WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE ASSEMBLY

Thursday, 22 October 1998

Legislative Assembly

Thursday, 22 October 1998

THE DEPUTY SPEAKER (Mr Bloffwitch) took the Chair at 10.00 am, and read prayers.

PARKWAY BUSHLAND, BIBRA LAKE

Petition

Mr Thomas presented the following petition bearing the signatures of 101 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned petitioners call for the retention of the Parkway Bushland at Bibra Lake, for conservation and recreation.
>
> This land is a people's asset. It should be retained in a natural state and as a barrier between our suburb and the Western Power switchyard.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 64.]

SKATEBOARDING FACILITY, CARINE

Petition

Mrs Hodson-Thomas presented the following petition bearing the signatures of 489 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned, being the residents of Western Australia, request that urgent attention be given to build a skateboarding facility in the Carine area.
>
> Young people are part of this society, and their needs and interests deserve a fair allocation of state and local government funding. Rather than focus solely on the negative aspects of youth culture in Western Australia, we seek the active assistance of Government to enable young people to be positive about their health, their lives and their community.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 65.]

BEADON CREEK, DREDGING

Petition

Mr Sweetman presented the following petition bearing the signatures of 166 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned request the Honourable Minister for Transport give urgent consideration to dredging Beadon Creek to ensure:
>
> > No further loss of life by enabling all hours, all tides access
> >
> > Safe navigation channel, berthing and mooring basins
> >
> > The viability of current user groups
> >
> > That the town doesn't lose any more commercial users of Beadon Creek to other ports with better and safer facilities; ie, WAPET to Dampier in 1997.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 66.]

MINISTER FOR POLICE, STATEMENT

Statement by Speaker

THE DEPUTY SPEAKER (Mr Bloffwitch): I have had a request from one of the television stations for a copy of the statement which the Minister for Police will make about the procession of the bike riders.

Dr Gallop: I hope it is a funeral, not a procession.

The DEPUTY SPEAKER: I believe they applied for a procession. I have given permission for the television station to receive a copy of the statement and it will receive it after question time today.

MEMBER FOR NOLLAMARA - ALLEGATIONS BY SENATOR SUE KNOWLES

Personal Explanation

MR KOBELKE (Nollamara) [10.07 am]: I wish to put the record straight in regard to a serious matter I raised by way of a question without notice on 21 June, 1995. Yesterday, Liberal Senator Sue Knowles issued a statement as part of a settlement with former Liberal Senator Noel Crichton-Browne. In this statement Sue Knowles unreservedly withdrew and retracted her allegation that Noel Crichton-Browne made threats to her physical safety by telephone. Her statement goes on to apologise to him for any damage, distress or embarrassment caused. In June 1995, I and other members of Parliament and the Press were aware of such allegations by Senator Sue Knowles. I believed at that time, and still do, that this was part of the Liberal Party in-fighting which was destabilising the Court Government and contributing to less than good government in this State.

My question in this House raised the allegation by Senator Knowles that then Senator Crichton-Browne had made threatening and obscene telephone calls to her. My question was not based on scuttlebutt. The question was based on a telephone discussion with Senator Knowles who personally confirmed her allegations against Mr Crichton-Browne. In fact, Senator Knowles, when pressed to assure us that the draft question was fully accurate, suggested corrections to the wording of the question for the purpose of accuracy. It was never my intention to further false accusations against Mr Crichton-Browne, but to bring public attention to a situation that required resolution. With the issuing of the withdrawal and apology by Senator Sue Knowles, it appears that the veracity of these serious allegations has now been determined. I regret that Mr Crichton-Browne's reputation was impugned by these allegations which have now been shown to be false.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Report on Forest Management Regulations No 2 1998

Mr MacLean presented the report of the Joint Standing Committee on Delegated Legislation report on the Forest Management Amendment Regulations No 2 1998, and on his motion it was resolved -

That the report be printed.

[See paper No 280.]

REGIONAL POWER COMPETITIVE PROCUREMENT PROCESS

Statement by Minister for Energy

MR BARNETT (Cottesloe - Minister for Energy) [10.10 am]: On 25 June 1998, the Government announced new regional power supply arrangements for the areas supplied by Western Power as part of its non-interconnected grid systems. I now advise the House of a number of positive developments that have since taken place.

The high cost of power generation in Western Power's regional systems, together with the Government's uniform tariff policy, has led to substantial losses of about $30m a year. The new arrangements in the regional systems encompass a number of strategies designed to reduce generating costs through a competitive power procurement process to attract private sector investment, provide large customers with the choice of a preferred electricity supplier through an open access regime, and encourage businesses to use power more efficiently, more in line with the cost of production than with the artificially low price of supply. Work is progressing on all these areas and the open access regime will be in place from 1 January 1999, concurrent with the introduction of the new tariff structure.

Since the announcement in June, a competitive power procurement process has been developed which will see the calling for expressions of interest for the west Kimberley regional systems of Broome, Derby and Fitzroy Crossing. The advertisement inviting an EOI will be placed this Saturday, 24 October 1998. The EOI is the first stage in a two-stage process with the second stage being a selective tender. The EOI will need to adequately demonstrate the proponent's technical and financial capability to develop and operate a safe, reliable and technically sound electricity supply adequate to meet Western Power requirements on a long-term basis and a high standard of project management in developing similar

projects in the energy field. Proponents who satisfy the EOI requirements may be asked to submit detailed proposals which will be evaluated against specified criteria to determine a preferred proponent.

The competitive procurement process is being managed by a government-led steering committee chaired by the chief executive officer of the Department of Resources Development, with representation from the Office of Energy and Western Power. The steering committee is being assisted in its assessment and determination by a working group with both Office of Energy and Western Power involvement. It is expected that the competitive procurement process will produce significant benefits in reducing the losses in the regional systems. Large customers who consume 300 000 kilowatt hours or more per year will be able to source their power requirements from either Western Power as the local distributor of electricity or contract-based supply from an independent power producer. This will mean that in some cases because of the large volume of electricity required, it may be possible for large customers to obtain power at less than the prevailing uniform tariff. I envisage that this in turn will provide opportunities for regional development when a secure low cost power supply arrangement is linked through an open access regime for contestable customers. The uniform tariff will be maintained for all domestic and small to medium-size customers. Following the calling of an EOI for the west Kimberley region, other regional systems will undergo a similar process. By the end of November, an EOI seeking the supply of power to the Esperance system and then the mid-west regional systems of Mt Magnet, Cue, Meekatharra and Yalgoo, will be called.

The new regional power supply arrangements have been positively received throughout the State. These arrangements provide the certainty and opportunity for businesses to plan for future expansion and ensure that significant benefits in regional development can be realised. In closing, I advise the House that expressions of interest will also be called this weekend for the sale of the Bunbury power station.

OUTLAW MOTORCYCLE GANG FUNERAL ARRANGEMENTS

Statement by Minister for Police

MR PRINCE (Albany - Minister for Police) [10.13 am]: I wish to make a ministerial statement about this afternoon's funeral of a member of the Coffin Cheaters outlaw motorcycle gang. The gang has applied to the Western Australia Police Service for a parade and processions permit under the provisions of the Road Traffic Act. In the interest of public safety, particularly the safety of road users, the Police Service has agreed to grant that permit. Pursuant to the permit, the body of Marc Chabriere will be transported from Coffin Cheaters headquarters in Bayswater to the Karrakatta Cemetery. The Police Service anticipates that at least 100 motorcycles and about 12 other motor vehicles will be involved in the funeral procession. Due to the size of the entourage and the number of people involved, and in line with normal practice for attending any formal procession on the road, the Police Service will maintain a traffic contingent of a forward command vehicle, a rear command vehicle and additional vehicles will be located at several points along the designated route.

To ensure that minimum disruption is caused to other road users and that the safety of the public is paramount, appropriate computer controlled traffic lights will be used. Police will man uncontrolled intersections to enable the passage of this group to and from the cemetery.

Mr Graham interjected.

Mr PRINCE: Again, due to the large number of people involved, this will ensure the people's safety and that the disruption to traffic users is kept to a minimum.

Mr Graham interjected.

The DEPUTY SPEAKER: Order! I formally call the member for Pilbara to order for the first time.

Mr PRINCE: All attending police personnel including those from Operation Gallipoli, the independent control group and the tactical response group will carry all their usual equipment and will be there to ensure the safety of the people of this State and the road users.

PEARLING AMENDMENT BILL

Second Reading

MR HOUSE (Stirling - Minister for Fisheries) [10.15 am]: I move -

> That the Bill be now read a second time.

This Bill amends the Pearling Act 1990 to allow fees payable under that Act to be paid by instalments. The Bill results from a commitment to the fishing industry following the introduction of cost recovery for the State's six major commercial fisheries in 1995.

The legislation will enable the payment by instalment option to be offered to pearling licensees for the start of the next licensing period, commencing 1 January 1999. The legislative framework to enable payment by instalments commenced

for all other managed fisheries in the 1996-97 financial year. The option of the payment of fees by instalment was requested by the industry to assist in spreading fee payments throughout the year. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

STATE RECORDS BILL

Second Reading

MRS EDWARDES (Kingsley - Minister for the Environment) [10.17 am]: I move -

That the Bill be now read a second time.

People have been keeping records for hundreds of years. The formal practice of record keeping has been referred to as the second oldest profession. Techniques for creating records have evolved from etching text on stone tablets, then writing on papyrus, to typing on machine-made paper and, today, to electronic media. Where the keeping of records has been carried out as part of administrative activity, for example, in corporate business and in government, there has always been the need for a system for the management of the resultant product, whether parchment, paper or printout from electronic media. Such a system must encompass the current management of those records and also provide for the preservation of those that have on-going significance or heritage value.

History shows that many nations have had such systems over the centuries, ranging from China in the east to the more recent models in the west such as the Public Records Office in England. The Government which set up that office was the same one, of course, that created much of the early correspondence now in our Public Records Office in the Alexander Library Building. Those records are to be found today amongst the collections of the Colonial Secretary and the Governor's Office.

Heritage was not the primary or even a secondary reason for these formal systems. The motivation was to ensure that the accountability of public officials could be demonstrated through the records of the business they transacted. It was only later, as antiquity conferred intrinsic and romantic values upon older records in the hindsight of history, that the heritage aspect assumed the value it now has. Western Australia's efforts in the first few decades of this century towards ensuring the preservation of its records were made largely to address that heritage aspect; in other words, to rescue records that had already been created by WA government agencies. That emphasis is apparent in the State's first archival legislation enacted in 1974 as part of the Library Board of Western Australia Act which had been on the books for the previous 23 years.

By the same token, however, that section of the Library Board Act includes significant cognisance of the evidentiary aspects of record keeping. In that sense the Library Board Act has served the State well. But new legislation is required to take account of technological and administrative trends, to strengthen public sector accountability through effective record keeping, and to provide a standard setting and monitoring function reportable directly to the Parliament. The time has come for legislation which will address record keeping issues that have been the focus of attention over the past few years - legislation which will provide a foundation flexible enough to accommodate the challenges of the twenty-first century. The Bill will achieve those aims.

The need for new legislation was realised by officers of the Library Board in the early nineties, who studied models in legislation elsewhere and formulated basic principles which were to be useful for future development. Impetus to the process came in the recommendations of the 1992 Royal Commission into the Commercial Activities of Government and Other Matters - WA Inc. Members will recall that the commission noted record keeping deficiencies, including the loss of official papers, the deliberate destruction of records or their removal by people in high office who should have known better, and instances where a record of major decisions was not made. Recommendation 20 of the commission's report called for the establishment of a -

> separate and independent archives authority . . . acting under its own legislation.

More recently the Auditor General has issued two reports on record keeping matters: No 2C, 1994 and No 6, October 1996. The general thrust of his recommendations has been for -

> a more comprehensive framework for managing public records in the public sector

and the provision of specific planning mechanisms and standards.

In this Government's development of new legislation, the Minister for the Arts was committed to a consultative process from the outset. To that end the minister released a discussion paper in July 1994, which outlined the scope and content of the new legislation. It proposed the establishment of an independent records commission with standards setting, auditing and reporting responsibilities separate from the present Public Records Office. A clear division between the regulatory and operational roles in the record keeping regime was to be inherent in a new Act, and the commission would be accountable to Parliament.

The Minister for the Arts released the discussion paper at the annual general meeting of the Records Management

Association of Australia in July 1994, and it was then distributed to a wide range of stakeholders for comment. From a mail-out to 349 stakeholders - government agencies, professional bodies, local authorities and members of the public - there was an 18 per cent return - 64 responses - with most responses - 55 - expressing broad support. In the drafting of the Bill, full consideration has been given to the letter and spirit of that discussion paper and to the responses.

As the need for an independent record keeping authority had been raised in the report of the Royal Commission into Commercial Activities of Government and Other Matters, it became a specified matter for consideration by the Commission on Government. The general thrust of the Commission on Government's report - report No 2, part 2, chapter 7 - had the effect of supporting the principles of and specifications for a new public records Act, as outlined in the discussion paper. Where COG's findings differed fundamentally from the Government's proposals was in COG's model of a public records authority combining both regulatory and functional operations into a single unit - headed by one full-time commissioner - which would be fixed in the legislation under the Minister for Public Sector Management. Those proposals were rejected by the Government as they would compromise the independence of both the State Records Commission and the Minister for Public Sector Management. The Government's preferred model is exponentially stronger in terms of accountability and transparency of process.

For administrative and resourcing purposes, the operational arm of the record keeping functions, to be vested in a State Records Office, will remain in the structure of whatever ministry or department is the most appropriate. Those functions are aimed at supporting agencies in continued improvement of their records and archives management activities. The allocation of ministerial responsibility for the State Records Office is not stipulated in the Bill, as that may be determined by administrative edict according to circumstances. The Library and Information Service of Western Australia is ideally suited for the purpose, as placement within that service agency of the Ministry for Culture and the Arts will enable the State Records Office - the present Public Records Office - to take advantage of existing support services such as conservation, microfilming, corporate support services, accommodation and storage facilities, and to benefit from the synergy associated with other services in that information network.

There has been a wish among some government records professionals for that bureaucracy to be part of the commission and therefore free of accountability to a minister. Not only is that likely to lead to another group who cannot be forced to be efficient but it is also bad in theory - the bureaucracy would supervise its own work. It would be as though the financial activities of Treasury were performed by the Auditor General. The Government's preferred model ensures that there is no need for an additional bureaucracy to be created, other than a basic secretarial support structure for the work of the proposed commission, to be called the State Records Commission.

The Bill reflects both the accountability and heritage factors that I mentioned earlier. That is to say, it provides for the whole continuum of record keeping from the creation and current management of a record to its eventual destruction or preservation as an archive. I will now outline for members some of its main features.

The State Records Commission will consist of three members to be appointed by the Governor. They will be a former judge of the Supreme Court or the District Court or a person who is eligible to be appointed as a judge of the Supreme Court; a member of the academic staff of a Western Australian university; and a retired state public servant.

The commission's functions will be to establish principles and standards by which organisations will manage their records, and for selecting those records which should be preserved for their archival value. By publishing those standards in the *Government Gazette*, no organisation will have an excuse for not complying with them.

A cornerstone of the ongoing implementation of the legislation is an instrument of accountability called the record keeping plan, a document to be formulated by every government organisation. That plan must set out the matters about which records are to be created by an agency, how those records are to be managed in the context of the agency's functions, and for how long records are to be kept. The plans will be submitted to the State Records Commission for approval. Organisations must report periodically to the commission about their compliance with the plan. The commission will monitor compliance by government organisations with those plans. It will also inquire into breaches of the legislation.

The commission provides Parliament with an annual report about the operation of the legislation. As well, the commission can at any time submit a written report to Parliament about contraventions by a government organisation.

Those mechanisms will address the need for government record keeping to be monitored and for the process to be done in a transparent way. The commission will be in a position to ensure that government record keeping is of a high standard and that practical expression is given to the public's right to access government records.

To ensure that government accountability is achieved, the range of government organisations that must comply with the Bill is wide. As well as public sector agencies and local government, it includes royal commissions, Parliament itself, Cabinet and ministers.

The concept of a record keeping plan provides considerable flexibility within the parameters of the Bill. It will enable the commission to ensure that the principles and standards it sets can address the impact of changing technologies and be

adapted to changing administrative policies and practices. For example, government is operating in an environment in which competitive tendering and contracting can lead to the outsourcing of certain functions. The commercial contractor may need to hold the records of that function so that it can operate the service in question. It is important to ensure that the records which reflect the outsourced activity performed on behalf of the government agency is subject to the accountability demanded in the Act. The record keeping plan concept enables that to happen. Factors of that sort will be taken into account in the scope and content of the record keeping plans.

In western democracy it is taken for granted that the public will have access to the records of its Government. In the case of current records, freedom of information legislation is a fundamental way of achieving that. As to older records, it is up to archival legislation to provide the necessary empowerment for people to be able to consult records for all manner of purposes. The State Records Bill has interesting features to allow that to happen. After 25 years an organisation must transfer its records to the state archives collection, which is under the control of the State Records Office, unless that organisation has received a dispensation from the State Records Commission. Generally speaking, many state archives will be available to the public when they are 25 years old, but with the concurrence of the commission some confidential records may be restricted for up to 75 years. The exception to that is patients' medical records where that restriction is extended to 100 years; and also archives that are adjudged by the commission to contain exceptionally sensitive information, in which case terms longer than 75 years can be set. In the latter category, such terms have to be reviewed at five-yearly intervals, and it would be up to the agency to adduce good reasons as to why a particular series of records should be hidden from the public for an inordinately long period.

The Bill also makes complementary links with the Freedom of Information Act so that a member of the public will not be given the runaround when seeking access to a record if the location and status of which are unknown. Heavy penalties are provided for organisations that do not keep a record in accordance with the record keeping plan or illegally destroy a record, and for anyone who has illegal possession of a government record.

