issuing licences. They tell me that we already have channels 57 to 69 dedicated to receiving SBS in the bush. However, because there are not enough people to check the computers to make sure that the channels are clear for the various communities and towns in our area, we cannot receive the signal. It is as simple as that. I have been advised that Newman will receive SBS on Friday. They have the equipment, which cost about $20 000, and the local shire has paid for the equipment to be installed. We must really think about the questions of Pauline Hanson, Queensland, and regional Western Australia. Maybe not receiving those channels is unimportant for the economic integrity of our nation or our State, but it is an example of how the regions have been treated. I do not pin the blame on anyone in particular. I know that Hon Hendy Cowan has played a major role in trying to get SBS into the bush. He has been vocal and has worked hard. The Leader of the House has said that he will join the Leader of the Labor Party in seeing if we can bring it about.

Perhaps it is now too late to get SBS so that people in regional areas can watch the soccer on television, but we should take that on board as a salutary lesson. I screamed and shouted when Iran was playing Australia in that historic final to get us into the World Cup, and we really fought to get Australian Rules Football on Golden West Network so that people in regional areas could see the Australian Football League games. I guess we should have done more.

Let us not forget that one of the most notorious companies in our State - the one that perhaps led us to the dispute on the waterfront with the Maritime Union of Australia, and the one that perhaps suggested the union movement could be beaten in certain parts of the State - was the one that provided the funds and the wherewithal to give the people who work for Robe River in the towns of Wickham and Pannawonica the chance to see the World Cup. We all could have done more, and we should take on board the fact that for a miserable $20 many of the people in the bush could have had access to that television coverage. Not all towns would have had access, because there might have been some problems with getting the technical equipment in place, but most of the major towns would have received it easily, according to the guy from the Australian Broadcasting Authority who is charge of making sure these stations are allocated correctly.

Taiwan Sugar - Adjournment Debate

HON JOHN HALDEN (South Metropolitan) [10.21 pm]: I wish to acquaint members with some information that I received when I was driving home during the dinner suspension tonight; I understand it was on the "PM" program of the ABC. Although I do not want to go into great detail about what happened in Queensland on Saturday, an inevitable consequence that has been broadcast by most major political parties and most significant commentators about parties that promote race is already starting to come to fruition.

The news item that I heard this evening was that Taiwan Sugar, a company that had proposed to spend $20m very shortly in Queensland on the first stages of its sugar refinery and subsequent works, which I understand from that news bulletin could have resulted in investment in Queensland of up to $1b, today announced that, as a direct result of the Queensland election, it would not invest any money in Queensland.

Hon Tom Helm: It was on ABC television.

Hon JOHN HALDEN: I was driving my car, so I heard it on radio. I do not wish to cast any aspersions on those who support or are members of a particular party, but whatever may be our political views, we do need to be very careful about what we espouse, because while it may be cheap and convenient on the domestic political scene, it may have grave consequences on the national scene and reverberate onto domestic jobs and domestic investment.

Many examples can be found, not only in Taiwan and other Asian countries but also today in the United States of America, to suggest that the events of last Saturday have not fallen upon international deaf ears. I believe all of us in any Parliament throughout this nation have a responsibility to be tolerant and to understand the political opinions of others and how they may have voted last Saturday, but at the end of the day, we do not live in glorious isolation, and we do not live in the 1950s or 1960s; we live in a world that is open to all to observe.

Within two working days of an election in one of the States of this Commonwealth, the world has observed and is making its judgment. It may well be a day we live to regret for a long time, and I hope that in this place and other places throughout this nation, we can address this issue sensibly. We cannot afford to make any cheap political gains, because at the end of the day, as a nation we may all suffer.

Question put and passed.

House adjourned at 10.25 pm

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

SNOWY MOUNTAINS ENGINEERING CORPORATION'S CONTRACT FOR FREMANTLE BYPASS

1427. Hon J.A. SCOTT to the Minister for Transport

Further to question without notice 1194 of March 11, 1998 regarding the Snowy Mountains Engineering Corporation's contract to design the Fremantle Eastern Bypass -

(1) Will the Minister table -

(a) the details of the tender document used for the contract; and

(b) any documentation relating to the variation to the original contract?

(2) If no to (1)(a), can the Minister advise the nature of the original contract including how the contract variation was allowed under the original contract?

(3) If the Minister will not table the documents, why not?

Hon E.J. CHARLTON replied:

(1) Yes, I table a copy of tender document with addendum, for Main Roads Contract 397/95 together with notices of variations. [See paper No 1697.]

(2)-(3) Not applicable.

ROAD CONTRACTS

1429. Hon TOM STEPHENS to the Minister for Transport:

With regard to the following companies -

(a) MacMahon Contractors and MacMahon Construction;
(b) Henry Walker;
(c) Highway Construction;
(d) Ertech Pty Ltd; and
(e) BGC Construction,

how much did each company receive in payment from the State Government for road contracts in the financial years -

(i) 1994/95;
(ii) 1995/96;
(iii) 1996/97; and
(iv) 1997/98?

Hon E.J. CHARLTON replied:

Insofar as Main Roads is concerned

Company	1994/95	1995/96	1996/97	1997/98 as at 1/4/98
McMahon Contracting	9 222 990	19 204 510	30 811 030	4 901 560
Henry Walker	959 350	24 118 790	25 447 490	30 975 580
Highway Construction	6 614 840	23 689 520	16 518 590	14 509 650
Ertech Pty Ltd	713 630	9 533 370	3 402 460	550 480
BGC Contracting Pty Ltd	249 620	2 048 050	6 644 530	15 137 950

MOLTONI CORPORATION PTY LTD'S CONTRACT

1545. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 1808 asked in the Legislative Assembly in relation to the Transport

Department's contract with the firm Moltoni Corporation worth approximately $95 388 for the provision of demolition part Pioneer Plant and all Quarry Industries plant, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalisation?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

The Member is referring to Contract 711/96, which was let by the Commissioner of Main Roads, not the Department of Transport.

(1)-(5) This contract involves the demolition of part of the Pioneer Plant and all of the Quarry Industries Plant for the construction of the Graham Farmer Freeway. A separate business case and comprehensive cost benefit analysis was not considered necessary.

(6)-(9) Quotes were sought from a prequalified list of demolition contractors, with Moltoni Corporation assessed as offering the best value for money.

(10)-(12) This information is not known nor was it considered by Main Roads necessary at the time to enquire.

MOLTONI CORPORATION PTY LTD'S CONTRACT

1557. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 1808 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Moltoni Corporation worth approximately $46 880 for the provision of demolition of Lone Star Hotel, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

Hon E.J. CHARLTON replied:

The Member is referring to Contract 359/96, which was let by the Commissioner of Main Roads, not the Department of Transport.

(1)-(5) This contract involves the demolition of the Lone Star Hotel for the construction of the Graham Farmer Freeway. A separate business case and comprehensive cost benefit analysis was not considered necessary.

(6) Quotes were sought from a prequalified list of demolition contractors, with Moltoni Corporation assessed as offering the best value for money.

MOLTONI CORPORATION PTY LTD'S CONTRACT

1558. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 1808 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Moltoni Corporation worth approximately $73 880 for the provision of demolition of Western Power Building, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

Hon E.J. CHARLTON replied:

The Member is referring to Contract 462/96, which was let by the Commissioner of Main Roads, not the Department of Transport.

(1)-(5) This contract involves the demolition of the Western Power Building for the construction of the Graham Farmer Freeway. A separate business case and comprehensive cost benefit analysis was not considered necessary.

(6) Quotes were sought from a prequalified list of demolition contractors, with Moltoni Corporation assessed as offering the best value for money.

BORAL LTD'S CONTRACTS

1562. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 31 in relation to the Transport Department's following contracts with the firm Boral Ltd -

(a) $10.4m, contract 118/95, maintenance contract, Pilbara and MidWest Regions;

(b) $1.7m, contract 414/95, road construction, National Park Section of Port Gregory to Kalbarri Road; and

(c) $449 500, contract 520/95 for the construction of surcharge embankment for eastern approach to Burswood Bridge,

can the Minister advise in each of these cases -

(1) Was a due diligence check carried out on the contractor before the above contract was awarded?

(2) If yes, did it include a check of the contractors financial background?

(3) Who carried out the financial background check?

(4) If the contractor is a company, when was the company formed and what is its share capitalisation?

(5) Who are the directors of the company?

(6) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(a)-(c) These contracts were awarded by Main Roads not the Transport Department.

(1)-(3) Tenders were called with Boral Contracting Pty Ltd offering the best value for money and assessed as being the most suitable to undertake the works.

(4)-(6) Main Roads maintains a register of pre-qualified contractors for high value contracts. To be pre-qualified, contractors must be able to demonstrate that they meet certain criteria regarding performance and resource capability. Main Roads was satisfied with the information it had available.

WORKSAFE WA INVESTIGATION

1578. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

Why has the Commissioner for Public Sector Standards not yet made a ruling on the request for a full investigation into the operations of WorkSafe WA and Commissioner Bartholomaeus since calls for a full investigation were made more than seven months ago?

Hon N.F. MOORE replied:

The matter is still under consideration by the Commissioner for Public Sector Standards.

BARTHOLOMAEUS, MR NEIL

1580. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Public Sector Management:

(1) How many complaints have been made to the CPSS about the WorkSafe WA Commissioner Neil Bartholomaeus?

(2) When were these complaints made?

(3) How many of these complaints have been investigated and a report completed?

(4) Of those investigations completed, was Mr Bartholomaeus found to have breached Public Sector Standards in any of the cases?

(5) If so, what disciplinary action was taken against Mr Bartholomaeus in each case?

(6) Has he adequately complied with the requirements of the disciplinary actions?

(7) If not, what additional disciplinary action will be taken in relation to those matters.

Hon MAX EVANS replied:

The Commissioner for Public Sector Standards has advised me of the following:

(1) 2.

(2) 25 July 1997, 17 December 1997.

(3) 1.

(4) No.

(5)-(7) Not applicable.

PUBLIC RECORDS BILL AND LIBRARY BOARD ACT AMENDMENTS

1583. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Public Sector Management:

I refer to the Government's response to the Commission on Government Reports Nos 1-5, released in October 1996, in which it was stated that "Cabinet has approved the drafting of a *Public Records Bill* and amendments to the *Library Board Act*", and that this legislation would be consistent with the general principles of the relevant COG recommendations, and ask -

(1) Has the proposed *Public Records Bill* been drafted?

(2) Have the proposed amendments to the *Library Board Act* been drafted?

(3) If no to (1) or (2) above, why not?

(4) If yes to (1) or (3) above, when will the proposed legislation be introduced in Parliament?

Hon MAX EVANS replied:

(1) Yes.

(2) Yes. They are contained in the Government Records (Consequential Provisions) Bill 1998.

(3) Not applicable.

(4) In the Spring Session.

MARKET EQUITY PTY LTD'S CONTRACT

1592. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Water Resources:

Further to the answer given to question on notice 796 in relation to the Water Resources Department's contract with the firm Market Equity for the provision of market research services, can the Minister for Water Resources advise -

(1) What was the value of the contract?

(2) Was a business case conducted?

(3) Did it include a comprehensive cost benefit analysis?

(4) If so, what did it show?

(5) If not, why not?

(6) What were the identified inherent risks?

(7) What other options were considered?

(8) Was a due diligence check carried out on the contractor before the above contract was awarded?

(9) If yes, did it include a check of the contractors financial background?

(10) Who carried out the financial background check?

(11) If the contractor is a company, when was the company formed and what is its share capitalization?

(12) Who are the directors of the company?

(13) Are any of the company directors Ministers or senior public servants?

Hon MAX EVANS replied:

(1) The contract between the Water Corporation and Market Equity has no finite value as each job is individually quoted.

(2) Yes.

(3) No.

(4) Not applicable.

(5) Not considered appropriate for the type of contract.

(6) The identified inherent risks were: deterioration of service quality; continuity of service; disproportionate amount of work being done by senior consultants; "lock in" to unsatisfactory contact; cost escalation; security; failure of contract management and commercial risk.

(7) The other option was to call for tenders for market research required by the Corporation on a case-by-case basis.

(8) Yes, at the appropriate level.

(9) No.

(10) Not applicable.

(11) Market Equity Pty Ltd, ACN 054 505 127, was registered on 6 December, 1991 and has 1000 shares with a face value of $1 per share.

(12) The current directors of the company are: Julie Michelle Beeck, Brent Michael Stewart and Robin Janet Thomson.

(13) No.

INFILL SEWERAGE CONTRACTS

1593. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Water Resources:

Further to the answer given to question on notice 345 of 1995 asked in the Legislative Assembly in relation to the

Water Resources Department's contracts worth approximately $10.7m for the provision of infill sewerage contracts in 1994, can the Minister for Water Resources advise in each case -

(1) Who was the successful tenderer?

(2) What was the value of the contract?

(3) Was a business case conducted?

(4) Did it include a comprehensive cost benefit analysis?

(5) If so, what did it show?

(6) If not, why not?

(7) What were the identified inherent risks?

(8) What other options were considered?

(9) Was a due diligence check carried out on the contractor before the above contract was awarded?

(10) If yes, did it include a check of the contractors financial background?

(11) Who carried out the financial background check?

(12) If the contractor is a company, when was the company formed and what is its share capitalization?

(13) Who are the directors of the company?

(14) Are any of the company directors Ministers or senior public servants?

Hon MAX EVANS replied:

(1) Construction Branch, Water Corporation.

(2) (a) $ 2,906,887
(b) $ 178,677
(c) $ 1,261,771
(d) $ 6,070,691
(e) $ 354,910

(3) All contracts were awarded following open tender process.

(4)-(14) Not applicable.

INFILL SEWERAGE CONTRACTS

1594. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Water Resources:

Further to the answer given to question on notice 801 in relation to the three contracts with the Water Resources Department worth approximately $3 991m for the provision of infill sewerage contracts, can the Minister for Water Resources advise in each case -

(1) Who was the successful tenderer?

(2) What was the value of the contract?

(3) Was a business case conducted?

(4) Did it include a comprehensive cost benefit analysis?

(5) If so, what did it show?

(6) If not, why not?

(7) What were the identified inherent risks?

(8) What other options were considered?

(9) Was a due diligence check carried out on the contractor before the above contract was awarded?

(10) If yes, did it include a check of the contractors financial background?

(11) Who carried out the financial background check?