The Bill addresses changing technologies by ensuring that the definition of a record reflects electronic media. If authorised by the commission to do so, an organisation may manage its own archival records in terms of its record keeping plan, according to the prescribed principles and standards set by the commission. Public access provisions will apply to such archives as though they were physically in the State Records Office.

The establishment of a State Records Commission will require resourcing to support its work. The estimated costs of the activities of the commission itself are expected to be $210 000 for the 1998-99 year and $175 000 per annum after that. Those figures allow for sitting fees for three commissioners, two full-time equivalents to supply executive support, renting of office accommodation, a communication network, and the provision of furniture and equipment. Funding for the State Records Office is included in the budget of the Ministry for Culture and the Arts, as that ministry's appropriation provides for the ongoing operations of the present Public Records Office within the Library and Information Service of Western Australia.

The State Records Bill is eloquent testimony to the Government's commitment to improve the standard of record keeping across the public sector and to ensure the continued preservation of government archives for the people of Western Australia. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

STATE RECORDS (CONSEQUENTIAL PROVISIONS) BILL

Second Reading

MRS EDWARDES (Kingsley - Minister for the Environment) [10.30 am]: I move -

That the Bill be now read a second time.

Until now, the State's record keeping legislation has been embodied in the Library Board of Western Australia Act. In a number of other state Acts, where reference is made to records and their implications in an archival context, the wording is specific to relevant sections of the Library Board Act. Examples are the various Acts governing the administration of Local and District Courts, and of Courts of Petty Sessions. Certain sections of these Acts provide for the retention and disposal of court records. There are a number of other Acts that I shall mention in a moment.

The State Records Bill, already placed before this House, has been drafted to replace the record keeping aspects of the Library Board Act and provides for the establishment of an independent State Records Commission with standard-setting, regulatory and monitoring functions. The State Records (Consequential Provisions) Bill ensures that those other state Acts which make reference to record keeping are amended to conform with the provisions of the State Records Act.

Amendments to the Library Board of Western Australia Act ensure that those records held now by the Library Board as state archives will form the state archives collection. Control of the records in the state archives collection will transfer from the Library Board to the Director of State Records. Archives restricted under the Library Board Act will remain restricted for

five years after commencement of the State Records Act. If an organisation wishes to extend the restriction, it must within that five-year period apply to the State Records Commission. Retention and disposal schedules in force through the Library Board Act will continue to apply until a record keeping plan for the agency in question has been approved by the State Records Commission.

Section 29(1) of the Public Sector Management Act 1994 lists the functions of chief executive officers and chief employees of state organisations. The keeping of proper records in terms of that Act is to be subject to the State Records Act.

Special arrangements have had to be made for the lawful disposal of the records of the Royal Commission into the Commercial Activities of Government and Other Matters known as WA Inc. The effects of clauses 26 to 30 of this Bill are to repeal those provisions of the Royal Commission (Custody of Records) Act that are now spent and to amend other provisions in order to preserve the intent of that Act, once the State Records Act commences.

The Freedom of Information Act is amended to ensure that access to state archives that have been transferred to the state archives collection of the State Records Office is to be subject to the relevant part of the State Records Act. The combined effect of the FOI Act and the two records Bills is to ensure that members of the public will not be given the runaround when seeking access to records the location and status of which are unknown.

Amendments are made to the Children's Court of Western Australia Act, the District Court of Western Australia Act and the Justices Act to provide for appropriate references in those Acts to take the place of existing references in the Library Board Act. The Financial Administration and Audit Act is similarly amended to refer to the State Records Commission. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

LOCAL GOVERNMENT AMENDMENT BILL (No 2)

Second Reading

MR OMODEI (Warren-Blackwood - Minister for Local Government) [10.34 am]: I move -

That the Bill be now read a second time.

This is the first comprehensive amendment Bill to be brought to the Parliament to make significant improvements to the Local Government Act since it commenced its operation in 1996. The Act has now been in operation for over two years and it is important that it be amended to reflect new policy decisions by this Government and to rectify various issues which have been identified by local governments and the Department of Local Government. The Bill contains four broad areas of amendments which may be categorised as election matters, constitution boundary issues, local government accountability and various miscellaneous matters affecting the powers of councils. The Bill includes a number of changes which are necessary for the next ordinary elections to be held in 1999. Members will be aware that local government elections are now held every two years with the previous elections being in 1997. The experiences of those elections have resulted in a review of the electoral principles and requests for practical changes from the WA Electoral Commission and local governments.

A key matter is the need to improve the enrolment arrangements for owners of rateable property. At present their enrolment entitlement lasts for only two ordinary elections, requiring a new application every four years. It is now proposed that enrolment for owners shall be indefinite and shall continue for as long as the person remains the owner. It is intended that the re-enrolment arrangements for occupiers - who are not owners - will be retained; however, to assist with the practicalities of re-enrolment it is proposed that a further six months be added to the enrolment period to provide a reasonable time after the second election for people to renew their entitlement.

Other electoral amendments deal with -

giving the electoral commission at least 80 days' notice of the various elections that it is to conduct;

providing for the close of enrolments to be at 5.00 pm instead of 6.00 pm;

allowing the chief executive officer or returning officer to make late corrections to the rolls without having to get Electoral Commission approval every time;

providing that certain personal details of candidates do not have to be exhibited for public information;

giving the CEO a longer period to deal with applications for enrolment before making a decision on approval or rejection;

allowing the number of votes a successful candidate receives to determine the length of term of office rather than the matter being determined by the drawing of lots in one specific circumstance; and

providing presiding officers at polling booths with some flexibility to allow persons who are canvassing for votes to come closer than the traditional six metre limit.

The matters in this Bill affecting the constitution of local governments are principally related to the process for creating new local governments. A significant proposed change is to provide greater flexibility for commissioners to govern a new local government when it is first constituted. The current legislation requires that inaugural elections must be held within one year of a new local government being established. However, the Perth City Council and Wanneroo experiences show that this period is not long enough and should be changed to two years. This would be consistent with other parts of the Act which provide for two-year periods where a council has been dismissed or suspended.

A related matter is to provide for commissioners to be appointed to run a local government from the time when a Governor's order is made to abolish a local government and create a new local government at some future date. This will enable commissioners to achieve an orderly transition of operations from the old local government to the new local government. Under the existing provisions, commissioners could be appointed only when the new local government is created, not from the date of the order.

The Local Government Advisory Board is required to assess proposals for district boundary changes and there are several amendments in this Bill that relate to the functioning of the board. A new power is added for the board to determine that some proposals may be considered frivolous or otherwise not in the interest of good local government. In such circumstances, the board may recommend to the minister that the proposal be refused and not subject to the full review process. The addition of this provision is considered necessary to deal with possibly frivolous competing territorial claims and counterclaims between neighbouring local governments.

On another matter, the Bill contains a power for the board to make recommendations to the minister about wards and councillor representation where those issues are directly affected by its determination on district boundary changes. These matters are closely linked where part of one local government is to be transferred to another.

Also, a further technical amendment is necessary to make it clear that where a poll is requested in relation to a proposed amalgamation of two or more local governments the poll applies only to the local government which has received the request.

In the area of local government accountability to both the electors and the State Government, the Bill has several amendments. Following the completion of the Royal Commission into the City of Wanneroo, a departmental working party was formed to assess the recommendations of the royal commission and other issues identified by the department. The working party, which included representation from the WA Municipal Association and the Institute of Municipal Management, made various recommendations for possible changes to the Act. Those recommendations, and other suggestions associated with these, which are included in this Bill are -

> where a council member has received an election-related gift from a person and that person has a matter before a council meeting then the member shall declare that interest in the same way as a traditional financial interest. This disclosure will preclude councillors from voting on matters involving donors to their election campaigns and addresses concerns about the perception of donations influencing councillors in their voting patterns;
>
> where a matter affecting any land adjoining a property owned by a council member is under consideration at a council meeting then the member shall be deemed to automatically have a financial interest. People widely believe that councillors have an interest in such land and this will specifically address that situation;
>
> the inclusion of a new power for the Minister for Local Government to order that a local government shall comply with a Local Government Act statutory duty. It will be an offence for the local government - or relevant person - not to comply with the terms of such an order. This will strengthen the minister's ability to enforce compliance with administrative or procedural provisions of the Act where no penalty is currently attached;
>
> the financial interest provisions of the Act have been modified to more clearly explain the basic principles of what constitutes a financial interest. Also, there are some further refinements to the drafting of various exempt interests; and
>
> when, under the inquiry powers of the Act, a departmental inquiry results in adverse findings about a local government, the minister may order that the local government shall pay the costs of the inquiry. When a local government has caused these problems it is appropriate that there should be a mechanism for it to pay the resulting costs.

The Bill contains a variety of other improvements which have been identified as part of the department's ongoing review of the Act. The more significant of these are -

> including the power to make transitional regulations in circumstances when a local government local law is being amended or repealed by the Governor - this amendment was identified during the drafting of laws to stop the Cottesloe Town Council from enforcing paid parking near the beach;
>
> reducing the amount of statutory advertising required by local governments when they are making new local laws

or advertising business plans - this was included at the request of the Western Australia Municipal Association to principally overcome concerns about inordinate costs;

increasing the power of local governments to demand that impounding-related fees are paid before goods are returned to the offenders;

including the impounding of animals in the powers dealing with the impounding of goods - it is anticipated that this will assist councils with the enforcement of any local cat laws that they may wish to make under the Act;

repealing the power in the Act for councils to convert private thoroughfares to public thoroughfares - the Land Administration Act now has more comprehensive provisions for councils to use and the power in the Local Government Act should be removed so that there is one consistent method;

changing the concept of an annual mayoral entertainment allowance to become a general allowance for local government expenses and including a mechanism for regulations to enable the deputy mayor to receive a portion of that allowance; also, a head of power is provided for regulations to enable payment of various allowances for council members and to set limits for such payments - in particular it is proposed that councils should have the discretion to provide a telecommunications allowance;

giving local governments more authority to act on notices requiring landholders to rectify problems on land which may be a safety hazard or serious nuisance for the public - examples include situations in which sand is blowing from properties onto roads and in which people are not complying with cyclone notices to remove or tie down dangerous or loose materials;

providing businesses with the option of taking appeals against local government decisions to either the minister or the local court - at present they are denied the option of low cost and quick appeals to the minister;

removing the requirement for local governments to give public notice in situations in which they need to implement partial temporary road closures for the purposes of repair and maintenance and to alter road levels or drain water when there are no adverse effects on adjoining properties;

including a power for regulations to prescribe the procedures for council or committee meetings to be conducted by telephone, video conference or other electronic means - this meets a request from local governments in remote areas which may experience logistical problems in convening meetings;

providing that when a council is required to have a policy on the payment of gratuities for retiring staff, the policy should also include any gifts of property or any other types of benefits;

the inclusion of a power for the minister to exempt certain special committees of council from the financial interest provisions of the Act - this is included to cover circumstances in which the nature of the functions of the committee may mean that all members of the committee will have an interest and the committee would otherwise not be capable of operating efficiently;

removing the requirement for an absolute majority of councils to grant concessions or write off debts - this will then allow such decisions to be delegated to employees when councils choose to take that action;

enabling an inquiry panel investigating the conduct of a local government to comprise either one or three persons - at present it must be a three-person panel; however, there may be circumstances when one person will be sufficient and a major, costly inquiry involving three persons is not warranted; and

there are various other minor additions and amendments to the Act.

The election and constitution amendments in this Bill are urgent and they must be in place prior to the local government election formalities commencing early next year. Accordingly, the Bill must complete its passage this session. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

PORT AUTHORITIES BILL

Committee

Resumed from 21 October. The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Omodei (Minister for Local Government) in charge of the Bill.

Clause 10: Remuneration of directors -

Progress was reported after the following amendment had been moved -

Page 8, after line 21 - To insert the following -

(2) The Minister will determine rates of remuneration to be paid in respect of directors of the board of each port authority and may determine higher rates of remuneration for the chair of each board.

Amendment, by leave, withdrawn.

Mr OMODEI: I move -

Page 8, line 21 - To delete the word "director" and substitute "port authority".

Page 8, after line 21 - To insert -

(2) Subject to subsection (3) and schedule 2, clause 3(4), the same rates of remuneration and allowances are to apply to all directors of the port authority.

This amendment emanates from the debate that took place at recent sittings of the House and from the concerns raised by the member for Armadale about directors and the payment of directors. I hope this has satisfied the member's concerns.

Ms MacTIERNAN: The Opposition accepts the amendment. It effectively achieves what our amendment does and addresses our concerns.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 11 to 13 put and passed.

Clause 14: Chief executive officer -

Ms MacTIERNAN: The Opposition raised this issue earlier in discussions on clause 6. We are seeking information about the setting of senior salaries and the transparency of that process. The minister suggested that we discuss this in more detail when we come to this clause. Paragraph (2)(b) of this clause states -

subject to the Salaries and Allowances Act 1975, -

The boards have power -

- to fix and alter the terms and conditions of service of the chief executive officer . . .

Could the minister explain the meaning of the phrase "subject to the Salaries and Allowances Act"? Will the rates be established by the Salaries and Allowances Tribunal? We also require information about whether the CEO's salary will be available for public inspection. For example, will it be included in the annual report? What mechanisms will exist for determining the chief executive officer's salary? At the moment, because the CEO is a public sector employee, the public has a right to know what the CEO is being paid. That should extend to a CEO of a port authority under the commercialised arrangement. We request information on that.

Mr OMODEI: I understand from advice given to me that while the board has power to fix and alter the terms and conditions of service of the CEO, this may be subject to the Salaries and Allowances Act 1975 if the position is formally included by regulation under the Act. The board may appoint a person to be acting chief executive office if the chief executive officer is unable to carry out his duties or is absent from the State. That section allows the minister some flexibility in the appointment of the officer under the Salaries and Allowances Act.

In relation to the member's question about whether the salaries would be reported in the annual report, that would not be the case as that does not necessarily occur in other commercial entities.

Mr RIEBELING: Dealing with the last point the minister made, despite the desire of the minister to have these boards operate as commercial entities, as he refers to them, the fact is they are not the same as private businesses; the State owns them. As is the case with the head of a government office, the remuneration of the chief executive officer is the business of the public, especially if an exorbitantly high salary is paid to, say, a solicitor or whoever is put into that position. The public should know the situation so that the operations of these authorities are transparent, and this does not necessarily relate to the commercial sphere. I do not see how the amount a board member is paid in any way interferes with, or impinges on, the manner in which these authorities operate commercially. How does a board member's remuneration impact on the commercial activities of a board? It does not have any bearing on the commercial activities of the board; it simply means that the public is informed as to how state moneys are expended.

Mr OMODEI: I am advised that these entities or port authorities will be subject to the Corporations Law. The minister can call for information on any matter regarding the running of these port authorities, including information on salaries.

Mr RIEBELING: My point is not that the minister can obtain information; it is whether any member of Parliament who is concerned about the functions and operations of a port authority can obtain the information, on behalf of the public of Western Australia who pay the wages of board members. That information should be readily available. The process by which that amount of remuneration is arrived at should be explainable to the public. On the issue of transparency, it is irrelevant whether the minister is happy with the situation.

Mr Omodei: Are you talking about the general public?

Mr RIEBELING: Yes.

Mr OMODEI: The appointment of the chief executive officer is covered by the Salaries and Allowances Act, and that information would be available to the general public. Regarding access to that information via the Parliament, if the information is not available through the Salaries and Allowances Act, a member of Parliament would be able to ask questions should he so wish. Most of these documents are public documents and are, therefore, available to the public.

Ms MacTIERNAN: I take it that we have an undertaking that the information on the CEO's salary will at least be available to members of Parliament. That is important. I acknowledge that the minister is acting in a representative capacity, and some difficulties exist for him in coming to terms with the detail of this legislation. However, in relation to the matter I raised, which was the meaning of paragraph (b) of subclause (2), we have received no more than a rereading of it. I can read what the paragraph says. I am asking what it means. For example, in what way will the Salaries and Allowances Tribunal provide terms and conditions? For example, is the Salaries and Allowances Tribunal actually going to set the basic rate of pay? What does the paragraph (b) mean? Why does it contain the words "subject to the Salaries and Allowances Act"? That is what I want to know. I want to know what provisions in the Salaries and Allowances Act will impinge on the package that is offered to the CEO.

Mr OMODEI: I give an undertaking that a regulation will be made under that Act to ensure that information is made available. Does that satisfy the member?

Ms MacTIERNAN: I appreciate the minister is dealing with the availability of the information, and we accept that undertaking in relation to a regulation to deal with the disclosure aspect. We appreciate that and it is a positive move. I am now raising the second issue. The first issue related to disclosure and the second concerned how the CEO's package will be determined. Paragraph (b) contains the phrase "subject to the Salaries and Allowances Act". Which provisions in the Salaries and Allowances Act will impinge on the CEO's package? It does not appear to me that we are talking about the actual rate of pay. I am trying to make sense of the proviso in subclause (2).

The Government is seeking to restrict what the board may do in relation to the CEO's package by making it subject to the Salaries and Allowances Act. However, in what way will the board be restricted? We need to know which aspects of the Salaries and Allowances Act will provide direction or some sort of limitation on the salary that is determined by the board. We are concerned that these CEO positions may become very powerful. Certainly I have seen this in local government. When I was on Perth City Council we had the ludicrous situation that even the councillors were not allowed to know what the CEO was being paid. The member for Southern River indicated a similar situation applied at Canning. That matter needs to be addressed. We have dealt with disclosure. However, what is in the Salaries and Allowances Act that will confine what the board does?

Mr OMODEI: Obviously the tribunal will set that, in the same way as it sets our salaries. I cannot understand what the member is trying to get at.

Ms MacTiernan: This is the key point. We are trying to determine whether the tribunal will set the salaries.