(12) If the contractor is a company, when was the company formed and what is its share capitalization?

(13) Who are the directors of the company?

(14) Are any of the company directors Ministers or senior public servants?

Hon MAX EVANS replied:

(1) Construction Branch, Water Corporation.

(2) (a) $ 3,282,937
(b) $ 45,509
(c) $ 662,241

(3) All contracts were awarded following open tender process or competitive bidding.

(4)-(14) Not applicable.

LESCHENAULT QUAYS CONTRACT

1597. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Water Resources:

Further to the answer given to question without notice 493 asked in the Legislative Assembly in relation to the Water and Rivers Commission Department's contract with the firm Leschenault Quays worth approximately $58 000 per annum for the provision of rental lease for the Water and Rivers Commission, can the Minister for Water Resources advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon MAX EVANS replied:

(1) Yes.

(2) A cost analysis of various options was included.

(3) No suitable long term accommodation was found. The Leschenault Quays was determined to be suitable in the short term while long term arrangements were progressed.

(4) Answered by (2) and (3).

(5) Alternative long term accommodation would be evaluated within the term of the lease or the lease extended.

(6) Two other main options were investigated: An ex-furniture showroom in Blair Street and the Bunbury Tower. The Water and Rivers Commission had also previously had a preliminary examination of skid mounted transportables; three commercial units in the Homemaker Centre, warehouses in the Hallifax Light Industrial Park, six private buildings in the Bunbury CBD and the options of building new premises on Crown Reserve or private land. These options were rejected at an early stage as unsuitable for a variety of reasons.

(7) No. The Government Property Office has confirmed there is no requirement to undertake due diligence checks or company searches, when entering into commercial lease arrangements in existing buildings.

(8)-(12) Answered by (7).

JOHN HOLLAND CONSTRUCTION AND ENGINEERING PTY LTD'S CONTRACT

1598. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 1820 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm John Holland Construction and Engineering Pty Ltd worth approximately $25m, 1996/97, a five year contract for the provision of Capital works for Westrail, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1)-(2) Yes.

(3) The analysis concluded that outsourcing the works was the preferred option.

(4) Not applicable.

(5) Nil.

(6) Westrail to carry out the work in-house.

(7)-(8) Yes.

(9) Westrail's Manager Finance.

(10)-(12) The Hon Member should direct these questions to the Company.

SCANIA AUSTRALIA PTY LTD'S CONTRACT

1604. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 81 of 1996 in relation to the Transport Department's contract with the firm Scania Australia Pty Ltd worth approximately $6.8m for the provision of supply of 16 low floor midi-buses, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) Yes, conducted under Better Cities Master Plan, included conceptual, feasibility study and research.

(2) Yes.

(3) In the context of Better Cities and CAT as a pioneer of new technology in passenger transport systems that a new standard of bus was required which took transport into the 21st century. This showed that the vehicle would be exceptional and more costly than the norm, but appropriate to meet the Better Cities funding criteria.

(4) Not applicable.

(5) Identified inherent risks were:

Cost.
Delivery Schedule.

(6) Refer to response to part (3).

(7) Yes.

(8) The company was required to submit a full profile with the tender including financial reports and bank statements.

(9) Standard Company search.

(10) Scania Australia Pty Ltd was incorporated in 1966 and is a wholly owned subsidiary of Scania Sweden AB.

(11) Directors: Mr Peter Cottrell.
Mr David Ferguson.
Mr Leif Ostling.
Mr Arne Carlson
Mr Hakan Eriksson.

(12) No.

TERRA VISION PTY LTD'S CONTRACT

1605. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 81 of 1996 in relation to the Transport Department's contract with the firm Terra Vision Pty Ltd worth approximately $534 687 for the supply of automatic electronic information system in buses, bus stops and shelters, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) Yes, conducted under Better Cities Master Plan, included conceptual, feasibility study and research.

(2) Yes.

(3) In the context of Better Cities and CAT as a pioneer of new technology in bus tracking and information systems, it showed that this technology was new to urban bus transport systems, was not fully proven technology and therefore carried a high degree of risk. This however was within the Better Cities criteria, part of which was to develop new technology and encourage local companies to get involved. The Commonwealth set out to ensure that Better Cities funding was used to create futuristic programs.

(4) Not applicable.

(5) Identified inherent risks were:

New Technology;
No precedent for the particular application;
Meeting technical, schedule and budget requirements;
Integration into the CAT system;
Satisfying Stakeholders (Commonwealth, State and Local Government); and
Meeting performance specified

(6) Refer to response to part (3).

(7) Yes.

(8) The company was required to submit a full profile with the tender including financial reports and bank statements.

(9) Standard Company search.

(10) Company formed: 18 August 1993.
Share Holders: Terrasoftware, PJ & SM Clifford and Tsalach Pty Ltd.

(11) Peter and Sue Clifford.

(12) No.

A. GONINAN & CO LIMITED'S CONTRACT

1606. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 82 of 1996 in relation to the Transport Department's contract with the firm A. Goninan and Co Ltd worth approximately $1.05 m for the provision of contract 18677 - conversion of WFDF class wagons for the transportation of sulphuric acid, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) No. A business case was conducted by Westrail prior to tendering for a contract with Western Mining Corporation for the Haulage of sulphuric acid. The rolling stock requirements for the project were identified as part of that business case.

(2)-(6) Not applicable.

(7) Yes.

(8) No.

(9) Not applicable.

(10)-(12) The Hon Member should direct these questions to the company.

A. GONINAN & CO LIMITED'S CONTRACT

1607. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 90 of 1996 in relation to the Transport Department's contract with the firm A. Goninan and Co Ltd worth approximately $1m for the provision of repairs to locomotives P2001 and P2014, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) No. Westrail's five year business plan identified an on-going requirement for locomotives P2001 and P2014. There was a fundamental requirement for the locomotives to be repaired so that Westrail could meet its haulage commitments.

(2)-(6) Not applicable.

(7) Yes.

(8) No.

(9) Not applicable.

(10)-(12) The Hon Member should direct these questions to the company.

BARCLAY MOWLEM CONSTRUCTION LTD AND JOHN HOLLAND CONSTRUCTION AND ENGINEERING PTY LTD'S CONTRACT

1608. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 759 of 1995 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Barclay Mowlem Construction Pty Ltd and John Holland Construction

worth approximately $5.7m for the provision of lowering the railway line under bridges between Forrestfield and Kalgoorlie, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) No. A business case was conducted by Westrail as part of its capital expenditure proposal for extending clearances on the railway between North Fremantle and Kalgoorlie to allow for double stacking of containers on railway wagons. The work carried out by Barclay Mowlem Construction Ltd and John Holland Construction and Engineering Pty Ltd was identified in that business case.

(2)-(6) Not applicable.

(7)-(8) Yes.

(9) Consultants, Gutteridge Haskins and Davey Pty Ltd.

(10)-(12) The Hon Member should direct these questions to the company.

JOHN HOLLAND CONSTRUCTION PTY LTD'S CONTRACT

1615. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 3266 of 1995 in relation to the Transport Department's contract with the firm John Holland Construction Pty Ltd worth approximately $335 762 for the provision of contract 18627 to supply railway sleepers for the Goongoonup railway bridge, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

(7) Was a due diligence check carried out on the contractor before the above contract was awarded?

(8) If yes, did it include a check of the contractors financial background?

(9) Who carried out the financial background check?

(10) If the contractor is a company, when was the company formed and what is its share capitalization?

(11) Who are the directors of the company?

(12) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1) No. A business case was conducted by Westrail as part of its capital expenditure proposal for the construction of the Goongoongup bridge. The railway sleeper requirements for the project were identified in that business case.

(2)-(6) Not applicable.

(7) No.

(8)-(9) Not applicable.

(10)-(12) The Hon Member should direct these questions to the company.

BARRACK SQUARE LTD'S CONTRACT

1629. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 831 of 1994 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Barrack Square Ltd worth approximately $2.2m for the development of the Old Perth Port project, can the Minister advise -

(1) Was a business case conducted?

(2) Did it include a comprehensive cost benefit analysis?

(3) If so, what did it show?

(4) If not, why not?

(5) What were the identified inherent risks?

(6) What other options were considered?

Hon E.J. CHARLTON replied:

(1)-(6) As indicated in the answer to Legislative Assembly Question 831 of 1994, Transport's involvement with Barrack Square Ltd related to the lease of an area of seabed and the issue of a Jetty Licence to enable a privately funded development on the site.

Transport was not directly involved in the construction contract other than through the normal lease approval process and in negotiation the provision of public toilet facilities and additional departmental offices at no direct cost to the taxpayer.

The Seabed Lease and Jetty Licence signed in 1994 was a continuance of the original development proposal approved by the then Minister for the Environment, the Hon R Pearce, acting on advice from the Swan River Trust, in 1990.

The Development Approval issued by the Minister for the Environment in 1990 required the developer to produce evidence to the satisfaction of the Swan River Trust as to the existence of sufficient investment capital to carry out and complete the development. In a subsequent Development Approval this requirement was substituted by a requirement for the proponent to lodge a performance bond of $100 000 with the Swan River Trust.

Transport was presented with copies of financial information from the development proponent prior to the lease agreement being signed, a detailed examination of this information was not undertaken by Transport in view of the primary role the Swan River Trust had with regard to the finance aspects of the development.

BARRACK SQUARE LTD'S CONTRACT

1637. Hon LJILJANNA RAVLICH to the Minister for Transport:

Further to the answer given to question on notice 831 of 1994 asked in the Legislative Assembly in relation to the Transport Department's contract with the firm Barrack Square Ltd worth approximately $2.2m for the development of the Old Perth Port project, can the Minister advise -

(1) Was a due diligence check carried out on the contractor before the above contract was awarded?

(2) If yes, did it include a check of the contractors financial background?

(3) Who carried out the financial background check?

(4) If the contractor is a company, when was the company formed and what is its share capitalization?

(5) Who are the directors of the company?

(6) Are any of the company directors Ministers or senior public servants?

Hon E.J. CHARLTON replied:

(1)-(3) These matters have been dealt with in my response to Question on Notice, Legislative Council 1629.

(4)-(6) This information is not readily available from Transport's records. However, the information is in the public domain via the Australian Securities Commission.

COMMISSIONER FOR PUBLIC SECTOR STANDARDS

Investigation and Reporting Time

1642. Hon LJILJANNA RAVLICH to the Leader of the House representing the Premier:

Can the Premier advise the mean and mode times taken by the Commissioner of Public Sector Standards ("CPSS") to investigate a complaint and complete a report?

Hon N.F. MOORE replied:

The Commissioner for Public Sector Standards has advised that for complaints received in the year 1997-1998 to date:

Mean time is 50 calendar days.

Mode time is 8 days when an inquiry is not required and 33 days when an inquiry is required.

WANNEROO ROAD, FOUR LANE DUAL CARRIAGEWAY

1658. Hon KEN TRAVERS to the Minister for Transport:

(1) Who was consulted regarding the proposal to make Wanneroo Road a four lane dual carriageway to Quinns Road?

(2) When did this consultation take place?

(3) On what date was it decided to include this project in Transform WA?

Hon E.J. CHARLTON replied:

(1)-(2) The proposal has been developed by Main Roads as part of normal planning to accommodate future traffic demands in this area.

(3) This project is not included in Transform WA.

INTERNATIONAL INVESTIGATION AGENCY'S CONTRACT WITH MAIN ROADS

1669. Hon TOM STEPHENS to the Minister for Transport:

Regarding the use of private investigators to investigate the source of a leaked Mains Roads document -

(1) What procedures were followed which led to the hiring of the company International Investigation Agency?

(2) Was there a contract with this private investigation agency?

(3) If so -

(a) who were the signatories to this contract;
(b) what was the remuneration spelt out in the contract; and
(c) what was the duration of the contract?

(4) If there was no contract what was the nature of the arrangement between the Main Roads Department and the private investigators?

Hon E.J. CHARLTON replied:

(1) The standard State Government procedures with respect to the nature of the work as determined at the time.

(2) Yes.

(3) (a) The Commissioner of Main Roads and the Director and Secretary of International Investigation Agency Pty Ltd.

(b) $100 per hour per investigation.

(c) From 8 January 1998 to completion of task.

(4) Not applicable.

INTERNATIONAL INVESTIGATION AGENCY

Hiring by Main Roads

1670. Hon TOM STEPHENS to the Minister for Transport:

In regard to the use of the private investigation agency "International Investigation Agency" by the Main Roads Department -

(1) Who made the decision to call in private investigators?

(2) Was the Minister involved in this decision?

(3) If no to (2) above, when was he made aware of the decision?

Hon E.J. CHARLTON replied:

(1) The Commissioner of Main Roads.

(2) No.

(3) The exact date is not known.

INTERNATIONAL INVESTIGATION AGENCY

Payments

1671. Hon TOM STEPHENS to the Minister for Transport:

In relation to the use of the private investigation firm "International Investigation Agency" -

(1) What is the total amount paid to date to the "International Investigation Agency"?

(2) Are there any outstanding accounts yet to be paid for work completed?

(3) If so, what is the amount to be paid?

Hon E.J. CHARLTON replied:

(1) $50 870.

(2)-(3) The Company is still assisting with investigations and further accounts for that work can be expected.

MR BARTHOLOMAEUS' REAPPOINTMENT TO COMMISSIONER OF WORKSAFE

1686. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Public Sector Management:

(1) Why did it take more than a year to re-appoint Mr Bartholomaeus to his position as WorkSafe Commissioner?

(2) Was his position under threat?

(3) If so, why?

Hon MAX EVANS replied:

(1) The Government is committed to a full merit selection and recruitment process for all Chief Executive Officer positions. This involves a number of stages, including consultation with relevant parties, which can take some time to finalise.

In the case of the WorkSafe Western Australia Commissioner, in addition to the need to follow the above

process, there were a number of administrative and legal issues that required resolution prior to finalising an appointment.

(2) No.

(3) Not applicable.

CHIEF EXECUTIVE OFFICERS IN ACTING POSITIONS

1687. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Public Sector Management:

(1) How many Chief Executive Officers ("CEOs") are currently in acting positions?

(2) What percentage of the total number of CEOs is this?

Hon MAX EVANS replied:

(1)-(2) As at 20 May 1998 there are sixteen Chief Executive Officer positions filled in an acting capacity. This includes two positions where a permanent appointment has been made but the appointee has not yet commenced. This represents 18% of Chief Executive Officer positions to which appointments are made under the Public Sector Management Act 1994.