Mr OMODEI: If it is regulated, yes.

Mr Riebeling: What happens if it isn't?

Mr OMODEI: We are saying that we will bring in a regulation to allow the salary to be set by the Salaries and Allowances Tribunal. The reference to the Salaries and Allowances Act is purely for the setting of salaries.

Ms MacTiernan: We will ask the Minister to respond to this formally. We are being told, and if that is the case we will support it, that it is proposed to introduce a regulation to the Salaries and Allowances Act to provide for the setting of the salaries of the chief executives of the port authorities.

Mr OMODEI: That is correct.

Clause put and passed.

Clauses 15 to 33 put and passed.

Clause 34: Duty to act on commercial principles -

Mr OMODEI: I move -

Page 21, after line 15 - To insert the following -

(2) If there is any conflict or inconsistency between the duty imposed by subsection (1) and the duty imposed by section 33, the duty imposed by section 33 prevails.

Mr Riebeling: I wonder whether the minister can fully explain whether the amendment is necessary. I presume he was going to do that.

Mr OMODEI: The explanation is that this clause requires a port authority to act in accordance with prudent, commercial principles and endeavour to make a profit. Part 5 of the Bill requires a port authority to prepare a strategic development plan and a statement of corporate intent which must be approved by the minister and the Treasurer in line with clauses 49, 57, 58 and 66. Under clause 51, in addition to the normal commercial considerations, the strategic development plan must address, among other issues, customer service arrangements, government policy and trade facilitation as well as the statement of corporate intent issues, including performance targets and community service obligations. This amendment requires that where the duty contained in this clause to act in accordance with prudent, commercial principles and endeavour to make a profit is inconsistent with the port authority's responsibility under its strategic development plan and the statement of corporate intent, its responsibilities under these instruments will take precedence.

Ms MacTiernan: Does that mean that the statement of corporate intent and the strategic plan take precedence over the money matters?

Mr OMODEI: Yes.

Mr RIEBELING: I thank the Minister for the explanation. I am glad it is on record.

Mr Omodei: I am sorry; I should have given the explanation when I moved the amendment. I shall try to do better!

Mr RIEBELING: It is eminently sensible that we look at the broader picture of why perhaps a port authority is paid less than sufficient in certain circumstances to endeavour to make a profit, at all costs. I understood the Minister to say that we will look at the global effect of the way the ports operate. The facility in Wyndham is a classic example of a port that may be operating at a profit. Without a port there, the products from Kununurra would not get to market. As I understand the amendment, that consideration will override the need for normal prudent, commercial principles and also the need to make a profit. That type of lateral thinking is required in a number of areas to ensure we do not have a bottleneck in developments just because a very important part of that operation - the wharf - is not at all times profitable.

We could look at the Dampier Port Authority. At the moment its operations are becoming less profitable; however, hopefully in a year or so when new projects start to crank up, it might be exceptionally profitable, with exactly the same method of operation. There is a desire and huge need for that port authority to continue to operate and to provide an opportunity for small, medium and large businesses to function through the port for the betterment of the entire State. It is pleasing that this clause is included in the Bill. I hope the Minister can reinforce what I think is the intention of the amendment.

The operation of our ports, especially those in the north of the State, is of vital interest to small and large business alike. The public wharf in the Dampier area is a very small concern compared with the privately-operated, company-controlled wharves; that is, the supply base of the Woodside organisation and the export facility for Hamersley Iron Pty Ltd, Dampier Salt Limited and the Robe River group. In this case, we are talking about the smallest of the wharves in my electorate. It is a public wharf, which is still known as the MOF wharf; it was once the materials offloading facility wharf for Woodside, but is now the Dampier public wharf. Its operations are the smallest in volume, tonnage and value. It is directly under the control of the port authority. The competition element of its operation was removed following the actions of the minister, and it is now in a monopoly situation. Profitability was not considered in that decision. If we had been looking at profitability in deciding how the wharf should operate, P & O Australia Ltd might have been given the responsibility for it.

Mr OMODEI: The member is quite right. The intention is to guarantee that services are provided in the places he mentioned. Although there is a requirement for the port authority to act in accordance with prudent, commercial principles and endeavour to make a profit, where the actions are inconsistent with that principle, the principle to retain the operation of the port would be in place. In other words, port authorities will have responsibilities under their strategic development plan and statement of corporate intent, and regardless of whether they make a profit, their responsibilities under those instruments will take precedence. They must ensure that they reach their performance targets and meet their community service obligations.

Mr RIEBELING: I thank the minister for that explanation. However, that makes me somewhat more concerned. The minister has said that in certain circumstances, the State will allow port authorities to operate at a loss if that will benefit the community, or a major industry, and not necessarily to follow the rules of prudent commercial practice, which presumably would lead to their making a profit. I agree with that; but there must then be a follow-up guarantee by the Crown, because

it was the direction of the Crown that led to those port authorities making that loss. However, the minister said during the debate on clause 5 that port authorities would not be agents of the Crown, which I presume would mean that the shield of the Crown and the responsibility of the State would be removed. How can the minister mesh together those two arguments?

Mr Omodei: Although the shield of the Crown will be removed, the State will still have a responsibility with regard to community service obligations, which in most cases involve a cross-subsidy from the consolidated fund. We are commercialising the port authorities because they are profitable, but should they become unprofitable, although from a legal aspect there would be no shield of the Crown, the State would still have a responsibility to guarantee those services. For example, if it were the port of Wyndham, we would guarantee that the people of Kununurra and Wyndham would receive the services that they required. It is a technical difference: It will remove the shield of the Crown, but it will not remove the responsibility of the State to maintain services.

Mr RIEBELING: I do not agree. The minister is saying that as a result of this amendment, the Crown could direct that a port authority, because of its uniqueness, could operate in a non-commercial manner; and if that port authority became unprofitable, that shortfall would be funded out of consolidated revenue. Is that not providing the protection of the Crown?

Mr Omodei: It is a legal responsibility rather than a commercial responsibility.

Mr RIEBELING: My understanding of the protection of the Crown is that it is a guarantee by the Crown. The minister is saying that there will be no protection of the Crown, but the Crown will fund the shortfall. I believe that means exactly the same thing.

My next question may assist the minister. I presume that if the State imposed a community service obligation on one industry that made its product less viable, it could authorise a subsidy to be paid on that product funded from the profits that were made by other users of the port, and the net effect would be that the port authority would still make a profit?

Mr Omodei: Yes. Community service obligations are a separate agreement, so if the delivery of a particular service were to run at a loss, it would be picked up by another transaction that dealt with a community service obligation. Therefore, the port would not run at a loss.

Mr RIEBELING: It would be afforded some protection by the Crown?

Mr Omodei: Yes.

Mr RIEBELING: That was our argument when we debated clause 5, and the minister disagreed with it. I agree with what the minister is proposing, but -

Mr Omodei: I said that the Crown would not be held liable, but that if a port had entered into certain agreements, they would be maintained.

Mr RIEBELING: The minister went a bit further a minute ago and said the Government would not allow a port authority to close down. It would be like my giving a guarantee to the bank for the minister's housing loan.

Mr Omodei: At the same time, the State should not be responsible for some decision that had been made by a port authority which was incorrect or the result of poor business management and which did not relate to a community service obligation.

Mr RIEBELING: The private sector should have an element of security in its dealings with entities such as port authorities. This amendment will deliver that security, and I believe that should be the case. However, it would be more accurate to say that the Crown would guarantee the operations of port authorities.

Ms MacTIERNAN: The minister is saying that the Government and the taxpayer should not accept responsibility for flawed business decisions that were made by a port authority. That might be the case, but it would not be as simple as that. I do not believe that under this commercialised arrangement, the minister would be able to get away with that. There is a very good argument that because a port authority was capable of being directed by the minister, and because the statement of corporate intent was submitted to the Parliament, the Parliament and the Government had an overall obligation to oversee the operations of that port authority; and if it made a mistake, that could be sheeted home to the Government. We forget history rapidly. Most people on this side of the House will acknowledge that events occurred in the 1980s that should not have occurred. Problems emerged in a deregulated environment and in the new business ethos that was created at that time. However, I am surprised the Government has forgotten the lessons learnt from BankWest with which problems occurred because it was a commercialised entity rather than a corporatised entity. We moved then to corporatise it precisely because of the problems that we are saying may occur under this legislation. I am not saying we should corporatise the port authorities, but we must be realistic about the potential exposure of the Government under this commercialised structure. The Government may not want it to occur and may believe that it will not occur because it has included little clauses to ensure that. However, on the basis of common law and the principles in the Corporations Law, which are referred to throughout this document, and given that this organisation is not similar to a corporation and that the legislation will provide overall power by the Government for direction, like it or not, the potential exists for the Government to be liable for the debts and liabilities of a port authority.

Mr OMODEI: I dare say in that case it would be determined by a court of law and may be a situation in which the State may be liable. We will have to wait and see.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 35: Powers generally -

Ms MacTIERNAN: I move -

> Page 23, line 17 - To insert after "costs" the following -
>
> > and on providing such approval, the Minister must table in Parliament on the next sitting day, full reasons for his decision to grant an exclusive licence

This clause expressly allows a port authority to issue licences which give a person an exclusive right to provide a port service of a particular kind. Many issues arise from this. This is very much a live issue in the ports around Western Australia. It is obvious from the legislation that some difficulties are acknowledged with exclusivity and it will require ministerial approval for such a grant of an exclusive licence because it is monopolistic behaviour.

The Opposition is not seeking to change that but to add an element of disclosure. It is proposing that on approving the granting of an exclusive licence, the minister must table in Parliament on the next sitting day full reasons for his decision. This arises out of our experience with the Dampier port.

Members may recall that in the second reading debate the Opposition made special reference to the Dampier port because it is one of the most bizarre developments in port administration in this State. The public wharf at Dampier was open to any stevedoring company. Traditionally the bulk of stevedoring had been provided by one company, Conaust Pty Ltd. It had no exclusive right, but as a matter of a practicality probably 99 per cent of people used Conaust. A couple of smaller operators had come in from time to time but they did not last very long. Then Western Stevedores Dampier, which the Opposition believes is a Buckeridge-related company, established an operation in competition. It succeeded in taking some work away from Conaust. We had no difficulty with that. We thought it was a good arrangement. We spoke to many of the users of the services of Conaust and of Western Stevedores who were of the view that the introduction of competition had been a very positive move. They did not have major problems with the way Conaust had operated at first but a positive response by that company's staff was noticed following the introduction of Western Stevedores Dampier. It lifted its game to the benefit of the users. It was a most fortunate arrangement. Then the Government decided, without giving any rationale, that the stevedoring on the Dampier wharf would go out to tender. That occurred and surprise, surprise, the winner was Western Stevedores Dampier, the Buckeridge-related company, and Conaust was forced out.

Mr CUNNINGHAM: I am amazed that the Government put this out to tender in the way it did. I would like to hear more about why the Government did that.

Ms MacTIERNAN: The Dampier port enjoyed very active competition which was transformed into a government subscribed monopoly. We asked by interjection if members opposite could enlighten us about why the Government did that. We asked the minister but nothing was said in his response during the second reading debate that shed any light on that bizarre decision.

The Opposition believes that the granting of a monopoly is a major step and the Bill recognises that it is a major step because ministerial approval is required before such a step can be taken. However, it is not good enough to have a minister of the likes of Eric Charlton signing off on these things. We have a right to know the reasons. We have never been given an explanation of why a monopoly operates on the port of Dampier. We know why it has occurred in one sense: It was an attempt, that completely failed, to get rid of the Maritime Union of Australia on the Dampier waterfront.

Mr Bloffwitch: It sounds like a reasonable objective.

Ms MacTIERNAN: It was not achieved. If that was the Government's objective, that must be disclosed.

Mr Bloffwitch: If it were a normal commercial activity they would be able to treat it in a normal, commercial way. However, if every port in Australia can be tied up because someone is trying to do something, a different means must be considered.

Ms MacTIERNAN: Okay; we have now perhaps the first acknowledgment by a member of the Government that the change in Dampier was, as we suspected, a move to get rid of the MUA. That is a very interesting admission. I am sure that in the Supreme Court action that will no doubt take place by Conaust against the State Government, the member for Geraldton will be called to give evidence. We will certainly ensure that P & O's solicitors are aware of that. Whatever the reason for the Government's deciding it will grant a monopoly, we have a right to know. We are not saying that there might not be circumstances in which a monopoly is appropriate. There is a great deal of debate about this. The member for Geraldton,

who is an avid follower of the Chamber of Commerce and Industry of Western Australia would no doubt be aware of the report produced by the CCI and the Chamber of Minerals and Energy about port productivity. They were very much opposed to exclusive licensing.

Mr Bloffwitch: You can understand from a business point of view why they would be.

Ms MacTIERNAN: Of course they would be. The Opposition acknowledges that there might be situations in which the scope of the activity is so small -

Mr Bloffwitch: Or the product going out is so small.

Ms MacTIERNAN: That is correct. One needs a certain level of capital investment and there might be situations in which exclusivity is desirable. However, as this Bill recognises, it is a major step to take. This Bill recognises that by providing that when we go down that path we must get ministerial approval. This is not something that a port authority can do by itself; it must get ministerial approval. The Opposition will sign off on that, but it does not want the reasons floating around in the head of Eric Charlton or the member for Geraldton. Members on this side want to know why; we want to see the justification for such a major decision.

The Opposition is proposing that if the Government makes that decision, not only must that approval be given, but also a document giving full reasons for the decision to grant the monopoly must be tabled in Parliament at the next sitting.

Mr RIEBELING: We clearly witnessed in Dampier the Government's making a less efficient operator the sole trader on the wharf. We had clear examples and evidence of the most efficient of the two tenderers not being preferred. To date no proper explanation has been provided of why that decision was made.

Ms MacTiernan: Other than the reason just given by the member for Geraldton.

Mr RIEBELING: The member for Geraldton's interjection told us what everyone in the State knows to be the truth. He stated that it is the Government's desire to get rid of the MUA, which is too powerful.

Mr Bloffwitch: It is.

Ms MacTiernan: We have the Deputy Premier coming into this place and saying that the regional ports have been operating magnificently and they are in the black, and you are now saying there are major problems and we must crush the MUA.

Mr RIEBELING: We also had during the recent debate -

Mr Bloffwitch interjected.

The DEPUTY CHAIRMAN (Mr Sweetman): Order! The member for Burrup is trying to speak to the amendment.

Mr RIEBELING: During the recent dispute in the eastern States, it was claimed by the conservatives that these awful people - the wharfies - were earning too much money. It was awful that workers could earn decent money. It was a sin that these people were earning as much as $70 000 in an industry in which they had been involved for many years. The dream of most workers is to earn as much as possible so their families can have a reasonable standard of living.

The member for Geraldton now tells us the truth after almost a year. About a year ago I stood in this place and said what I thought was happening; that is, that the Government was hell-bent on destroying the P & O operation through Conaust, which is controlled by the union. It did not matter whether the replacement company was efficient; P & O simply had to be replaced.

Mr Bloffwitch: You must ask him that. He is the only person who would know that.

Mr RIEBELING: Who?

Mr Bloffwitch: The person who did it. I cannot surmise why he did it.

Mr RIEBELING: I am telling the Committee why the minister did it.

Mr Bloffwitch: So, you know?

Mr RIEBELING: I do, as does the member for Geraldton. The then Minister for Transport had a pathological hatred of that union.

Mr Bloffwitch: He did it because they were going broke. They were losing something like $1m a year, according to the newspaper reports. But that was all right provided they kept paying the same rates of pay.

Mr RIEBELING: P & O was happy with the arrangement and was making a profit out of Dampier.

Mr Bloffwitch: Good for P & O; the other mob was not.

Mr RIEBELING: The other mob was the company that could not make a go of it and it won the contract in spite of that. It was not efficient enough to compete with P & O, which was doing well and was happy for the competition to continue because it knew it was efficient and flexible and its work practices were preferred by the customers. This Government got rid of the efficient company while supporting the other company. If the Government allows this situation to continue - with no transparency - the Opposition will continue to criticise it.

Mr OMODEI: The amendment refers to the minister's tabling the full reasons for the decision on the next sitting day. However, subclause (4) provides -

> A port authority must get the Minister's approval before it issues a licence giving a person an exclusive right to provide port services of a particular kind.

And subclause (5) provides -

> The Minister is not to give approval under subsection (4) unless the Minister considers that the public benefits of exclusivity exceed the public costs.

The Opposition is presuming that the minister is corrupt or will not do the right thing.

Ms MacTiernan: That is an extraordinary response!

Mr OMODEI: All the conspiracy theories in this place -

Ms MacTiernan: You are a minister; you sit in Cabinet. If we have it wrong, tell us. We are waiting to hear why an exclusive licence was granted in Dampier.

Mr OMODEI: I am not aware of all the details in relation to Dampier. An exclusive licence would be a legal document, and even if it were tabled immediately we could not change it.

Mr Riebeling: You would not want to.

Mr OMODEI: If it were a legal document, we could not change it. If there were a conspiracy and something terribly wrong, as members are suggesting, a minister would probably table it on the last day of Parliament and members would obtain the information months later. If there were a suggestion of some improper motive or method, the aggrieved party could go to the Australian Competition and Consumer Commission for a decision about a breach under the Trade Practices Act. It is not realistic to table it on the next sitting day.

Ms MacTIERNAN: The minister has completely missed the boat.

Mr Omodei: I do not think I have.

Ms MacTIERNAN: I am aware that he is a representative minister, but this is basic logic. We are talking about a port authority wanting to give an exclusive licence. It may have a legitimate reason for doing so. The port authority goes to the minister.

Mr Omodei: The minister has to satisfy himself of the benefits to the public.