OLD COAST ROAD WIDENING

1691. Hon BOB THOMAS to the Minister for Transport:

(1) What order of priority was given to the completion of the widening of the Old Coast Road between Bunbury and Mandurah in the Transform WA Program?

(2) How precisely was that priority calculated?

(3) Was the project considered to have a positive or negative economic benefit?

(4) Why were other projects which delivered lower or even negative economic benefits funded ahead of this project?

Hon E.J. CHARLTON replied:

(1) The road to Bunbury is a high priority for the Coalition Government, not as was the case with the Opposition when in Government.

You will no doubt be interested to know that in the five years up to 1992/93 $27 million was spent on this road, whereas for the five years up to 1997/98 the Coalition Government has spent $47.4 million. We have also committed a further $54 million in the Main Roads' 10 year program.

I am pleased to say that the dual carriageway on the Clifton and Preston sections is scheduled for completion by the year 2000.

(2) Very precisely.

(3) The project has a major positive economic and social benefit.

(4) Priorities are calculated on a number of factors including program cash flows and the readiness of the project to get under way in respect to design, tender documentation or land availability.

CONVENTION CENTRE NEGOTIATIONS

1714. Hon JOHN HALDEN to the Leader of the House representing the Premier:

(1) Prior to the announcement of the $100m in the Budget for the Convention Centre, was the Burswood Casino management advised of the Government's intention to provide this $100m?

(2) What negotiations had the Government had with the Burswood Casino management about their proposed convention centre?

(3) If none, why not?

Hon N.F. MOORE replied:

(1) The Government has had discussions with the Burswood Casino on their proposals for several years. We have made it clear to them the type of dedicated exhibition and convention facilities this city requires. They are aware of the studies of alternative sites. They were not aware of the $100m budget proposal until the day of the budget, which is the normal and proper process.

(2) Burswood management made a presentation of their convention centre plans to Government in July 1996. This was immediately followed by the operator of the Casino, Victoria, announcing its plans to sell its interest. Burswood management explained to Government that this would obviously delay their plans. In April 1997 Metroplex Berhad announced its intention to take up a substantial interest in Burswood subject to shareholder approval. Metroplex stated its intention to progress the Burswood convention centre plans. In recognition of this, officers of the WATC (Shane Crockett, Chief Executive Officer and Anne-Maree Ferguson, General Manager Perth Convention and Incentive Unit) attended meetings of Burswood's Convention and Exhibition Facility Redevelopment Committee to ensure its executive staff were kept informed of the convention and exhibition market opportunities in the context of the Resort's proposed expansion plans. The WATC also provided Burswood with ongoing convention market analysis from June to December 1997. In particular, this information was in the form of an updated feasibility study into the viability of a dedicated Convention and Exhibition Centre for Perth which was forwarded to Burswood in November 1997. The original study, undertaken by Pannell Kerr Forster in September 1994, was also provided to Burswood Resort Hotel and Casino at that time. Both the original and updated studies were funded in full by the State Government and have been tabled in the Legislative Assembly.

In September 1997 the contemplated Metroplex participation failed. This required Burswood to fully fund the purchase of the Operating Agreement from Victoria.

Informal discussions with Burswood have been held both before and after the Government decision to seek other avenues for improving the convention facilities of Western Australia.

It must be noted that it is only prudent for Government to test the market for a proposed development of this significance. Burswood Resort Hotel and Casino is not precluded from submitting their proposed expansion plans at such time as Government seeks Expressions of Interest for the proposed Perth Convention and Exhibition Centre.

(3) Not applicable.

VEHICLE LICENSING FEES, PENSIONER CONCESSIONS

1717. Hon NORM KELLY to the Minister for Transport:

(1) What was the concession available to pensioners paying their vehicle licensing fees, prior to the recent increase in fees?

(2) Will this concession remain at the same rate or will it rise to cover the full increase in fees?

Hon E.J. CHARLTON replied:

(1) Pensioners on the maximum rate of invalidity pension through the Department of Veterans' Affairs or Centrelink, receive a 100% vehicle licence fee concession. Other pensioners who hold a Pensioner Concession Card issued by those organisations, receive a 50% licence fee concession.

(2) The percentage rates of vehicle licence fee concession will remain the same.

WASTE TRANSFER STATION, MANDURAH

1726. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

(1) Is the Minister for the Environment aware that the Mandurah City Council intends to rezone land at the Gordon Road site in the pending City Planning Scheme No 3?

(2) Is the Minister aware that this rezoning will allow the development of a waste transfer station at this site even though adequate buffer zones cannot be achieved?

(3) Did the Department of Waste Management or the DEP provide the City of Mandurah with information regarding the laws, rule and guideline for waste transfer stations?

(4) If yes, what was that information?

Hon MAX EVANS replied:

(1) No. Not to the knowledge of the Department of Environmental Protection.

(2) The Gordon Road Transfer Station has already been constructed and is operating.

(3) Yes.

(4) The information was discussed with a representative from the City's consultants, Halpern Glick and Maunsell. This is included in the City of Mandurah's Integrated Waste Management Facility Site Location Study and the Gordon Road Integrated Waste Management Facility Referral Document, which the City produced.

WASTE TRANSFER STATION, MANDURAH

1727. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

(1) Did the City of Mandurah contact the Department of Waste Management when the city was drafting licensing conditions and buffer zone distances for its waste transfer station?

(2) Will the Minister for the Environment table any documentation between these two offices on this matter at this sitting or as soon as possible?

(3) What input or advice has the Environmental Protection Authority and the Department of Environmental Protection given to the City of Mandurah to set up and administer the Waste Management Facility?

Hon MAX EVANS replied:

(1) The City of Mandurah lodged a licence application with the Department of Environmental Protection on 1 October 1997.

The licence was based on a generic licence for transfer stations in WA and was drafted by the DEP and issued on 30 October 1997. The licence conditions make reference to the "City of Mandurah Gordon Road Integrated Waste Management Facility Site Operations Manual E3392F August 1997" which is included as an appendix to the licence conditions. Licence conditions state that the site shall be "...managed in accordance with the report..." which addresses internal and external buffers.

Oral negotiations were carried out between technical officers of the City and their consulting engineers, Halpern Glick Maunsell and the DEP's licensing officer.

(2) Yes, I now seek leave to table a copy of the licence for the facility. [See paper No 1698.]

(3) It was determined that the appropriate level of assessment for the facility was informal review with public advice.

The DEP reviewed the Integrated Waste Management Facility Site Location Study, September 1995 and provided information, advice and requirements for construction and operation of the facility on 6 March 1996. This originally included a requirement for an approximate 200 metre internal buffer distance. The DEP has received no advice from the City of Mandurah that this distance has been reduced.

The current licence conditions refer to the abovementioned report which indicates that a 200 metre buffer distance will be maintained, and also operational requirements for the facility.

The State is also paying part of the interest costs incurred by the City of Mandurah for the facility as part of an agreement made in 1993 to facilitate enhanced waste management arrangements for the City of Mandurah and the Shire of Murray.

BUNBURY HOSPITAL SITE LANDSCAPING CONTRACT

1840. Hon TOM HELM to the Minister for Finance representing the Minister for Works:

With regard to the landscaping contract at the new co-located hospital site in Bunbury -

(1) Were tenders called to carry out this work?

(2) If yes -

(a) who was the successful tenderer; and

(b) what was the value of this contract?

Hon MAX EVANS replied:

I am advised that:

(1) Yes. A provisional sum was allocated in the tender for landscaping. The tender for landscaping was called by the head contractor, Devaugh Pty Ltd, which assessed the tender and made a recommendation to the Superintendent of the contract. This was evaluated and agreed.

(2) (a) The successful tenderer was a local contractor - Critchleys Landscaping.

(b) The value of the contract was $1,543,342.00.

QUESTIONS WITHOUT NOTICE

WORLD CUP SOCCER

1677. Hon TOM STEPHENS to the Minister for Sport and Recreation:

(1) Has the Minister taken steps to ensure that all Western Australians living in regional and country areas can view the World Cup series on television?

(2) Will he join with the Australian Labor Party to ensure that strong representations are made to the Federal Government aimed at ensuring major sporting events like this are never deprived the television viewing audience of regional Western Australia?

Hon N.F. MOORE replied:

(1)-(2) This is one occasion when I agree with the Leader of the Opposition. Viewers in regional Western Australia are entitled to view the same sporting events as viewers in the metropolitan area. As the Leader of the Opposition knows, there was a time in the not too distant past when no-one in country Western Australia enjoyed a television reception. Times have changed, and we have the capacity for country viewers to witness the very best sporting events in the world. I support what the Leader of the Opposition seeks to achieve. I will take up the cudgels in the way he seeks to take them up.

While on the subject, the State Government has just announced a country areas initiative in respect of sporting events in country areas. We will make available funds to sporting organisations and teams at the elite level to enable them to play matches in the country in order to give regional people a chance to witness our sports stars in action firsthand.

STAMP DUTY ON CHATTELS

Farming Land and Mining Tenements

1678. Hon TOM STEPHENS to the Minister for Finance:

(1) What is the estimate of the cost to revenue for 1998-99 due to the exemption of stamp duty on chattels involved in the transfer of farming land?

(2) What is the estimate of revenue from the mining industry for 1998-99 from the impost of stamp duty on chattels involved in the transfer of mining tenements etc?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Data is not readily available to enable this cost to be estimated.

(2) The total revenue from removing the exemption for most chattels conveyed with land is estimated to be $12m in a full year, of which it is expected that the majority would come from conveyances of houses. However, an industry breakdown is not readily available.

AGED CARE ACT

1679. Hon N.D. GRIFFITHS to the Attorney General:

In the Budget Statements under the Ministry of Justice at page 594 the observation is made -

. . . the Public Advocate will be working with the Commonwealth Government to reduce any adverse effects of the Aged Care Act 1997 (Commonwealth) on people with decision-making disabilities.

What adverse effects of the Commonwealth's Aged Care Act 1997 on people with decision making disabilities are currently being sought to be addressed by the Public Advocate?

Hon PETER FOSS replied:

As the member is probably aware, a significant increase was made to the budget of the Public Advocate, due to the problems which arise out of the changed relationship to aged people's accommodation in nursing homes and the requirement to have approval of the agreements which are entered into. That means that some people going into nursing homes do not have the competency to give their consent. We believe there will be considerably more applications to the Guardianship and Administration Board in respect of those people. We are trying to see if there is a way around the current procedures required by the commonwealth legislation so that that is not required.

STUDENTS IN YEARS 11 AND 12

Funding

1680. Hon HELEN HODGSON to the Leader of the House representing the Minister for Education:

(1) Does the Education Department expect an increase in the number of students remaining at school for years 11 and 12 as a result of the federal youth allowance legislation?

(2) If so, has the State Government negotiated an increase in federal funding to cope with the expected increase?

(3) If yes to (1), are enough places available at public high schools for the 1999 school year to cope with the expected increase?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes.

(2)-(3) The Federal Government has allocated $24m over three financial years for this purpose. The full extent of funding requirements for Western Australia will be known only when the 1999 enrolment statistics are available.

MARINE RESERVES

Vesting in Marine Parks and Reserves Authority

1681. Hon GIZ WATSON to the Leader of the House representing the Premier:

In reference to the recent release of the document "New Horizons - the way ahead in marine conservation and management" -

(1) Will the Premier confirm the Government's commitment to a comprehensive, biologically representative system of marine reserves vested in a single authority; that is, the Marine Parks and Reserves Authority?

(2) If not, why not?

(3) Will the Premier give an assurance that the Houtman Abrolhos Islands group will be part of that reserve system?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) The Premier confirms the Government's commitment to a comprehensive, biologically representative system of marine reserves established under the Conservation and Land Management Act being vested in the Marine Parks and Reserves Authority.

(3) The "New Horizons" document also refers to the ability to create fish habitat protection areas in accordance with the provisions of the Fish Resources Management Act 1994. Planning for the establishment of a fish habitat protection area at the Abrolhos Islands is well advanced and a draft plan of management has been released for public comment. The Abrolhos Islands Management Advisory Committee is in the process of reviewing public comments received in respect of the plan.

PATRICK STEVEDORES LEASE

1682. Hon CHERYL DAVENPORT to the Minister for Transport:

(1) Why did the Fremantle Port Authority backdate its approval of the assignment of the Patrick Stevedores lease to 1 October 1997 when Patricks did not make an application until 11 December 1997 and when it was not approved until 20 March 1998?

(2) Will the Minister table all documents relating to this arrangement?

(3) If not, why not?

Hon E.J. CHARLTON replied:

When I looked at this question I thought that it should have come from Hon John Halden.

Hon John Halden: Why?

Hon E.J. CHARLTON: Because he takes an interest in these matters - and Hon Cheryl Davenport is too nice!

I thank the member for some notice of this question.

(1) The Fremantle Port Authority did not backdate its approval of the assignment of the Patricks lease. Patricks requested that the date of assignment of the lease be 1 October 1997 and this was agreed to by the Fremantle Port Authority. It is not uncommon for documents in respect of assignments of lease to be signed after the date of assignment.

(2)-(3) The request needs to be more specific about whether it relates to correspondence concerning the assignment or the deed of assignment itself. Once the request is clarified I am prepared to make arrangements for the member to view the documents after obtaining legal advice as to what may need to be withheld because of any commercial sensitivities or breach of confidentiality.

ANTI-CORRUPTION COMMISSION

Allegations of Corrupt Activities by ACC Officers

1683. Hon NORM KELLY to the Leader of the House representing the Premier:

(1) In regard to the letter referred to in question without notice 1646, does the Premier accept that the letter raised concerns that officers of the Anti-Corruption Commission, or others employed as investigators by the ACC, could be carrying on corrupt activities?

(2) What, if any, procedures are in place for the ACC to investigate allegations of corruption or improper conduct by its own officers and employees?

(3) Will the Premier table a copy of any such procedures?

(4) Further to question without notice 1646, is it the Premier's intention to refer a copy of the letter to the Parliamentary Commissioner for Administrative Investigations?

(5) Is the Premier aware that it is the view of the ACC chairman that the Parliamentary Commissioner's jurisdiction does not include officers and employees of the ACC?

Hon N.F. MOORE replied:

(1)-(5) I thank the member for some notice of this question. I regret that in the time available I have been unable to provide an answer and ask that the question be placed on notice.