Ms MacTIERNAN: Yes, the port authority tells the minister that for reasons X, Y and Z it wants to grant an exclusive licence for towing or stevedoring services. The Bunbury Port Authority is an example of that. This amendment requires that before the port authority does that, it must receive ministerial approval. The minister has an obligation to be prudent in making that decision. There is no difficulty about that. There would be a meeting of the board to decide that it wished to award an exclusive licence for its towage services, for example. The board would make a submission to the office of the minister and the minister would make a decision whether to allow that. With that decision having been made, the matter would then go out for tender. The Opposition is not talking about tabling the commercial document which would be drawn up between the port authority and the private operator. It is talking only about the decision made by the minister to accede to the request of the port authority. This is a basic issue and I am surprised that the Government will not agree to it.

Mr Omodei: What is special about the next sitting day?

Ms MacTIERNAN: That simply provides a time frame. The Opposition does not see any reason for it not to be the next sitting day. At some times of the year the provision might mean the reasons document is not tabled for three months, and so be it. The Opposition is not seeking to change the decision; it is seeking to have the decision made public. It is a simple act of disclosure and the logic is overwhelming. In this Bill the Government recognises that it is a big deal to grant an exclusive licence, and it does so by quite properly requiring ministerial approval. We agree with the Government; it is a sensible move, but in the light of bitter experience we need to go further than that. We need to ensure that the Government is on the record as to why it has done that. This is not a hypothetical problem. Precisely this situation arose in Dampier. Do members think the Opposition ever received an explanation from the Government? Never! The Opposition has not received any advice from the Government other than the very helpful interjection from the member for Geraldton.

Mr Bloffwitch: It was a commercial decision. I do not think it should be broadcast to the world

Ms MacTIERNAN: The member for Geraldton is missing the point. The Parliament has recognised in this Bill that this cannot be a matter which is determined by the port authority. It is of such significance that it should have ministerial approval

Mr Bloffwitch: Who do you think should do it? Do you think the next Parliament should do it?

Ms MacTIERNAN: Not at all. It is a basic principle of accountability. The Opposition is saying the minister should make this important decision. The principle is opposed by the Chamber of Commerce and Industry of Western Australia. It would like this provision wiped out but the Opposition agrees with the Government on this issue and recognises that, on occasions, it may be necessary. We need to know the reasons and the Government needs to be obligated to provide those reasons.

Mr Omodei: Why the next sitting day; why not 14 days?

Ms MacTIERNAN: If the minister wants 14 days, we can do that. The Opposition is not tied to the next sitting day; it had to think of a mechanism. We could have put 14 days -

Mr Omodei: Which would have been consistent with other clauses of the Bill.

Ms MacTIERNAN: Okay, the Opposition will amend this provision to 14 days if that is necessary.

Mr RIEBELING: The minister is asking why the document should be tabled so soon after it is drawn up, but if members read the Bill, they will see it logically follows that when the decision is made, the minister has made all those considerations. When the minister makes that decision, there should not be a problem producing a document, because he has done everything he has to do. In a court of law, the statements made immediately after an event are the best, for a very good reason; that is, the person's mind is still focused on why he made the decision at that time. The closer to the event, the more accurate the statement.

Mr Omodei: The reasons would be in a document.

Ms MacTiernan: What document are you talking about?

Mr Omodei: The reasons would be in a document. That is what the member for Armadale is talking about in her amendment.

Mr RIEBELING: That is right. The reasons document would be based on what the minister needs to comply with in clauses 4 and 5. The minister would not need to sit down and write this document. He would have already decided what he had to do under clauses 4 and 5. It is a simple matter of summarising the reasoning. Why not allow the people of Western Australia to find out those reasons?

Mr OMODEI: I do not see this as being a big problem. As other parts of the Bill refer to 14-day periods, I suggest that the time frame be 14 days. That gives the minister some flexibility in presenting the document. What would the Parliament do if the minister did not present the document on the next sitting day?

Ms MacTIERNAN: The comment about the timing made by the member for Burrup is correct. There is no reason for the Government not to go through the process at the next sitting day, but that is not the crucial point. The crucial point is getting the disclosure. If the Government is prepared to support this provision on the basis of 14 days, the Opposition is happy to move that.

Amendment, by leave, withdrawn.

Ms MacTIERNAN: I move -

> Page 23, line 17 - To insert after "costs" the following -
>
> > and on providing such approval, the Minister must table in Parliament within 14 days, full reasons for his decision to grant an exclusive licence

Amendment put and passed.

Mr RIEBELING: Subclause (6) relates to gifts given and received by the port authority. I understand that the port authority may for some reason make gifts for charitable purposes. I do not think anyone would disagree with that as it is for the benefit of the community. I want some clarification on the second part of paragraph (a). The first part refers to gifts for charitable purposes and then reads "or for other purposes", and the next line refers to the benefit of the community and then reads "or a section of the community". What worries me is why one would permit the port authority to give gifts to a non-charitable organisation or community group for the benefit of a section of the community rather than for the community as a whole.

Ms MacTiernan: Particularly as under paragraph (b) it does not have to be in the interests of the port authority.

Mr RIEBELING: Yes, paragraph (b) needs be explained completely and paragraph (a) partly. Paragraph (c) also worries me. The acceptance of gifts could be a code for graft. The clause needs to be worded in such a way that it renders illegal the receiving of gifts for anything other than completely aboveboard purposes. Paragraph (c) does not reach that point. It refers to the acceptance of gifts subject to conditions that are within the functions of the port authority. I am concerned about the breadth of the permission to accept gifts. What would happen to those gifts and how should they be dealt with by the port authority?

Mr OMODEI: I am told that paragraph (a) refers to making gifts for charitable purposes, and that is self-explanatory. The other purposes the member spoke of would possibly be for community benefit, such as a study grant or some kind of recreation contribution. Those are the normal things that an organisation would give to the community. The other part of paragraph (a) is really to cover -

Mr Riebeling: A soccer club or something like that?

Mr OMODEI: Yes, any sporting group or industrial organisation - those sorts of bodies.

Mr RIEBELING: That quick answer creates a few problems for me relating to the second half of paragraph (a). I am concerned that if there are two football clubs in town, the port authority may decide to support one and not the other. This is a bit pedantic, but at the end of the day the entire community owns the facility. I can understand charitable organisations that benefit a section of the community, such as crippled children or a hospital, receiving gifts, and such things as little athletics that cater for the entire population at some stage, but this sort of authority should not be donating to a section of the community such as the Liberal Party or the Labor Party, and also not to a particular club.

Mr Omodei: Surely the board is a commercial entity. If it makes a decision to support a certain section of the community, what is wrong with that?

MR RIEBELING: It is acting on behalf of the community, is it not?

Mr Omodei: Generally we do that with government departments now.

MR RIEBELING: I hope not. I hope that the Government acts for the entire community.

Mr Omodei: Sport and recreation grants do not go to everybody. People are selected based on submissions or whatever.

Mr RIEBELING: The grants would go to support an association but not a club. If they supported an association for the benefit of the community, which is covered in the first part of the paragraph, that would be fine. My concern is not that a gift might benefit the community but that it might benefit only a section of the community, which is allowed for in subclause (6)(a). I cannot see why we would allow a port authority or any government instrumentality to support or show a preference for a specific candidate. I cannot see why we allow the AlintaGas support for the Dockers. There may be a reason for it but its corporate sponsorship is for the Dockers and not the Eagles. If it were really after benefiting the community, why not support the league?

Mr Omodei: It is likewise with the Australian Goldmining Industry Council.

Mr RIEBELING: Absolutely. We are dealing with port authorities and government agencies that are dealing with the State's money when they give to groups. They should be giving to groups that at least have the capacity to help the whole of the community. The first part of the paragraph referring to charitable purposes could be expanded, but the second part should be reduced. I have no problem with the port authority being able to make gifts for charitable purposes or for other purposes of benefit to the community; however, why would subclause (6)(a) then add the words "or a section of the community"? We are dealing with government moneys and with the public's capacity to assist groups. If we are to be selective, I hope the regulations will force the authority to state why a specific group, and not the community in general, is being assisted when donations are being made.

Mr OMODEI: In his comments the member for Burrup admitted that he was being a little pedantic. I think he was correct. Let us compare this with what happens in other government departments that allocate funds to, for example, sporting clubs. The Ministry of Sport and Recreation might allocate a sporting grant to a community for a sporting club. That funding will benefit only that section of the community that uses the sporting club.

Mr Riebeling: The minister would know better than I about this matter; however, I have seen the Ministry of Sport and Recreation sponsor a project that impacts on only one club and the association.

Mr OMODEI: That is not correct.

Mr Riebeling: In what circumstances?

Mr OMODEI: It could be in football clubs, hockey clubs or tennis clubs, or a whole range of others. Grants are provided

specifically for clubrooms for football clubs. A huge number of activities are covered by these grants. The same applies to the moneys provided by the Lotteries Commission. Not all grants that are provided by government institutions go specifically to sporting organisations or associations. This provision is consistent with the current policy. A port authority must have the ability to give money for charitable purposes, even if it is to only one section of the community. I cannot see a problem with that.

Mr Riebeling: Will the regulations make it incumbent on the port authority to give reasons why that has been done?

Mr OMODEI: No.

Ms MacTIERNAN: I move -

Page 23, after line 17 - To insert the following -

(6) (a) In contracting out the performance of any port function or issuing exclusive or non-exclusive licences for the performance of any port function, a Port Authority must not specify to any contractor or licensee or prospective contractor or licensee anything concerning the terms and conditions or mode of employment of the contractor's or licensee's employees other than that those terms and conditions and that mode must be lawful.

(b) In awarding any contract for the performance of any port function and in the issuing of any exclusive or non-exclusive licence for the performance of any port function, a Port Authority shall not take into account the terms and conditions or mode of employment of the contractor's or licensee's employees unless any of those terms or conditions or that mode is unlawful.

This amendment inserts a provision dealing with the powers and functions of port authorities. It would follow clause 35(5) and come before subclause (6). It is not intended to replace any of the existing powers and functions; rather, it is a new provision. This amendment seeks to limit the powers of the port authorities in relation to contracting out. It is not saying that port authorities cannot contract out work. We have major concerns about the program of contracting out at the regional ports at the moment. We recognise that Fremantle Port Authority, for example, has contracted out its towage service for quite some time. There may well be instances where certain functions can be contracted out properly. That is not to say that we sign off on what is being proposed in Geraldton and Bunbury and what has happened in Port Hedland; however, we recognise contracting out is a possibility.

We are not seeking to remove the power to contract out. Our very big concern, which we have raised time and time again in this debate, is that port policy in this state has been misdirected. Aspects of it have been subverted to an industrial relations agenda. In the contracting out of services or the granting of licences, be they exclusive or non-exclusive licences, we are seeking to prevent industrial relations being the issue. We are seeking to remove the restrictive trade practice that has sprung up in this State wherein the Government and the port authorities, in tendering out work, have required that the company providing the services engages in a particular industrial relations regime. The Geraldton Port Authority - the member for Geraldton has acceded to this in his abundant interjections - has now made an undertaking to the court that it will not implement the requirement in its request for proposal documents that there be a specific industrial relations regime.

In all of these documents for tendering out - we have seen it in the case of Bunbury - under the heading of "Continuity of Labour" we see a provision that states that preference will be given to those submissions which demonstrate innovative employee-employer work arrangements as permitted by section 3(d) of the federal Workplace Relations Act, which provide for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards. Basically what is being specified here, as was the case with the Geraldton Port Authority and in the document that went out for the tendering of the new fantasy port at James Point -

Mr Riebeling: I would appreciate hearing what the member for Armadale has to say in her comments on this amendment.

Ms MacTIERNAN: We have seen in the ports in Geraldton and Bunbury and the new port that is being proposed -

Mr Thomas: The scab port.

Ms MacTIERNAN: Yes, the scab port. I want to make absolutely clear what is being suggested about the scab port, or the fantasy port. It is a fundamental requirement that the port owner or operator unequivocally guarantees continuity of services and operations of the port. It requires that there be the creation of direct employee-employer relationships which will promote efficiencies in the port and deliver reductions in total costs to users. What is being required here is not just simply that a tenderer for these services puts in a price and a level of service, but also an undertaking must be given that all employees will be engaged on workplace agreements. That is disgraceful. In our view this will be seen as a restrictive trade practice, which is contrary to the Trade Practices Act, and in due course there will be litigation on that point.

Aside from that, it is a grossly improper practice. It is one that is subverting the commerciality of the ports. Surely, at the end of the day, if these services are being put out to tender, we are saying that we want to get the best price and the best quality of service. How a private employer goes around organising his industrial relations surely is up to that employer. I have no difficulty with the use of the continuity of service provisions. They were put in the legislation earlier as code for being anti-union, but companies like P & O Australia Ltd were prepared to sign off on continuity of service undertakings because they know there has been very little disputation in the ports and they can guarantee that service. The Government can put in place a penalty for the private operator if it cannot deliver continuity of service, but it should not dictate to employers that they must have a particular industrial relations regime. It is extraordinary that a Liberal Government, which claims its industrial relations regime is based on choice, is now saying that not only will employees have no choice, but also employers will have no choice. If people want to do business with the port authority, all their employees must be on workplace agreements. It is an absolute outrage.

Mr Bloffwitch: Almost a visionary approach.

Ms MacTIERNAN: It is not a visionary approach. Is the member for Geraldton saying that businesses should not be able to organise their industrial relations with their employees? He is saying that the Government should direct employers and that if they want to do business with the Government they must take on workplace agreements. Legislation in this State provides that it is lawful to work under workplace agreements or awards. That is not good enough for this Government; it is going beyond that.

Mr Bloffwitch: Are you saying that they must join the union?

Ms MacTIERNAN: I am not saying that at all. The member for Geraldton has a copy of the Notice Paper and he should read the amendment. The Opposition has been very careful in the drafting of this amendment, and it is not proposing to insert into the legislation a particular industrial relations regime. It is not suggesting that tenderers cannot use workplace agreements but that the port authority cannot dictate to people tendering for services what industrial relations regime they must have in place, other than that the industrial relations regime must be lawful. It is a perfectly reasonable principle, on which one would expect a Liberal Government to be the first to sign off. It is extraordinary that this Government has developed an industrial relations regime that gives choice, but it is proposing that people who want to do business with the Government must use workplace agreements. This is not an issue about workplace agreements, but about whether the Government should dictate to businesses the choice they must make.

Mr OMODEI: The Government will not agree to this amendment. An essential feature of the operation of ports is the ability to secure continuity of service provisions. Imposing limitations on the terms and conditions which might be included in contracts for the provision of services to any port under the control of the port authority, will restrict the ability of the port authority to examine the proposals of any potential contractor for its ability to ensure continuity of service delivery. Including in the Bill provisions which limit the ability to impose terms and conditions will place port authority ports at a relative disadvantage to private port operators. One essential feature of this Bill is to remove the limitations on port operators and place them on an equal footing, regardless of whether they are government-owned or private. The creation of a level playing field is an essential feature of the National Competition Policy. This legislation is intended to provide a more commercial footing for the operation of ports, not to address the industrial relations or trade practices issues. These matters are already capable of being addressed under existing legislation. At all times the commercial and industrial activities of port authorities can be scrutinised under other legislation which relates properly to the type of activity that legislation addresses. There is no need to include the provisions proposed by the member for Armadale.

Mr THOMAS: I support my colleague, the member for Armadale, and the comments she made about the proposed port at James Point. It is clearly an exercise to break the Fremantle port. It is an exercise in scabbery and a desire to establish a non-unionised port to break the port of Fremantle and the Maritime Union of Australia. That move is most unwelcome. Of all the various moves going on in Cockburn in my electorate and close to it, the least popular proposal - a number are not popular, including some which I support - is the proposed scab port at James Point. The Fremantle port has the capacity to handle 650 000 containers a year, and at present it handles only 250 000 a year. It can easily double its capacity without the need for a new port. There is no need to take up coastline, with possible environmental implications which will impact on the capacity of Cockburn Sound to take other industries. A large number of people now working, or who have worked, at the Fremantle port live in Cockburn, Kwinana, Rockingham and surrounding areas and it is fondly regarded by them, as is the coastline where it is proposed the new port will be built. It will be very unpopular. If the Government tries to build a scab port in Cockburn or Kwinana, people will lie down in front of the bulldozers. This move will be similar in terms of social disruption to the waterfront dispute in Fremantle and other ports throughout Australia earlier this year. I ask members opposite, and the minister handling this Bill, who represents the Minister for Transport in this House, whether the Government wants to go back to that. Does it want to conduct industrial relations in this country on the basis of thugs in balaclavas and Rottweiler dogs?

Mr Bloffwitch: We want freedom of choice.

Mr THOMAS: The member wants freedom of choice. Within the port of Fremantle a couple of container handling

companies are competing with each other at the moment. In the debate with the minister we talked about provisions for continuity of supply, and it has been assumed that it is not possible to have a contract for service and an award together with some sort of continuity of supply. I draw the minister's attention to the fact that some awards in this country contain dispute settlement procedures and sometimes no strike clauses. If the Maritime Union of Australia or some other union were to be engaged for that work and it had an award issued by the Industrial Relations Commission, which contained a dispute settlement clause and procedure for resolving disputes that might arise without disruption to work, would that satisfy the provision in the Bill?

Dr Hames: Surely they would not have to be a union member if they did not want to be.

Mr THOMAS: That is outside this legislation. I am strongly opposed to scabbery. A person who is obtaining the benefit of something should pay their way and pay union dues.

Mr Omodei: What about those not getting a benefit?

Mr THOMAS: I do not believe they should be in a position to undercut those who are. That is not a matter being debated now. This debate is about the administration of ports, not industrial relations. I am drawing the Government's attention to the fact that if it tries to build a scab port in Cockburn it will be unpopular in Cockburn and it will be resisted very strongly by the community. I suspect the Government may not be able to do it. Secondly, if industrial relations awards contained a dispute settlement procedure, would that satisfy the continuity of service provisions in the Bill?

Mr RIEBELING: I support the amendment. This Government is hellbent on destroying the Maritime Union of Australia and any companies in a profitable working relationship with it. In that aim it is enacting legislation which will be challengeable in the High Court.

Mr Omodei: I thought the Labor Party was in favour of this legislation. The member for Armadale said in her second reading speech she supported the legislation.

Mr RIEBELING: We do support it; we are already onto clause 35. We have made amazing progress. If we were not being so cooperative we would still be discussing clause 2. Why would the Government not want to agree to this amendment? The Opposition has no objection to various elements of the conditions of tenders being examined. We are seeking to include in the legislation that the Government's view on industrial relations not be imposed on people. During the farce of a debate on changes to industrial relations laws the Government said the legislation was all about freedom of choice. This legislation will have the opposite effect.

The Opposition says that if the Government is fair dinkum about the intention of its industrial relations, a clause should be included that if someone chooses to be in the award structure he will still be eligible for employment. By not agreeing to this amendment, the Government will be denying people choice that the Government guaranteed loudly and strongly in this place they would have. That choice was also denied in many public service positions. I am pleased to see that the new minister is moving away from that position and soon new employees and people on promotion will once again be allowed to work under their awards.

However, that is not so in this area because of the hatred of the union the Government wishes to destroy. Unless the Bill contains rules that show fairness and the ability for people to choose the way in which they wish to operate, the Government's rhetoric will be seen to be a hollow attempt to allow scabbing companies to pick up the work and companies that guarantee employment will be extinguished. Even if a company such as P & O has been working with award labour profitably for a number of years, the expansion of Buckeridge-style industrial relations will mean that there will be no industrial relations - do it his way or not at all.

This legislation is trying to impose a system which would mean that even if employees were more efficient, they would not get work. It will have nothing to do with efficiency but with the fact that the Government does not agree with the way they are organised and give protection to themselves and their families; it does not like people belonging to an organisation that looks after safety, health and financial security of families. Over the next few years the lack of job security which the Government has destroyed will come back and bite it. I urge the Government to seriously consider the amendment.

Amendment put and negatived.

Mr OMODEI: I move -

> Page 24, after line 19 - To insert the words "supplying water, fuel or electricity;"

This amendment brings the supply of water, fuel and electricity within the definition of port services. These services are traditionally provided by port authorities to the shipping industry and their omission was an oversight.

Mr RIEBELING: Despite what the member for Geraldton and the minister said, I am surprised that the minister did not take the opportunity of responding to comments on the previous amendment.

Mr Omodei: I covered it in my opening comments. I did not want to inflame the situation. I do not think you are in the mood to make progress.

Mr RIEBELING: If the minister thinks we are not in the mood to make progress, that may happen if he does not answer queries that are legitimately raised in this place. Our concerns are for the betterment of people in Western Australia. The provision of labour for the stevedoring functions of the port has been of much concern. What is the situation with the port services that have been included in this amendment?

Mr Omodei: The ports can facilitate them; they do not have to supply them, but they must ensure they are some of the services that are made available by contract or by themselves.

Amendment put and passed.

Mr RIEBELING: Without the amendment that has been defeated, this provision allows port authorities to discriminate against people. On the face of it, and from what the Ministry is saying, this Bill is designed to make ports more efficient. If the Government is now saying that the ability to make ports more efficient is code for "we do not want any award workers to be on our wharves," the minister must say so. If he is saying that the Government wants the ability to ensure that work practices which are employed in the wharves are above board and transparent, and it wants to make decisions based on economic reasons and the like, the minister has missed a golden opportunity to place that in this Bill. As it has not been placed in this Bill, the ability to discriminate and to remove the MUA remains. We hope it does not continue to be used. However, this Government's performance up until now shows that it will take every opportunity to make that happen. We have witnessed the replacement of an efficient operating service in Dampier with a monopoly which does not appear to be operating efficiently. No means is available to test whether it is efficient because the competition has been removed. It appears that the decision to do that and the justification for saying that competition continues in Dampier is related to the port that operates in Port Hedland. Clearly, whoever made that decision has never visited Port Hedland or Karratha. One of the grounds on which it was said that competition continued was that a public port was located in Port Hedland and, therefore, some competition would exist between Dampier and Port Hedland. That is an absolute nonsense, because the two ports and the areas they service are 260 to 280 kilometres apart.

P&O Australia Ltd was clearly prepared to operate at a reduced volume in Dampier and yet still remain profitable. It is still fighting the decision in the courts, saying it was badly treated. The only competitive tendering process that occurs in this port is when the port authority's contract with Western Stevedores Dampier is dealt with every five years; therefore, every five years competition within the stevedoring part of the business will occur. The member for Geraldton has now let the cat out of the bag by indicating that the real reason for this decision was to remove the unions. The Opposition has moved a reasonable amendment which the Government has rejected. This reinforces in my mind that there is more than an element of truth in the proposition that this decision was based on a desire to remove the MUA from our ports.

Ms MacTIERNAN: Unfortunately I was out of the chamber when the amendment that I proposed was rejected. The concerns that the Opposition raised about the subversion of port policy for industrial relations ends were not addressed by the Government. The Government has spoken about the need to ensure continuity of service. It is an extraordinary claim given that virtually no industrial stoppages have taken place other than those generated by the Government's industrial relations policy on the waterfront, particularly in regional ports for many years. It is not as if continuity of service was no longer an issue in the ports of Western Australia. It has been made an issue by this Government and it has generated industrial strife by its attempts to install an industrial regime which it says is aimed at ensuring continuity of supply. In any event, the Opposition is saying that if the Government wants continuity of supply provisions within its tendering arrangements, it should go ahead and insert them by imposing penalties on operators if they do not provide continuity of service. It should be left to the private operators to determine how they will deliver continuity of supply. However, an attempt is being made to dictate to employers the manner in which they will deliver continuity. At the end of the day this is not an issue about continuity of supply; it is an issue about the MUA and collective bargaining. This Government wants an end to collective bargaining and it is prepared to suborn port policy and efficient management of ports to achieve this ideological objective.

I note that many other contracts do not require this; for example, the bus contracts. Those bus contracts did not contain a provision that there be direct employee-employer relationships or that people be employed on workplace agreements. Surely continuity of supply is as important in our transport system as it is in our ports. Why did we not include this provision in the bus contracts? We did not do so, because the MUA is not involved in the bus service contracts. We have supposedly placed a continuity of supply provision in our bus contracts. The bus companies are penalised if they do not deliver the service they have contracted to supply. Why do we not insert that sort of provision in these tendering arrangements? This is not a minor issue; it is a significant one. This Government is leaning on port authorities in this State to enter into agreements that contain restrictive trade practices. This is not only unfair, but also it will result in more public money being wasted on legal action. The Geraldton Port Authority is already before the Federal Court expending large amounts of money defending the restrictive practice clauses contained in its legislation. We do not see anything here that will enhance commerciality; rather these provisions will jeopardise it. Ports are not being allowed to operate in a commercial manner.

They are being directed by this Government to operate in an ideological manner. It is an anathema to all the powers and functions set out in this clause. While the Opposition supports this clause, it believes that the Government has missed an opportunity to put the port authorities on a proper commercial basis rather than an ideological basis.

Clause, as amended, put and passed.

Point of Order

Mr RIEBELING: I might have misheard. I thought the correct calling of the last question would have been for the amendment. I cannot remember passing the minister's amendment.

The CHAIRMAN: It was agreed to, so that was the correct phraseology for that question.

Debate Resumed

Clause 36: Extended powers relating to facilities and services -

Mr RIEBELING: This clause appears to allow the port authority to conduct activities outside the port and its usual operating scope. Will the Minister explain the type of services envisaged in this broad definition?

Mr OMODEI: It would put the authority on the same footing as any other commercial enterprise. A port authority could manage other activities; for example, supplying fuel and providing day labour when there is no work on the port.

Mr RIEBELING: Therefore, the port authority can do whatever it feels like doing outside the port operations.

Mr Omodei: If the member read the rest of the clause he would see that it can do so as long as it does not adversely affect the operation of the port.

Mr RIEBELING: It could grow apples or do anything else it wanted to do.

Mr Omodei: Only if growing apples is included in its statement of corporate intent and the strategic plan. It is also subject to the approval of the minister and the Treasurer through the statement of corporate intent and the strategic plan.

Mr RIEBELING: Therefore, the regulations will provide that the operation of clause 36 is to be directed after approval from the minister or the Treasurer, or words to that effect.

Mr Omodei: The statement of corporate intent is covered in clauses 49 to 66. It must be approved by the minister and Treasurer.

Mr RIEBELING: There will be a process for approval to go outside corporate functions. The minister mentioned the provision of fuel. That was covered by clause 35 and was the purpose of the amendment. I understand that. If a port authority went into the catering business and started to compete with the local deli down the road, would that be included in the statement of corporate intent document and be tabled?

Mr Omodei: Yes, it would be tabled with the annual report. This reflects what was in legislation brought in by the previous Government. The activities that have occurred in ports until now will be able to continue.

Mr RIEBELING: I wonder about the extent of it. The minister is saying that a port authority that wished to extend its activities outside what are considered to be normal port activities would not be able to do so without the minister's approval and advice would be provided in the annual report as tabled in this House.

Mr Omodei: It would also be in the strategic plan and statement of corporate intent, which are tabled in the Parliament.

Clause put and passed.

Clause 37 put and passed.

Clause 38: How planning and building requirements apply to port authorities -

Mr OMODEI: I move -

Page 26, after line 29 - To insert the following -

(3) Without limiting section 35(7), port works and port facilities are to be regarded as being public works for the purposes of section 32 of the *Town Planning and Development Act 1928* as applied by subsection (2)(a).

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 39 and 40 put and passed.

Clause 41: Exemptions from section 40 -

Mr OMODEI: I move -

Page 29, line 2 - To delete "transactions" and substitute "transaction".

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 42 to 59 put and passed.

Clause 60: Matters to be included in statement of corporate intent -

Ms MacTIERNAN: I move -

Page 38, lines 28 to 31 - To delete the lines.

This provision enables the minister to exempt the port authority from including any matter or any aspect of any matter mentioned in subclause (2) in a statement of corporate intent. The Government has stated that under this legislation it will increase the autonomy of the port authorities. That is fine. The quid pro quo for that will be increased accountability, and the primary instrument of increased accountability is the obligation to prepare statements of corporate intent. So, we have a provision dutifully setting out a comprehensive list of items that will be included in a statement of corporate intent, including objectives, proposed provisions for dividends, targets and other measures by which performance must be judged, the type of information given to the minister and so on. It is an extensive list and the Opposition supports it; it is a sensible list. However, members on this side are alarmed by subclause (3), because it provides that the minister can decide that the authority is not required to provide any of that information; that is, it can provide a statement of corporate intent that might not contain all the key information.

Frankly, that is unacceptable. We are signing off on the Government's proposed commercialisation. We agree that there must be more autonomy and accountability and that a statement of corporate intent can be an important part of increased accountability, but the minister cannot set out all those magnificent provisions in relation to statements of corporate intent and then provide the absolute catch-all which says that the minister may exempt an organisation from providing any of that information that is set out in the legislation. It makes nonsense of the requirements for a statement of corporate intent. Of course, there might be ministers who will be diligent and who will not allow any exemptions for a port authority, but that will not always be the case.

We must acknowledge that we need proper disclosure in this place. One of our major arguments in relation to the port authorities legislation is that we need proper disclosure of the information of port authorities. We do not say that port authorities cannot make decisions or that port authorities cannot run as a business, but we must recognise that port authorities are government entities and government agencies and that we as the guardians of the taxpayers' assets and funds have an obligation to oversee their performance. We have an obligation at least to scrutinise their conduct.

The minister recognises that by setting out in clause 60(2) all the things that should be set out in a statement of corporate intent. It is totally inappropriate then completely to undermine the value of that clause by saying that in respect of any port authority the minister can say, "Don't bother, lads; you just put in what you want to put in." That is completely to destroy the benefit of having a statement of corporate intent. Frankly, anything of a sensitive nature that a port authority does not want the public or Parliament to see could be excluded.

Mr RIEBELING: I support the amendment moved by the member for Armadale. Earlier, the minister indicated that a statement of corporate intent is an important document which is designed to show transparency in a port authority's operations. It is designed also to show the community a port authority's activities and why it acts in such a way. It is to provide the community with security. That is all well and good but it is another of the Government's snakes-and-ladders attempts. It says that it will be open and accountable and that all the information from (a) to (n) will be included in the magnificent new statement of corporate intent. The Government says, "We will lodge it and everyone will know about it." However, the minister will be able to say, "We don't have to put all that stuff in any longer because it might be inconvenient and there might be a few commercially sensitive transactions that we have done that we don't want anyone to know about. We'll make sure that (a) to (f) aren't in it, but we'll put a few things in it so that the public's fears of what is happening in our port authority can be allayed, but we won't make it comply with all of them."

Why would we have subclause (3) in any form at all? Clearly, someone in the department has said, "For a statement of corporate intent to be of some use, what do we need in it?" Someone has thought about (a) to (n) and decided that, firstly, all those matters can be easily given by port authorities; and, secondly, that they are required to be given to allow security as to the functioning of port authorities. Perhaps it was not the minister who decided that. Perhaps he sent out somebody to say, "We need a smokescreen about accountability. We have not done too well in the courts so far, so let's put a big long

list of things in there; we need a way out for the port authorities and the minister; let's put in subclause (3), which basically allows the minister to allow the port authorities not to comply."

Is there a provision for the minister to give written reasons to Parliament about why any exemption would be given? It is not good enough for a section to say, "This is a protection that the public is given; by the way, we can take it away." Without written reasons and proper information about why that exemption is to be allowed by the minister, it is not good enough for the minister to say that (a) to (n) are difficult to put in place. If they are not necessary, do not include them; but if they are necessary, let us have them, and let us have them on a consistent basis so that we can check the performance of various port authorities and have a benchmark.

Mr OMODEI: The Government does not support the amendment. Members will know that all port authorities are different. They have different statements of corporate intent. Clause 60(3) states -

> The Minister may exempt a port authority from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent.

Some matters in subclause (2) might not be relevant to a certain port authority.

Mr Riebeling: Which one?

Mr OMODEI: Under (i), the accounting policies might have been the same as they were last year. Accounting and reporting is subject to the Corporations Law. Paragraph (k) states -

> The nature and extent of community service obligations . . .

If there are no community service obligations, (k), (l) and (m) would be irrelevant and therefore subject to exemption.

Ms MacTiernan: Why not have a heading "Accounting Requirements"?

Mr OMODEI: That is what subclause (3) says -

> The Minister may exempt a port authority . . .

It provides an accountability measure. Port authorities must obtain ministerial agreement to exempt areas that may not be relevant to them.

Mr RIEBELING: What a pathetic attempt to answer a genuine inquiry. The minister says that it would be onerous to answer questions in the negative. We are not saying that a port authority should say that there was no community service. We are saying that if it is important enough to put in the Bill as an obligation, it should be answered. All those matters should be covered. One does not need to answer in the positive. The accounting system is in there for a reason, I should have thought, so why would one not answer? Why would a minister exempt people from answering all those questions and annually putting the answers in the statement of corporate intent? The same statement might be made each year and we might become bored with it, but it should be answered every year. What is the reason for having subclause (3) -

Mr Omodei: If one did not report on every one of those matters, the member would ask why one was not reporting on them.

Mr RIEBELING: That is right.

Mr Omodei: The minister can give an exemption. That is why you are not reporting on it.

Mr RIEBELING: Presumably the statement of corporate intent is not the property and ownership of the minister. It provides the public with information about what is happening within that authority. The minister would know how the port authority is running without this document being lodged. This document is required by the public, not by the minister. The minister is the policeman, so to speak, of the lodgment of this form. The Minister for Local Government is saying that it is important to answer paragraphs (a) to (n) except if the minister says, "It is not really that important." We agree that paragraphs (a) to (n) are important and that the minister, under no circumstances, should exempt an authority from complying with its obligations under subclause (2). As the minister said, it is a simple matter for a port authority to answer and report on every one of those provisions because it knows how it operates.

Mr Omodei: What if there are no community service obligations? Do you still report on them?

Mr RIEBELING: Absolutely.

Ms MacTiernan: Just like you do when you return various statements to the Australian Securities Commission. If you have a nil return for that part, you simply write that there were no community service obligations in 1988-89. It is a very simple matter rather than opening the door, as you are here.

Mr Omodei: What are you saying?

Mr RIEBELING: The answer to that question must be answered truthfully.

Ms MacTiernan: An organisation can just say that there were no community service obligations for 1989.

Mr RIEBELING: I can find no reasons that a port authority is not required to answer those questions about its corporate intent. If we followed the minister's conclusion to the ultimate and, for instance, if a port authority had nothing different to say, would the minister exempt it from answering any of the questions?

Mr Omodei: It would be unlikely that it would be exempted from all of them.

Mr RIEBELING: It is possible, is it not? If the minister requires a group to specify paragraphs (a) to (n) on the basis that we are having an open and accountable system and then puts in a provision to allow that group to not answer those questions, the proposed protection is nonsense and is not worth the paper on which it is written. That is a real obligation and should be treated as such.

Ms MacTIERNAN: The examples which the minister gave do not wash up. It is true that almost one-third of the items relate to community service obligations. There may be no service obligations for a particular port authority in a particular year, or even generally. There may be no transfer of payments to implement a community service obligation. It could be operating on a purely commercial basis. All that would require in a statement of corporate intent is that, from paragraphs (k) to (m), it is not anticipated that community service obligations will be imposed upon the port authority or there are no plans for community service obligations in the following year. It is very simple.

Mr Omodei: What is the conspiracy theory this time? What is the minister trying to do that you don't want?