PERTH AIRPORT

Homes to be Insulated against Noise

1684. Hon JOHN HALDEN to the Minister for Transport:

Today the federal member for Swan, Don Randall, said on ABC Radio that the federal Minister for Transport, Mark Vaile, had agreed not only that homes surrounding Perth Airport would be insulated against aircraft noise but also that an audit of airport noise in suburbs surrounding Perth Airport would be conducted. Has the federal Minister made Hon Eric Charlton aware of this decision and, if so, when?

Hon E.J. CHARLTON replied:

No, he has not made me aware of that detail.

Hon John Halden: That is good because he has not made a decision.

Hon E.J. CHARLTON: Hon John Halden could be right. I met with the federal Minister when he was here recently and I have also held discussions with the operators of Perth International Airport. They have indicated their commitment, so far as the noise problem is concerned, to look after the interests of residents close to the airport. We are all aware that there has been a great deal of misinformation peddled by a couple of gentlemen, one of whom happens to be a federal member.

Hon N.D. Griffiths: Naughty Don!

Hon E.J. CHARLTON: That federal member is Mr Smith. The other gentleman is a shire council president. They have gone to great lengths to misinform the public.

Hon N.F. Moore: Isn't he a past Labor candidate?

Hon E.J. CHARLTON: Yes, and he is trying to do some grandstanding and to mislead the public. If one wants to become a Labor member of Parliament all one need do is misrepresent the facts.

Hon E.R.J. Dermer: That is outrageous.

Hon E.J. CHARLTON: The federal Minister, in conjunction with airport operators, is preparing a response to the master plan. The State Government will take all the necessary precautions to look after the interests of all Western Australians, as it always does.

WATER BORES

Number and Water Extracted

1685. Hon RAY HALLIGAN to the Minister representing the Minister for Water Resources:

Does the Government have any plans to restrict the number of bores or quantity of water extracted from bores in the metropolitan area? If so, when and how will this be implemented?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The Government has no plans to place restrictions on the number of domestic bores in the metropolitan area, or on the quantity of water extracted from those bores. In some areas an increase in domestic bores may be inappropriate because of potential damage to the environment or water quality; for example, where pumping will cause saltwater intrusion. The Water and Rivers Commission is actively addressing these issues through public education as part of a garden bore strategy for Perth.

FOREST RESERVES

1686. Hon CHRISTINE SHARP to the Minister representing the Minister for the Environment:

(1) The comprehensive regional assessment document states on page 25 that formal forest reserves total 745 000 hectares. The Department of Conservation and Land Management's forest management plan 1994-2003 states at page 46 that there are 437 000 ha of formal forest reserve. This means there has been a 70 per cent increase in the formal reserves over the past four years. Can the Minister identify the location of these additional reserves?

(2) The CRA document shows CALM managed forest in toto to be 2.45 million ha. The forest management plan shows that the total area of CALM managed forest is 1.74 million ha. This means that from 1994, 710 000 additional hectares have been placed under the management of CALM. Can the Minister identify the additional CALM managed areas and when each area was granted to CALM?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The comprehensive regional assessment report applies to a different regional boundary from the 1994 forest management plan. More importantly, table 6 on page 46 of the forest management plan refers only to jarrah

forest and karri forest types. Other forest and non-forest types are not included. The figure in the CRA report includes all forest and non-forest types.

(2) The same reasons apply as in paragraph (1). The figure of 1.74 million ha applies only to jarrah forest and karri forest. The figure of 2.45 million ha applies to all forest and non-forest types. The region boundaries used for the forest management plan and the RFA region are also different.

CITY NORTHERN BYPASS

Cost of Contracts

1687. Hon LJILJANNA RAVLICH to the Minister for Transport:

(1) Why is the Minister consistently refusing to answer questions relating to the cost of contracts for the city northern bypass project?

(2) Why did the Minister on Tuesday, 9 June 1998 refuse to answer a further 41 questions, involving 41 contracts, that sought information on the total amount paid for the contract, variations to the amount originally tendered, variation amounts and the reasons for those variations?

(3) Is this information available on the contracts, many of which are now complete?

(4) If yes, does the Minister's failure to respond indicate major cost overruns on contracts relating to this project and, if not, why will the Minister not provide Western Australian taxpayers with the relevant information?

Hon E.J. CHARLTON replied:

(1)-(4) I have not answered those questions because they are irrelevant. Hon Ljiljanna Ravlich, and anyone with any interest in the Graham Farmer Freeway, would know that the cost of implementing that significant project for the benefit of all Western Australians has been made public over and again.

Hon Ljiljanna Ravlich: The information on these contracts is not public.

The PRESIDENT: Order! Hon Ljiljanna Ravlich will come to order and let the Minister finish.

Hon E.J. CHARLTON: The contract is not only a design and construct contract but also a maintenance contract for the next 10 years, so any variation to the cost of the project is very public. Any additional works that have been agreed since the contracts were signed, of which there are many -

Hon Ljiljanna Ravlich: Those were fixed price contracts.

Hon E.J. CHARLTON: - were made at the community's request. They include interchanges to the racecourse. We have been working with the Turf Club on its plans for a residential development, which is a great thing. There were changes to Lord Street and Great Eastern Highway.

Hon Ljiljanna Ravlich: Give us the information.

Hon E.J. CHARLTON: There were changes in the activities in Northbridge and many other changes costing several millions of dollars more. Those additions are a benefit. There are no overruns. The only issue with overruns is that some people try to mislead the public. I agreed with Hon Kim Chance on one point a couple of days ago, and I will ensure that Main Roads identifies the administrative cost in its operations separately, rather than as part of all the projects around Western Australia because that is totally misleading.

FITZGERALD, MR J.

Visit to Mercedes-Benz

1688. Hon TOM HELM to the Minister for Transport:

(1) Did Mr J. Fitzgerald of the Department of Transport visit Mercedes-Benz in Germany in 1995 or 1996?

(2) If so, when and under what circumstances?

(3) Did Mr J. Fitzgerald visit Mercedes-Benz's operations in Australia in 1995, 1996, 1997 or 1998?

(4) If so, when and under what circumstances?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1)-(4) This is the sort of misinformation being peddled by the Labor Party. The answer to all four questions is no. Mr Fitzgerald has never been to Germany to talk about any of these issues. The member should recognise this and advise all those people who have been peddling this misinformation. I would be interested to know where that rumour came from.

BUS PURCHASE

Visits to European Manufacturers

1689. Hon TOM STEPHENS to the Minister for Transport:

In the recent parliamentary Estimates Committee it was revealed that the Minister for Transport, Hon Murray Criddle and adviser Graeme Harman had visited European bus manufacturers in 1997, and that some time later Mr Greg Martin and Mr Brett Inchley of the Department of Transport made a similar trip.

(1) When did each of these trips take place?

(2) Will the Minister table the itinerary and all reports prepared with respect to these trips?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Hon Murray Criddle, Graeme Harman from my office, and I visited European bus manufacturers in July 1996. Dr Chris Whitaker, Director General of Transport, and Mr Greg Martin, Executive Director, Metropolitan Division, visited European bus manufacturers between 17 September and 9 October 1996. Mr Brett Inchley has not visited European bus manufacturers.

(2) I will be pleased to arrange to table the itinerary and reports with respect to these overseas visits.