Ms MacTIERNAN: This may have been done for the reasons that the Minister for Local Government has said. It may be an entirely innocent inclusion by the parliamentary drafts people. I am not saying that there was necessarily -

Mr Omodei: There is usually a good reason for that.

Ms MacTIERNAN: If we follow the minister's line, he is saying that we should not debate matters in Parliament. We should not raise issues because the parliamentary draftsmen know what they are doing and are very good. The minister says, "I cannot think of a reason for our having this."

Mr Omodei: I did not say that at all. I said there are several good reasons for it being there.

Ms MacTIERNAN: The reason you gave us was a poor example of community service obligations. As the minister rightly pointed out, some port authorities will not have community service obligations. It would be very easy for a statement of corporate intent to include a paragraph that stated, "In respect of requirements from (k) to (m), it is not anticipated that there will be any community service obligations in the forthcoming year". We would then know that there are no community service obligations. We would know that it is not a situation in which there might be community service obligations, but the minister has exempted this organisation from declaring those in its statement of corporate intent. There would be a positive advantage in having that written down because we would know that it is obvious that there are no community service obligations. If we do not have a paragraph like that, the minister may have just exempted the organisation from revealing information about its community service obligations, not that it does not have any community service obligations.

It is important that these items be retained for each port authority in respect of each statement of corporate intent. If they are not, we must ask the questions, "Have these been exempted? Are these issues of exemption?" This is all about transparency. I acknowledge that from time to time we must take into account practical considerations, but the minister has not been able to provide us with any persuasive answers that would override the need for disclosure and justify the granting of an exemption. The best he can say is that there will be some minor inconvenience and that a paragraph could be left out of the statement of corporate intent. That minor inconvenience of putting a paragraph in the statement of corporate intent is overborne by the positive advantages of ensuring that every port authority presents a comprehensive statement of corporate intent. Therefore, we will know whether or not each of these items that are set out in subclause (2) have been addressed by the authority.

Mr OMODEI: The members in their own words have acknowledged that there may be some practical considerations in which there needs to be an exemption.

Ms MacTiernan: No, we did not.

Mr OMODEI: The members have just said that.

Ms MacTiernan: I said that your argument is that it is a minor inconvenience. We have said that it is a minor inconvenience which is easily addressed - simply add a paragraph into the statement of corporate intent.

Mr OMODEI: As the member for Burrup said, it would be very unusual to exempt all of these. It would be a very unusual statement of corporate intent without the outline of the port authority's objectives or the outline of the major planned

achievements. These are the main issues. However, some issues may require an exemption by the minister on the statement of corporate intent. The statement of corporate intent and the strategic plan which are approved by the minister and Treasury must be tabled in Parliament and are subject to the scrutiny of Parliament.

Ms MacTiernan: It is not much good.

Mr OMODEI: The strategic plan is not tabled; it is the statement of corporate intent.

Ms MacTiernan: It is not much good having something tabled in Parliament if all the matters of interest have been exempted; that is the point.

Mr OMODEI: That is going to the extreme. I do not think that would happen. It does not happen now. As I said, it is subject to the scrutiny of Parliament and members have the ability to question the minister on those issues.

Mr RIEBELING: I understand what the minister is saying about it being rare for a total exemption to be declared but surely if these things are so important, the minister should be obliged to report why an exemption was given. To merely say that most of the questions will be answered most of the time is not good enough. If they are so insignificant, why have them there?

Mr Omodei: If they were not there, you would argue that they should be.

Mr RIEBELING: I probably would but that does not weaken my argument. I argue that they should all be there and I would argue that if they were not there. However, I would never argue that the next clause should apply. For the life of me I cannot see why a minister would want that provision in the Bill if he is fair dinkum about clause 2. It makes a joke of clause 2.

Amendment put and negatived.

Progress reported.

[Continued on page 2583.]

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from 15 October.

DR GALLOP (Victoria Park - Leader of the Opposition) [1.12 pm]: I preface my discussion on the Titles Validation Amendment Bill by referring to comments made by Justice French, president of the National Native Title Tribunal. In September this year Justice French said that -

> Native title is a property right recognised in common law. It is here to stay. As the Tribunal's audit of agreements shows, there are many people who recognise this fact and are attempting to negotiate properly with indigenous Australians. Native title, rather than being perceived as a threat, should be looked upon as an opportunity to address the fundamental relationship between indigenous and non-indigenous Australians as that is the only path to the certainty and mutual recognition of rights that all parties seek.

Treating native title as an opportunity rather than a problem or threat is something this State Government has failed to do from the time of the 1992 Mabo No. 2 decision. For this reason, the Opposition believes it has cause to be wary of this Government's attempts to legislate on, and deal with, native title issues. Given the complexity of the matter, it is most unfortunate that the minister's second reading speech comprehensively failed to explain the operations of the Bill and the context in which it has been introduced. Therefore, the Opposition has a number of important questions it wishes to put to the minister about the Bill and its implications. The Opposition will consider its options, including the nature of any amendments, on the basis of this response.

The House must be very clear about the purpose of this Bill. Firstly, it validates what are potentially illegal and unlawful acts undertaken in the period 1 January 1994, when the federal Native Title Act commenced, to 23 December 1996, when the High Court handed down its Wik decision. The Bill goes further than that and extinguishes native title rights on a range of interests. It is not just a validation Bill; it is an also an extinguishment Bill. It is extinguishing indigenous people's native title rights in a wider range of circumstances than has clearly and incontrovertibly been established by common law. Given that, it is essential that this Bill is seen in its historical context, and that the Government's shameful agenda on native title is placed clearly on the public record.

In the 1992 Mabo No 2 case, the High Court recognised the rights of indigenous people to land at common law and rejected the notion of terra nullius - land belonging to no-one - at the time of European settlement. By this decision, the common law of Australia recognised a form of native title that reflected the entitlement of the indigenous inhabitants of Australia to their traditional lands in accordance with their laws and customs. In Mabo, the High Court did not invent native title, but recognised rights that had existed for thousands of years and that native title could and has survived in some places.

Australia was the last of those nations continuing in the common law tradition, such as Canada, the United States and New Zealand, to recognise that survival.

In this sense, native title can be distinguished from land rights. With lands rights, the Government passes a law that gives indigenous Australians the right to obtain land as a means of compensating them for lands taken away in the past, whereas native title is a principle of common law. In Mabo, the High Court also found that native title could be extinguished by valid government Acts that were inconsistent with the continued existence of native title. At page 42 of the Mabo decision, Mr Justice Brennan commented that -

> The common law of this country would perpetuate injustice if it were to continue to embrace the enlarged notion of terra nullius and to persist in characterising the indigenous inhabitants of the Australian colonies as people too low in the scale of social organisation to be acknowledged as possessing rights and interests in land.

It is enlightening for us to compare the responses to the Mabo decision by the then Federal Labor Government and this State Government. Rather than accept native title as a reality and an opportunity and negotiate in good faith with the Federal Government on its proposed Native Title Act, the Premier was intent on continuing to perpetuate injustice against indigenous Western Australians. In April 1993, the Premier was quoted in *The Australian* as saying that there is a need to protect the ownership of land "threatened" by Mabo. On 10 May 1985 in *The West Australian* Bill Hassell wrote that the decision was "illegitimate, illogical and racist". The Premier endorsed those comments. It became clear that for some in our community terra nullius was not just a legal concept but a state of mind.

In December 1993, the State Government enacted its now notorious Land (Titles and Traditional Usage) Act. That Act purported to replace any remaining native title in Western Australia with so-called "rights of traditional usage". However, even those limited rights were subject to all other interests in land and could be extinguished by legislative or executive action. I remind this House of the circumstances surrounding the passage of that shameful piece of legislation. The debate in the other place was guillotined as the Premier tried to force the Bill through before the passage of the original federal Native Title Bill, which was being debated in federal Parliament. It was only the second time in the 103 year history of the Legislative Council that the guillotine had been used.

After treating this Parliament and indigenous people with contempt, the State Government embarked on a campaign in support of its legislation and in opposition to the Mabo decision in a disturbingly deceptive and all too familiar manner. It sent leaflets to all householders proclaiming that the Government had found "A fair solution to Mabo for all Western Australians". It soon became apparent exactly what type of solution those opposite had in mind.

On 24 December 1993, the Native Title Act - the Federal Labor Government's response to Mabo - was passed. What is often overlooked is that in many respects that Act took a very minimalist approach to native title. The Act recognised that there must be some elements in the legislation that make the process sufficiently attractive to native title claimants, otherwise they could choose to go through the common law process. This alternative would not have been of benefit to any of the parties involved when we remember that Mabo took about 10 years to be resolved.

The past was the trade-off for the future. In effect, the Native Title Act was the result of a compromise. Indigenous people made significant concessions in terms of their substantive rights in return for procedural rights, such as the statutory procedures for the extinguishment of native title, simplified mechanisms for proving native title and, importantly, the right to negotiate process. The Act also gave certainty to all holders of post-European settlement titles. It validated all titles, including those issued after 1975 that were clearly inconsistent with the Racial Discrimination Act.

The fundamental difference between the responses of the State and the then Federal Government is highlighted by the State Government's challenge against the constitutional validity of the Native Title Act. The Premier was trying to convince Western Australians that Mabo was a problem, a threat, and that his solution solved the problem; however, all seven judges of the High Court of Australia thought otherwise. That court held that the Land (Titles and Traditional Usage) Act was inconsistent with the Racial Discrimination Act and, therefore, was invalid. It also found that the Native Title Act was a valid exercise of commonwealth power as it was supported by the race power in the Constitution.

Put simply: The State Government had denied indigenous interests equality before the law, and the decision of the High Court cannot be dismissed on the ground that the Western Australian Act was invalid because of minor technicalities. The High Court found that the rights of traditional usage fell short of the rights and entitlements conferred by native title, the enjoyment of which is protected by the Racial Discrimination Act, and specifically stated that "the shortfall is substantial". The fact that the High Court totally rejected the State's argument is demonstrated by the award of costs, without argument, against the State. What is particularly interesting is that, even after the 7:0 argument in the High Court, as recently as 2 July this year, the Premier was quoted in *The West Australian* as saying -

> Our preferred position would be to start again with much simpler legislation not dissimilar to our traditional land usage legislation.

Some people never learn. It has been estimated that the Premier's first foray into native title cost Western Australian

taxpayers more than $4m, when we include the cost of the High Court challenge, the establishment of the Office of Traditional Land Use and the costs awarded by that court against the State. On top of this, we could well add the cost of the anti-Mabo advertising and polling.

Having put the Titles Validation Bill into its historical context, I now move to the Bill itself. As the minister commented in his speech, this Bill is introduced in response to changes to the Native Title Act at the federal level. The amendments to the Native Title Act were, in the first instance, a response to the Wik decision. In that decision, the High Court held that the issuing of pastoral leases did not necessarily extinguish native title. It also held that, to the extent that there is any inconsistency between the two interests, the rights of the pastoral leaseholder prevail over the native title holder; however, the Wik decision was not the only impetus for the amendments.

Parliament will recall that the federal Labor Government had introduced amending legislation in 1995 before it lost power and the federal coalition introduced amending legislation in 1996, before the Wik decision was handed down. The need for amendments arose from a combination of High Court and Federal Court decisions, including the Brandy and Waanyi decisions, and from ongoing administrative experience by the National Native Title Tribunal. A combination of these factors meant it was necessary for the original Native Title Act to be revisited and the need for this was generally acknowledged by all parties. I do not propose to revisit the long running debate regarding the federal amendments in any detail, although, given the complexity of the Act and the fact that there was very little precedent to draw upon, I suggest this was not unexpected. The amendments to the Native Title Act were passed in the Senate on 8 July 1998, and came into operation on 30 September.

Part 2A of the Bill deals with the validation of the intermediate period acts. They are the acts that took place between 1 January 1994 - the commencement date of the federal Native Title Act - and 23 December 1996, the date the Wik decision was handed down by the High Court. Grants of interest made in this period are potentially invalid because of failure to comply with the process under the Native Title Act. In his second reading speech, the Minister claimed that during this period State Governments granted titles over pastoral leasehold land without complying with the Native Title Act because it was believed that pastoral leases extinguished native title.

However, the Government is being misleading in its claim that potentially invalid grants made during this period are only as a result of confusion as to the effect of native title on pastoral leases. The Government has failed to acknowledge that from the outset. It refused to recognise the Native Title Act and, instead, relied on its land usage legislation, which failed 7:0 in the High Court. I understand that from the date that decision was handed down on 16 March 1995, the State Government was forced to acknowledge that its previous policy was unlawful and started ostensibly to comply with the Native Title Act.

Nevertheless during the life of the Office of Traditional Land Use, I understand that approximately 10 000 interests were granted. Important questions must be answered before we can sign off on this sort of legislation: How many interests were issued during this period? Given that this Bill has made no attempt to differentiate between valid and invalid grants, can the Government provide information as to how many grants were made without recourse to the Native Title Act? Even once the Government started ostensibly to comply with the Native Title Act, were there any special cases where the Act was not followed? How many special cases were there, and why? Was the Premier and his Cabinet directly involved in these decisions? Which ministers directed their departments not to comply with the law?

The Government's complicity is compounded by the fact that pastoral leases in Western Australia have always provided for a reservation in favour of indigenous people and that the National Native Title Tribunal had issued instructions as to the likely survival of native title and was accepting claims over this type of land from day one of the Native Title Act.

Mr Court: The other States have continued to issue titles on leasehold land. Western Australia was the only State, after the High Court ruling came down, to put those through the process. The other States assumed the whole way, until quite recently - until the Wik decision - that native title had been extinguished on leasehold land. We did not; we put them through the system.

Dr GALLOP: None of that absolves the Premier from responsibility for what happened before.

Mr Court: As long as the same criticism is used for Labor States that continued this process after the High Court decision came down.

Dr GALLOP: All informed independent legal advice clearly indicated the presence of a specific statutory provision for the reservation of lands and access to those lands or pastoral leases for indigenous people in existing Western Australian legislation and, consistent with the Mabo decision, native title could co-exist with pastoral leases issued in Western Australia. I find it almost impossible to accept the State Government's glib claim that it did not comply with the requirements of the Native Title Act because it believed pastoral leases extinguish native title. Ignorance of the law is generally not an excuse for others, and nor should it be a general excuse for Governments which were aware of the issues and of the debate taking place in the community at the time.

Native title holders are not the only innocent parties affected by the Government's actions. During this period, people received their interests in good faith from the Government, and would be entitled to assume that the Government would comply with the law. Some form of validation is needed so as not to disadvantage these people who received the grants in the intermediate period in good faith.

Putting aside the issue of pastoral leases, the Government's amendments go way beyond the Wik issues. The Wik decision is being used as the basis to achieve other validations and extinguishments on grants and interests not connected with pastoral leases. In other words, the Federal Government used the Wik decision as a means of validating the deliberately unlawful acts of State Governments, and the Western Australian Government has chosen to perpetuate that injustice. In effect, the Federal Government has rewarded the Western Australian Government for its deliberate breaches of federal law. This is being done by validating acts, thereby extinguishing native title, when those acts would otherwise have been invalid. The windfall benefit to the State Government and to the ultimate users of the land will be paid for by all Western Australian taxpayers. Again, indigenous people are the losers in this process.

If these grants are to be validated, or if certain extinguishments are to take effect as set out in part 2B, the Bill provides for compensation to be payable. It is important that the compensation process be fair, speedy and accessible. Certain questions follow. In relation to both validation and extinguishment, can the Government give an estimation of the amount of compensation for which the State will be liable? If not, does the Government expect Parliament to pass legislation without full knowledge of its financial implications? What is the process by which compensation is to be claimed? Why is the process not set out in this legislation? How can individuals whose rights are to be impaired be said to have access to compensation if the process is complex, legalistic and potentially more costly than the value of the compensation sought?

I am concerned that unless compensation is timely and accessible, it is not compensation at all. Has the State signed off on its negotiations with the Commonwealth as to its 75 per cent contribution to which it has committed itself? Will the Commonwealth make a contribution in all cases, including those in which settlement has been reached by agreement? Are there any cases in which the Commonwealth need contribute less than 75 per cent? Will it be making a contribution for the past validations and extinguishing acts, as well as presumably for future acts? Will any written agreements between the State and the Commonwealth be tabled in Parliament?

We expect a detailed and comprehensive answer from the Government on all these and other questions we will raise throughout the debate. As I said earlier, this is a Bill not just intended to affect validation of invalid acts, but also to extinguish native title in certain circumstances. Regardless of the merit of validation, the minister has not explained why legislation is needed to confer the extinguishing effect on native title by these acts. He has not explained why extinguishment is considered necessary for the validation of titles or the protection of existing valid interests when it is clear from all legal decisions, including Wik, that these interests prevail over native title interests anyway.

Again, we have no way of knowing how much the State could be liable for, and nor can any native title holder have any assurance that the process of claiming compensation will be fair, speedy and accessible. It is not good enough to come into Parliament and propose extinguishment without a proper account of what is involved and who will be affected. For example, a list of scheduled interests have been agreed to be exclusive possession acts by both the Commonwealth and State Governments. We should be told how much land is represented by these interests, and whether it is reasonable to say that they would have extinguished native title at common law. Also, no account is given of whether some of the leases are current rather than historical.

The Opposition accepts that certainty should be provided in relation to exclusive possession acts, such as private freehold, commercial leasehold and residential leasehold. We should ensure that the net is not cast so wide as to involve injustice. I remind the Government that the Opposition expects a full explanation on all these matters. As parliamentarians, we have a duty to press the State Government on behalf of all the stakeholders and taxpayers. As it stands, details of the Bill, the second reading speech and other material provided by the Government fall well short of the standards of accountability Parliament should expect in relation to legislation which legitimises the misdeeds of the State Government, and includes the potential extinguishment of property rights, and to provide adequate details of the acts we are being asked to validate. Also, it fails to provide adequate detail of the acts it is said will extinguish native title. It fails to provide adequate detail of the compensation process which will apply.

A case exists for validation and for confirmation of past extinguishment. Therefore, the Opposition will support the passage of the Bill to the committee stage. However, it will keep open the option of moving amendments in this House and the other place, depending upon the answers received from the Government to the questions posed by this important Bill.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [1.38 pm]: I support the remarks of the Leader of the Opposition. I note from the second reading speech -

> The purpose of this Bill is to validate certain titles to land and water in Western Australia which were granted in what is now termed "the intermediate period" and to confirm the effect on native title of previous land grants and public works.

Let us be clear: The purpose of the Bill is to validate what were potentially illegal acts which were undertaken by the State Government from 1 January 1994 until 23 December 1996, when the High Court handled down its Wik decision. Let us be clear on one other matter: The validation of one person's title could well be the loss of another person's title to land - in this case, native title. Merely because Aboriginal property is concerned and native title is the title involved does not make the taking of land any less serious. Members of Parliament should reflect on the feelings people have when suburban blocks are resumed for roadworks or schools. Resumption of suburban blocks is carried out on a case-by-case basis. Significant procedural safeguards are involved in that process. Compensation is payable. Despite these features of the process, people who face resumption of their suburban blocks in many cases still suffer considerable anxiety and anguish.

I make those comments about Aboriginal property and native title and the comparison with the loss of other people's property because, in regard to native title in this Bill, we do not follow the same procedures and safeguards or approach the matter with the same spirit. New section 12A reads -

> Every intermediate period act attributable to the State is valid and is taken always to have been valid.

What type of act with regard to titles will be covered by that very broad provision? According to the second reading speech, this Bill is about validating grants over pastoral leasehold land outside the provisions of the Native Title Act. The second reading speech also explains that the titles were granted because of a belief that pastoral leasehold extinguished native title. Was the Government justified in its belief that pastoral leasehold lands extinguished native title? After all, in Western Australia pastoral leases have always contained a reservation providing for Aboriginal people's continued traditional use of the land.

Mr Prince: No, since 1933.

Mr RIPPER: Perhaps I might stand corrected on that detail but that leaves the overwhelming majority of pastoral leases still subject to that reservation. Because of that reservation existing in most Western Australian pastoral leases, a cautious issuer of titles would have been justified in assuming that native title might have survived on those pastoral leases. Another factor should have led to caution on behalf of those state officials responsible for issuing titles; that is, Western Australian pastoral leases tend to be more rigid than the pastoral leases in other States. Their purpose is specific - they are allocated for pastoral purposes - and they do not resemble exclusive possession where people are free to do a variety of things on their properties. Those two features of Western Australian pastoral leases should have led this State Government to be much more cautious about issuing titles, without going through the future act provisions of the Native Title Act. Arguably, the State Government should always have seen this pastoral leasehold land as subject to native title. That is the advice given by the National Native Title Tribunal. Thus, we see the first example of how we, as a Parliament, are now required to correct the mistakes of the Court Government with regard to native title. Those are not the only titles to be validated by this Bill.

If this legislation is passed, it will validate titles granted under the state Land (Titles and Traditional Usage) Act of 1993. That Act was ruled unconstitutional by the High Court in a 7:0 decision. That was the Act in which the Premier defied the national native title legislation, and which the Premier said would give certainty to title holders, developers and miners in Western Australia. This Parliament must now go back and validate by further legislation the titles that were issued under the state Land (Titles and Traditional Usage) Act. The Parliament must now correct, by validating titles under this Bill, what the Premier described as the best solution to the position created by the Mabo decision of the High Court. The Premier said it would give certainty to Western Australian economic interests and that it was superior to the Federal Government's solution to native title issues, and this Parliament must now correct it. This legislation is the final confirmation, if any confirmation is needed, of the Premier's folly in introducing that legislation in 1993. It is the final confirmation of the Premier's folly in striking out and seeking to make political capital of and opportunistically use the native title issue in 1993 and 1994. This Bill is, if any more is needed, the final discrediting of the wild assertions made by the Premier at that time. He said he had the solution to native title that was fair to all Western Australians, and that his actions would promote certainty. However, this Parliament must now correct those actions.

In addition to the titles granted on pastoral leasehold land and the titles granted when the State Government's Office of Traditional Land Usage was operating, this Bill will also validate other titles that may have been illegally issued during that period. I refer to titles on non-pastoral leasehold land issued subsequent to the period when the Office of Traditional Land Usage was in operation. These titles may have been inadvertently issued, or they may have been consciously wrongly issued. Nevertheless, this Bill will validate their issuance. The Parliament is asked to validate that which is way beyond what some people regard as understandable confusion about the survival of native title on pastoral leasehold land. The Parliament is asked to correct at least two other categories of state government folly with the passage of this legislation. All the categories of titles issued about which I have spoken, were contraventions of the law, and the Parliament is asked to correct those contraventions at the expense of Aboriginal people. Acting outside the law, whatever the claims of the Premier at the time, cannot give certainty to title holders and those interested in the economic development of the State, and cannot give justice to Aboriginal people, those interested in preserving their pre-existing ownership rights. The cavalier approach to native title issues by this State Government threatens the need for yet more title validation legislation. We see a developing history with this issue whereby there are said to be misunderstandings in areas as yet undefined with regard to native title. The State

Government and other State Governments go ahead and issue titles, and when some new compromise resolutions are made they come to Parliament again to validate the titles that have been issued. The Parliament always validates those titles at the expense of Aboriginal people.

The history of dispossession has not stopped with the Mabo and Wik decisions. Each time some new arrangement is made on native title, the Parliament validates all the mistakes made in the past, sets a new cut-off date, and tells the Aboriginal people their land must be taken as of the new cut-off date. Members of Parliament are becoming serial validators of titles at the expense of the property rights of Aboriginal people. I emphasise the term "property rights". We are talking about the ownership of land. Native title is not about giving ownership to Aboriginal people, but is about recognising pre-existing ownership of land by Aboriginal people. Validating titles and extinguishing native title takes land that was already owned by Aboriginal people. It must be thought of as similar to the resumption of a suburban block for a public work, such as a roadway. When a suburban block is resumed, it is done on a case-by-case basis. This action is not taking the land on a case-by-case basis, but is taking it wholesale by a special Act of Parliament. It is up to the Government to tell the Parliament precisely how many pieces of land and how many titles are involved with this validation Bill. The Government should present Parliament with a schedule of titles which are to be validated by this legislation.

Mr Prince: I will see if it can be done.

Mr RIPPER: I appreciate the assurance by the minister that he will investigate the matter. Each one of these validations, with its consequent extinguishment, is potentially a resumption of Aboriginal land.

[Leave granted for speech to be continued.]

Debate thus adjourned.

[Continued on page 2572.]

BANDYUP WOMEN'S PRISON

Statement by Member for Perth

MS WARNOCK (Perth) [1.50 pm]: I wish to bring to the attention of the House serious concerns about the conditions being endured by female prisoners at Bandyup Prison. Members may be aware that Bandyup is overcrowded and has been for some time; and that because it is this State's only women's prison, maximum security prisoners - murderers and the like - are housed side by side in that prison with remand prisoners who have not been sentenced, and with minimum security prisoners. However, members may not be aware of just how crowded that prison is, and of the conditions that the women in that prison must put up with.

Bandyup Women's Prison has a capacity of 83 prisoners. Last week, it was holding 124 prisoners - 50 per cent above its intended level. The cells in that prison are very small and were built for one person, but they now contain two women, and in some cases they contain four women. The lack of privacy is obviously likely to exacerbate tensions in this already tense environment.

Campaigners for better prison conditions - admittedly not a popular cause - believe that both officers and prisoners are being subjected to a volatile and dangerous situation. It is obviously also unjust to mix remand, medium and maximum security prisoners; and unjust and inequitable that that happens in a women's prison and not in prisons for men. Those campaigners ask that minimum security prisoners be moved as soon as possible to other quarters, and that separate remand facilities be established.

I call upon the Government to respond to these concerns.

LAW AND ORDER SURVEY

Statement by Member for Hillarys

MR JOHNSON (Hillarys) [1.51 pm]: Last month, I asked the people in my electorate of Hillarys for their views on law and order, because I, like many Western Australians, have been horrified by the incidence of home invasion and cowardly attacks upon the elderly and their property. The strategies that we have put in place do not appear to be working, and it appears to me that the people who live in our community should also have a say in determining how we should prevent and punish these crimes.

Nearly 300 people took the time to tell me their views; and they were very clear about what they wanted. Ninety-three per cent of the people who responded said that they favoured corporal punishment, such as birching, and that they identified "serious" crimes as home invasion and burglary; serious assault and murder; motor vehicle theft; crimes against seniors and children; sexual assault; and robbery with violence.

It was noticeable that 54 per cent of the people who returned the survey were over the age of 56. I realise that retired people

often have more time to complete a survey, but I believe this age group feels vulnerable after the spate of attacks upon older people. Even though most of these people had not been the victim of a crime in the past two years, it was clear that they had a great deal of apprehension, and even fear, about crime levels.

The facts are that 95 per cent of the survey respondents said that they would support a law demanding truth in sentencing whereby either early release or parole from gaol was abolished, or the guidelines for repeat offenders were tightened up considerably. Ninety-four per cent of respondents said that the courts did not impose upon criminals sentences that were strict enough; and 88 per cent of respondents said that criminals should be required to make some kind of financial reparation for the damage that they had caused.

PEOPLE WITH DISABILITIES, TRANSPORT PROBLEMS

Statement by Member for Willagee

MR CARPENTER (Willagee) [1.53 pm]: I bring to the attention of the Parliament, particularly the Minister for Disability Services, the problems that are accumulating for people with disabilities with regard to transport. These problems have manifested themselves in three discrete areas in the past few months. The first area is the decision by the State Government to restrict the number of people who can access the taxi user subsidy scheme by making the criteria more difficult and the forms more difficult to fill in successfully. A person who answered in the affirmative the question on the form "Can you use public transport at any time?" would now be ineligible for the taxi user subsidy scheme. That is an absolutely ridiculous restriction to put on people with a disability. Of course most of those people would be able to use public transport at some time under some circumstances.

The second area is a matter that I brought to the attention of the Parliament yesterday; namely, the decision by the Australian Council for Rehabilitation of the Disabled - I think supported by the minister rather than opposed - to restrict by 25 per cent the number of people who are eligible for ACROD stickers. That may amount to as many as 8 000 people in Western Australia. The minister has a responsibility to step in and do something about that matter.

The third area is the replacement of Westrail's passenger assistants on trains with private security guards. That will leave people with disabilities who require assistance in getting on and off public transport, particularly trains, in the situation where they may not be able to use that public transport system.

NANCYE JONES RECREATIONAL CENTRE

Statement by Member for Southern River

MRS HOLMES (Southern River) [1.55 pm]: At its August 1998 meeting, the Lotteries Commission recommended 165 grants, which were subsequently approved by the Minister for Racing and Gaming. One of those grants included an application submitted on behalf of the Amaroo Foundation of Gosnells. This grant was requested to provide the much needed extensions to the Nancye Jones Recreational Centre within the Amaroo Retirement Village to increase the size of the activity centre to allow for the expansion of the range of recreational activities, and to enlarge the kitchen. On Monday of this week, I had the great pleasure of handing over a presentation cheque for $40 000 from the Lotteries Commission to Mr David Winter, Chairman of the Amaroo Foundation, and Mr Lyle Richardson, Freeman of the City of Gosnells, who is the honorary chairman of the Amaroo Retirement Village.

That money will provide the seed capital to enable those extensions to take place. I thank the Lotteries Commission and the State Government for making this possible. I congratulate the Amaroo Foundation for its ongoing efforts, and I am very proud to have an organisation such as that within the seat of Southern River. Both the Amaroo organisation and the residents of the Amaroo cottages can be assured of my ongoing total support for this much needed, quality aged and frail-aged facility within the city of Gosnells.

EX GRATIA PAYMENTS

Statement by Member for Bassendean

MR BROWN (Bassendean) [1.57 pm]: In 1994, when I was the Justice spokesperson for the Opposition, the Government launched a number of police and prison inquiries into the Western Australian prison service. The Opposition said at that time that those inquiries were launched as a blind, in order to protect the position of the then Attorney General. Yesterday, I received finally, by way of an answer to a parliamentary question, some information that I had been seeking for some time. The information that I sought related to ex gratia payments that had been made by the State. I found that ex gratia payments, totalling almost $600 000, had been made by the State to the Civil Service Association and the Prison Officers Union - in my view, quite rightly - for the defence that they had mounted of officers charged under the Criminal Code as a result of those inquiries. All of those charges were rejected by the Supreme Court. The inquiries that were undertaken at that time cost the State between $2m and $3m. That money, which has now gone down the drain, was used to defend the Government's decision to establish a Ministry of Justice - a ministry that has not worked in the past and still does not work, and that has been flawed since its inception.

CAPEL DAIRY

Statement by Member for Vasse

MR MASTERS (Vasse) [1.58 pm]: For many years, George Weston Foods has owned and operated the Capel Dairy factory. I wish to alert members to one of the south west's best kept secrets: The Capel Dairy produces an excellent range of cheeses. If members would like to taste the four varieties of cheese that I have brought with me today, they will be available for tasting later at afternoon tea.

The real purpose behind this 90-second statement is to outline my belief, which is shared by virtually all dairy farmers in the State, that the industry's future lies in exports. Western Australia's domestic market is too small to successfully withstand the forces of deregulation, which are slowly but steadily being applied by producers in Victoria and the northern hemisphere. While we have a small buffer between us and our major competitors in the form of our geographical isolation, many dairy farmers want to expand their production at a rate faster than the growth in the State's population. The industry's future must be in exports, and government should be working with producers and processors to realise this goal.

I understand that George Weston Foods is investigating a major expansion of the Capel Dairy, which in time should increase its exports and overall production of manufactured milk products by 300 per cent. This type of expansion is the very lifeblood of the industry's future, and I hope that the current economic problems in Asia will be seen as only a temporary constraint on an industry which has an important part to play in this State's long-term future.

I have been asked to lay these cheeses on the Table - or spread them on the Table - but I prefer to put them out with afternoon tea at three o'clock.

[Questions without notice taken.]

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from an earlier stage of the sitting.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [2.39 pm]: Before question time I referred to the fact that the Bill will validate a large number of titles on a wholesale basis. I compared the loss of native title on that wholesale basis with the case-by-case manner in which we approach resumptions of land held by people under other titles. I suggested to the minister that he should arrange for the Parliament to be given a schedule of the titles to be validated before the passage of this Bill, and I argued that each of those validations is potentially a resumption of Aboriginal land.

I now make a point which is a corollary to that: I hope indigenous interests will also examine this issue and blow the whistle now if specific instances of injustice will arise from the passage of this Bill. If there are examples of injustice, now is the time for individual indigenous people to draw the attention of the House to the land and people who will be affected by that injustice. Nevertheless, the primary responsibility is with the Government which is asking the Parliament to pass this Bill.

It is important that this House have the full information available to it. It is being asked to make a very important decision. Essentially members are being asked to allow the resumption of Aboriginal land on a wholesale basis. We should know precisely what we are doing before we pass this legislation. It is obviously important to Aboriginal people because their land is potentially affected by the Bill. It is also important to the rest of us because of the issue of compensation. When land is taken, there is both a moral and constitutional obligation for compensation to be paid. The State Government should advise this House how much compensation is likely to be payable as a result of the legislation. What is the value of land that will be affected by this piece of legislation?

Mr Court: Do you have an estimate of what the compensation will be? How would anyone have any idea?

Mr RIPPER: Will the Premier be able to tell us whether it will be $1m or $100m? Can he give us any idea of the possible value of this land?

Mr Court: Why do you think we negotiated so extensively for the feds to take primary responsibility for native title?

Mr RIPPER: I have a question for the Premier on that issue. What is the status of the agreement that the Premier says he has for the Commonwealth to take up 75 per cent of the compensation?

Mr Court: In relation to these lands that are being validated, it pays 75 per cent.

Mr RIPPER: Is there a written agreement?

Mr Court: I will have to check, but I think there is.

Mr RIPPER: When considering this issue, it would be very useful to receive from the Premier the evidence of that agreement with the Commonwealth.

Mr Court: The Prime Minister has said that is the case for all the States.

Mr RIPPER: If there has been an exchange of letters, the Premier should table them so that we can see the financial obligation on the State as a result of this.

Mr Court: Mr Keating would not give us any compensation. That is the point you are missing.

Mr RIPPER: The Premier can go back to his rhetoric of 1993 and 1994.

Mr Court: It is not rhetoric; it is fact.

Mr RIPPER: A lack of credibility has been shown. We now need the information that is owed to this House and the people of Western Australia before the Parliament passes legislation of this significance. The issue of compensation raises other matters of concern. Compensation is dealt with in two parts in the Bill. Proposed section 12G relates to the validation of the intermediate acts and states -

(1) Under section 22G of the NTA native title holders are entitled to compensation because of the validation by this Act of an intermediate period act attributable to the State.

(2) The compensation is payable by the State.

(3) Compensation is to be determined in accordance with the principles contained in Division 5 of Part 2 of the NTA.

I do not regard that clause of the Bill as highly informative. Under which state law is compensation to be payable? By what procedure is compensation to be claimed? At what time can it be claimed? What will be the length of the decision making procedures? At what cost can claimants seek to make application for compensation? We were told in briefings on this matter by the State Government advisers that compensation would be payable under the Land Administration Act. I seek formal confirmation from the Government that that Act will govern the compensation procedures under proposed section 12G -

Mr Prince: I can't give you an unequivocal answer. I think that is the case. Certain questions have been asked. You will get an answer, and it will be in writing.