ROAD BUILDING

Use of Recycled Material

1690. Hon J.A. SCOTT to the Minister for Transport:

The Minister will be aware that building rubble makes up a significant proportion of waste used in landfill -

(1) Does the Minister know that throughout other States of Australia and in the United States, crushed and graded building rubble is used extensively by road building authorities as a road base? Has the use of this material in Victoria and the United States been studied by Western Australian state government authorities?

(2) Does the Western Australian State Government have a policy to use recycled products which are of equal quality and price in preference to new products, and does this apply to Main Roads Western Australia?

(3) Is Main Roads currently using recycled materials for road base where it has been made available? What quantities is it using per annum? If it is not using recycled materials for road base, why not?

(4) Are any companies or organisations offering recycled building rubble to Main Roads as a road base alternative and, if so, will Main Roads use this material? If so, when?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) Main Roads is aware that crushed building rubble is used as a road building material in Australia and elsewhere. I saw it being processed in America when I looked at the new road making technology and equipment. However, building rubble is generally not used as base material, because it must withstand high stress levels. Its use is restricted to layers lower down in the pavement structure. This use of recycled material has been studied and researched, and specifications have been developed by Main Roads Western Australia for its use in road building activities. I have seen it used in the higher profile of the road in the United States.

(2) If recycled material satisfies performance requirements and is competitive in terms of cost, it is acceptable to Main Roads.

(3)-(4) Specifications are in place to allow the use of recycled material on Main Roads' works. The problem is that Hon Jim Scott probably will not allow any old buildings to be knocked down to provide that material!

SCHOOLS, WESTERN SUBURBS

Effect of Local Area Education Plan on Aboriginal Students

1691. Hon E.R.J. DERMER to the Leader of the House representing the Minister for Education:

(1) Will the Minister confirm that within the western suburbs local area education planning area, Scarborough Senior High School provides education for the largest proportion of Aboriginal students?

(2) Where, within the four preferred options presented by the draft local area education plan for the western suburbs' senior high schools, is there provision for the improvement of educational opportunities for Aboriginal students?

(3) Will the Minister explain how the need for an Aboriginal student to travel by bus to attend a larger school 15 to 20 minutes away will improve that student's educational outcome?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes. Of the 317 students at Scarborough Senior High School, 17 are of Aboriginal descent.

(2) Local area education planning and the options in the local area education plans aim to increase student access to the curriculum and to quality facilities. The educational opportunities for Aboriginal students will be improved as more students will be able to study a wider range of tertiary entrance examination and non-TEE subjects, leading to increased interest, and thus motivation, in schooling and increased likelihood of success at school.

An Aboriginal education worker is currently employed at Scarborough Senior High School. In the event that Scarborough closes, this officer will relocate to the school to which the majority of Scarborough's Aboriginal students move, thus maintaining this support and assistance.

(3) Very small senior high schools are usually able to offer only a restricted subject choice to students. A higher number of students, particularly in years 11 and 12, enables schools to offer more subjects and also to offer the same subjects more often. Attending a larger school, even if additional travelling is required, will enable students to study a wider range of TEE and non-TEE subjects leading to the benefits mentioned in response to question (2).

BUNBURY PORT

Live Cattle Export

1692. Hon BOB THOMAS to the Minister for Transport:

(1) Is the Bunbury Port Authority planning to load another shipment of live cattle through the Port of Bunbury?

(2) If yes, given the Minister's comments reported in the *South Western Times* on 6 August 1996 prior to the last election, that the State Government has no intention of allowing livestock exports through the Bunbury port, does he intend to contact the port authority to express his concern about this development?

(3) Have the two local Liberal members of the Legislative Assembly now expressed their outrage to him about this development?

Hon E.J. CHARLTON replied:

(1) I was not aware of the export of cattle from Bunbury next week, to which Hon Bob Thomas refers. As I have said before, if the port authority makes a decision on proper commercial and other management grounds to do this, that is its decision.

Hon Bob Thomas: Why did you not say that in 1996?

Hon E.J. CHARLTON: I am about to answer that, which was the second question.

(2)-(3) As far as the policy in 1996 is concerned, when there was debate about whether the port authority would specifically cater for and spend additional funds on opening up trade in Bunbury, the Government said it did not support the port authority going down that path.

Hon Bob Thomas: This is the thin end of the wedge.

Hon E.J. CHARLTON: I do not think it is. That is only a matter of opinion, of course, because the Bunbury port will be used for a number of other niche market operations - I am not talking about livestock - from time to time. Certainly, the industry tells me there is no prospect of Bunbury being involved in a large amount of this type of trade. It will be done certainly at other ports, and particularly from Kwinana.

LAND TAX CONCESSION

1693. Hon TOM STEPHENS to the Minister for Finance:

(1) How many organisations currently have available to them the 50 per cent concession on land tax for land held by universities or educational and religious bodies used or leased for business, commercial, professional or trade purposes?

(2) What is the value of that concession to those organisations in 1997-98?

(3) What is currently (a) the highest, and (b) the lowest, annual cash value of this concession?

(4) What increase in state revenue is anticipated in a full year from cancelling this concession?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I thought this was covered in my second reading speech.

(1) Nineteen.

(2) $1.2m.

(3) (a) $456 000.

(b) $155.

(4) $1.2m.

It is usual business practice for land tax to be passed on to tenants by the landlord pursuant to the terms of the lease or occupancy agreement. Therefore, in cases such as this where an owner is entitled to concessional land tax assessment the amount of land tax passed on to the tenant is less than that which would be passed on to a lessee by a landlord who was ineligible for the concession.

PUBLIC SECTOR EMPLOYEES

Choice of Workplace or Enterprise Bargaining Agreement

1694. Hon HELEN HODGSON to the Minister representing the Minister for Public Sector Management:

Some notice of this question has been given.

(1) On commencement of employment in the Western Australian public sector are new employees allowed to choose whether to be employed under a workplace agreement or an enterprise bargaining agreement?

(2) If not -

(a) under which form of industrial agreement are new employees engaged; and
(b) at what stage of their employment is the choice made available?

(3) Has the Government changed its employment practice in this respect in the last two years, and, if so, when?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No.

(2) (a) Workplace agreement;
(b) subject to the terms of the agreement, on the expiry of the agreement.

(3) Yes, on 13 March 1998.

COASTAL EROSION

State Contribution to Local Authorities

1695. Hon J.A. COWDELL to the Minister for Transport:

(1) Can the Minister confirm that an amount of $78 000, being the State contribution to remedial coastal restoration works, is still owing to the city of Mandurah? When will this debt be paid?

(2) Is it the intention of the Government to opt out of any future contributions to the protection of coastal areas from severe winter erosion? Are local government authorities now expected to shoulder the total burden of this responsibility?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

(1) No. The Government has provided some financial assistance through the Department of Transport to local government for emergency beach protection works where funding is available. I know this issue specifically. What happened was that the Department of Transport made funds available to the council to conduct a study to ascertain the needs of that section. A commitment to then fund was not incorporated in that. It was subject to funding being available. There were two components. There seems to be an ongoing debate about that issue.

(2) No. The Department of Transport is currently working in partnership with local government through the WA Municipal Association to formally establish state government involvement in coastal protection including financial support for coastal works. Every year we provide funds for some sections of coastal management around the State.