Mr RIPPER: I will be very pleased to get an answer in writing from the minister; however, I think the answer should be in the Bill. If compensation is payable under procedures in the Land Administration Act, proposed section 12G of the Titles Validation Amendment Bill should make reference to the sections of the Land Administration Act that apply.

Mr Prince: People who run this legislation do not need to be told. You might.

Mr RIPPER: Members of the public, native title claimants, native title holders and others may well need to have these matters clarified. If we were dealing with people who were the owners of suburban blocks, they would want to see more information than is contained in this legislation about the compensation payable to them and the procedures by which that can be claimed.

Mr Prince: It is in the Land Administration Act. The Mining Act is getting a mandate at the moment.

Mr RIPPER: I am glad to get that confirmation from the minister, and I hope he will now listen to my second point; that is, it would be helpful if there was a fast-track procedure to allow people to make claims for compensation when the claims are on a relatively small scale. There should be a special fast-track procedure for claims of up to about $100 000.

Mr Court: How would you know what the compensation would be? Don't you think that's the whole crux of the issue?

Mr RIPPER: Does the Premier have any estimation?

Mr Court: No-one has.

Mr RIPPER: There would have to be negotiation, one would think, on the values of certain claims and people might not necessarily agree on a precise figure straight up; however, anyone can make a distinction in values for compensation between $5 000 and $30 000 and between $150 000 and $250 000. People can make those sorts of distinctions. I am sure it would be possible to draft a fast-track procedure for minor claims. I do not think it is beyond the wit of the Government's advisers, if they are asked to do it. I am suggesting it would be helpful to native title holders and claimants.

Mr Court: If you can tell us what a minor claim is, we would not have had the legislation in the first place.

Mr RIPPER: I have suggested claims with a value of up to $100 000 should be available for processing through a fast-track procedure.

Mr Court: The value of what; the land?

Mr RIPPER: The value of the compensation.

Mr Court: We won't have a clue what the value of the compensation is.

Mr RIPPER: It would not be beyond the wit of the Government's advisers to take the broad statement I have made and come up with a scheme. It may need words referring to a reasonable presumption that the value may not be more than $100 000. I am sure such a provision could be drafted.

Mr Prince: Go and read the Native Title Act. You will find there is a form of fast track to the Federal Court, which will deal with some native title claims. I think an amount of $100 000 is set. We cannot say how we will do it. What you are talking about in terms of the size of claims and so on is very difficult. You have to do it on a case-by-case basis.

Mr RIPPER: We are talking about state law, and compensation is specifically payable under state law. I do not agree with the minister's assertions that legislation cannot be drafted to do that. The minister should look at the situation again.

Proposed part 2B of the principal Act is entitled "Confirmation of past extinguishment of native title by certain valid or validated acts". That is a misnomer because this Bill extinguishes native title. It is not necessary to extinguish native title in order to validate titles. There is a possible alternative legal approach in which titles are validated but native title is not extinguished and is instead suppressed to allow for the validation. Certainty for statutory title holders can be delivered without complete injustice to Aboriginal native title holders. In this Bill it would appear that the scheme is different, and that validation and extinguishment of native title always go together. Proposed section 12H states -

> the act extinguishes any native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned;

There is no argument with the proposition that freehold title extinguishes native title. That is common ground in the debate, and it is certainly common ground between the Government and the Opposition that freehold title extinguishes native title. However, I am concerned about the way in which scheduled interests are dealt with in this legislation. I have looked at the definition of "scheduled interest" in the Native Title Act, and it contains a long list of interests that will extinguish native title, following the passage of this Bill. The definition states in part -

> . . . the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
>
> > artificial lake; bathing house; billiard room; blacksmith and wheelwright shop; . . . boat building; . . . bone crushing mill; clayhole and brick kiln; collection in catchment ditches and manufacture of salt; cultivation of tobacco;

It is a very long list of scheduled interests. I am concerned that the list demonstrates that many of the scheduled interests represent temporary uses of the land. It is also possibly the case that those temporary uses of the land are long defunct and perhaps have not been replaced by any alternative uses. It is possible under this legislation that temporary and long-defunct uses of the land will permanently extinguish native title.

The Federal and State Governments' legislation has gone too far with regard to this matter. Proposed section 12I refers to the confirmation of extinguishment of native title by public works. It is unfortunate that quite minor public works, perhaps even long-defunct public works, will extinguish native title under this legislation. Section 253 of the Native Title Act includes a stock route in the definition of "public works" for the purpose of this legislation. In addition, a well or bore constitutes public works for the purposes of this part of the legislation. Therefore, the construction decades ago of a well, perhaps no longer used, may well result in the extinguishment of native title on land that has been subjected to no other use.

As with the earlier part of this Bill, the Government should give the Parliament all the information about land taken under this provision. If this Parliament is to extinguish native title wholesale, members should know what they are doing. Again, the compensation provisions are vague and unsatisfactory. In my view, the Bill should make specific reference to the procedures available.

The Labor Party will vote for the Bill at the second reading stage. It believes the Government owes the House more information and a response to the points raised by the Opposition. The Opposition reserves the right to move amendments, depending on the quality of the response received from the Government. This Government has posed as a great defender of the State's interests in achieving a title and access to land for the mining industry. However, its track record is not good for developers or Aboriginal people. There is no certainty in schemes which are in danger of being found illegal. There is no certainty if the procedures are made so unattractive to indigenous groups that on big projects they go back to their common law rights. If indigenous groups go back to their common law rights, delays of up to 10 years could be expected in resolving these matters. This Government has a very poor record on achieving certainty and justice with regard to native title matters. There is every reason for this Parliament to be sceptical when this Government produces Bills on native title.

MR CARPENTER (Willagee) [2.56 pm]: I start by posing a question: Who comes into the Parliament of Western Australia, stands up for the rights of Aboriginal people, and protects those rights? Can members imagine the scenario if the

State Government proposed legislation to radically affect the property rights of thousands of people who are not Aboriginal? Would the Chamber and the public gallery be empty and would flippant comments be made by government ministers? That is the extent of their contribution. Because this Parliament is dealing with the rights of Aboriginal people, there is virtually no interest from government members in this legislation. The public gallery is empty. Earlier this year, when the Parliament dealt with the rights of unionists and industrial relations, the public gallery was full day after day and night after night. When this Parliament dealt with the rights of women carrying unwanted foetuses and the rights of unborn children, the gallery and the House were full day after day, night after night, and week after week. This Parliament is now dealing with fundamental rights for Aboriginal people - the indigenous people of this State - and there is no-one in the House. This legislation is part of a process to eliminate the rights of Aboriginal people in relation to property in Western Australia, and the government benches are empty.

Mr Court: And the opposition benches.

Mr CARPENTER: I am here. The people who are making the decisions have only a few flip comments to make on the issue. This is a continuation of the sad history of government relations with the Aboriginal people since the European settlers came to Western Australia. It is a continuation of the same mentality and it is very sad. It is a tragedy for Aboriginal people, and I wonder if members can imagine how they feel. It is no wonder that a couple of indigenous people turned up at the ceremony yesterday to express anger about the situation in which they find themselves in this State. This is a continuation of the denial of basic rights of Aboriginal people in this State, and it is sad that the Parliament of Western Australia is once again part and parcel of that process. It is sad that the current Premier has played such an active role in the process, and seems to be proud of his role. The Premier should be on his feet apologising to Aboriginal people for the way he has treated them over native title. The member for Albany should be ashamed to show his face in this Chamber during this debate - perhaps that is why he is not here. If my recollection is correct, the member for Albany was rewarded for his part in the development of the State Government's policy on native title and traditional land uses by being made Minister for Aboriginal Affairs. He played a crucial part in attempting to eliminate the rights of Aboriginal people. Only in a State like Western Australia can that sort of behaviour be rewarded with a promotion to the position of Minister for Aboriginal Affairs. It is unbelievable that that should have happened. Thankfully, that minister is no longer the Minister for Aboriginal Affairs, but he should never have been made the Minister for Aboriginal Affairs. The skill that he demonstrated in his treatment of the native title issue shows that he has no concept of the issues at hand. He should not be allowed near any form of legislation that deals with it and should not sit in the Chamber offering free advice to members. Imagine how the Aboriginal people of the State felt when he was made Minister for Aboriginal Affairs, as a reward for work that he had done in supporting the Government's position which was to extinguish native title.

The history of Aboriginal Affairs in Western Australia primarily has been an official denial of any Aboriginal interest in the land. It is known as the concept of terra nullius which means there is no recognition of any viable interest in the land by the native people of the country who occupy that land. That was the policy that was adopted and run with by Governments in this State for a long time, despite directions otherwise from Britain and despite the protestations of many people in this State. The Governments of Western Australia went beyond that policy, as did the Governments of other States in Australia. They actively pursued and promoted policies which they knew would eliminate Aboriginality from Western Australia. That has been denied by Governments and ministers for decades. We now know as a society, even if government members and backbenchers still reject it, that that was the official policy of Governments in Western Australia - not only to deny Aboriginal people their rights, their land rights and their property rights, but also to eliminate their Aboriginality. Only in the last decade or two has that reality been confronted. In that confrontation, members of society said that it was the wrong thing to do to Aboriginal people. Most members, not all, agree that the policy was a mistake. Most people in the community agree that it was a mistake. Aboriginal people in this State fought long and hard for recognition of their culture, their rights as human beings, their rights to vote like every other citizen in the country, their rights to marry Aboriginal or non-Aboriginal people and their rights to bring up their children. Those are the sorts of rights that everyone else took for granted. Aboriginal people had to fight for decades - well over 100 years - for that simple right in Western Australia. Their rights were continually denied by Governments in Western Australia. I raised the question at the start of my remarks: Who are the people who come into this Parliament and stand up for the rights of Aboriginal people and who have traditionally done it? It is interesting to look at the members who comprise the Parliament of Western Australia today when we consider the answer to that question!

In 1977 there was a major controversy about the voting rights of Aboriginal people, especially people in the electorate of Kimberley, many of whom were illiterate and found it difficult to go into a polling booth unaided by how-to-vote cards and cast a valid vote. The Government of Western Australia at that time, because it lost or was in danger of losing the seat of Kimberley and it believed it was because of the Aboriginal vote, moved to make it more difficult for Aboriginal people to cast a valid vote. That was 21 years ago. There is one person in this Chamber today who was present at that time. He is now the Deputy Premier. The Premier's father, Sir Charles Court, was the Premier who was pursuing that legislation. The current Deputy Premier, Mr Hendy Cowan, was a newly elected backbencher from the National Country Party in the Parliament of Western Australia. A monumental debate took place in society about the Government's actions which would have disfranchised many Aboriginal voters across the State. The member for Kimberley, whose recent performances in

Parliament have been unfortunate, considering his history, has been one of the most interesting parliamentarians in the history of Western Australia. It is unfortunate that he is not in the Chamber for the debate.

Some years ago, the member for Kimberley sent me press clippings from that debate in 1977. I had a fairly good recollection of that debate because I was a student in the State at the time and was interested in politics. My memory was refreshed by the articles that the member for Kimberley sent me. The current Deputy Premier was a member of Parliament at that time. A great struggle took place within the conservative parties of that time about whether the Government was acting in an appropriate way. It threatened to split the Government. Many people in the Government believed that the Sir Charles Court Government was taking the wrong action.

Eventually this matter came to a vote in this Chamber. Several members of the then Government stood up for what they believed was the right thing to do, which was to protect the right of Aboriginal people in the Kimberley to vote. The Deputy Premier was one of those members. He had the courage to stand up for the rights of Aboriginal people in a way that caused huge ructions within his political party and his party's coalition partner, the Liberal Party. Day after day, the front page of *The West Australian* of that time referred to the importance of the debate. The Deputy Premier, another minister of the time, Mr Matthew Stephens, and Mr Ray McPharlin, who were members of the National Country Party, voted with the Labor Party against the Government's motion. Dr Tom Dadour, who was the Liberal member for Subiaco at the time, refused to vote. The vote was split 25-25. The then Speaker, Mr Ian Thompson, who was the member for Kalamunda, voted with the Opposition against the Government to stop it from disfranchising Aboriginal people in the Kimberley. It was the most courageous decision that any Speaker in Western Australia has ever made. The Deputy Premier also made one of the most courageous decisions that perhaps any politician has made in the history of Western Australia. That was one of the factors that led to the creation of the National Party. Part of the impetus for the creation of the National Party was the defence of Aboriginal rights.

Mr Pendal interjected.

Mr CARPENTER: No, they were still the National Country Party. They went on to create their own party. Look at the scenario today: How sad it is that when Aboriginal rights are under attack again, and that has been the process in Western Australia since the middle of 1992 and the beginning of 1993 - certainly since the election of the conservative Government - the Deputy Premier has not stood up for the rights of Aboriginal people for one reason or another. That is very sad because he is a man of some courage and he should have the courage to stand up for them again. They need powerful people to represent them in the Western Australian Parliament. We, in the Opposition, can speak on this matter but everyone knows we are in the minority and will lose the vote. People like the Deputy Premier and the small "l" Liberals have the chance to do what those courageous members of the conservative parties did in 1977.

Mr Court: We are doing more to help Aboriginal people than you ever dreamed of in government. We are sitting down negotiating agreements. We have made major advances. You have a look at your track record; you should be ashamed of what you are saying.

Mr CARPENTER: The Premier can go out in the State and make his claims and build his belltowers with his name inscribed on one of the bells, but this is what he will be remembered for. Any Premier of Western Australia can wear a hard hat and open mining projects, but it takes a person of courage and character to stand up for the rights of minority groups in opposition to the bigoted people who surround this Premier. The Premier is not one of those bigoted people, but he is surrounded by that kind of person. The Premier has been unable to climb over the intellectual and moral walls that have trapped him all of his life, to see the world as other people live in it. That is why this Premier will never be remembered as much of a Premier. He will be remembered as a reasonable Premier; as a person who did a bit of good work here and there. However, this Bill will always be the black mark against his name, and he will never live it down. It does not matter how many stupid belltowers the Premier builds - a belltower that someone in England no longer wants - he will be remembered as the Premier who went out of his way to extinguish the rights of Aboriginal people who have no voice in this Parliament. That is to the shame of the Premier and those who sit around him in the Parliament and refuse to do anything. If the member for Joondalup wants to have a say, this is the sort of debate he should join in. He knows he should join this side of the debate.

What happened when the decision on native title came down? The conservative forces in this State, principally Mr Bill Hassell, could not wait to tell Western Australians that it was shameful that Aboriginal people would be given rights that the rest of us did not have. It did not matter a hoot that they were given those rights because they are the indigenous people of this State who inherited those rights. We cannot have native title if we are not indigenous people, but we can tear those rights away from them, and that is what this Bill will do. If we were dealing with farmers' rights and the compulsory resumption of farming properties the gallery would be full of angry farmers - probably in checked shirts - shouting abuse, and so they should!

Aboriginal people do not come to this place, because they know it is no good; it is a waste of their time and energy. When one goes go to the north west to try to get Aboriginal people interested in politics they say, "Why should I be? The parties do nothing for us." Look at the history of the relationship between Aboriginal people and political parties in this State. We

cannot get Aboriginal people involved because this is what happens in the Parliament - mass extinguishment of Aboriginal rights with barely a whimper.

It was not an issue at the recent federal election. The Premier called press conferences holding up maps of metropolitan Perth with rings around houses in Churchlands or somewhere like that. How could the Premier do that if he has an IQ above the height of his kneecap? The Premier held up maps of the Perth metropolitan area and said that people's properties were under threat by native title and the State would be locked up. The mining companies initially bleated. They have an interest in what goes on and it is fair enough for them to put their points of view. However, the Premier of this State should have reminded those mining companies of the way they acted in the 1980s. They ran a shameful scare campaign in the 1980s when a Labor Government was elected and tried to do its best to address a difficult problem. The Labor Party failed and it still wears that. The mining companies were assisted by people like Mr Hassell, who gave the Government such vital advice in the early stage of the drafting of this Bill.

Mr Court: Brian Burke appeared on television saying, "We will not introduce land rights." What hypocrisy!

Mr CARPENTER: The Premier should have gone to the mining companies and expressed his appreciation for their genuine interest in this debate, and he should also have reminded them of the way they behaved in the 1980s. It may have been difficult for the Premier because of the attitude that his father took on these matters earlier on. The Premier accuses us of hypocrisy, but I remind him of his father's suggestion to send a delegation of Western Australians to study the apartheid system - the so-called colour problem. That is the background that we are talking about.

We should have moved a long way from that position. However, we are revisiting the position the Premier took up in 1993 against the advice of probably every lawyer in town - apart from the ones he had in his pocket and the ones he was paying for advice. Every reputable lawyer in town, every legal expert at the University of Western Australia and other universities around Australia said that native title was here to stay. They said that the Premier should get his head around the concept in the High Court's decision. The High Court recognised that these people have an interest in the land and the Premier cannot ignore the High Court. However, the Premier's position was that he did not accept the concept of native title. The first thing the Premier said was, "I do not understand native title." If the ABC wants to pull the tape we could see the Premier at the doors of Parliament House heading off to Canberra for a meeting about native title, saying, "I do not understand the concept." Why did the Premier not make the effort to find out? Do Aboriginal people not deserve that? The Premier of the State, who represents them in this Parliament, should make the effort to understand that little thing called native title before he goes off and tries to eliminate the rights that have been recognised by the High Court of Australia after nearly 200 years of the concept of terra nullius.

There were two elements to the decision on native title. The first is a legal recognition of a right to an interest in the land. It is not ownership, as has been said in this place. Aboriginal people do not seek ownership. They seek recognition of an interest in the land. They have never sought to keep white people off their land. Do members remember the rubbish about non-Aboriginal people not being able to visit Ayres Rock?

Mr Tubby: What about Arnhem Land?

Mr CARPENTER: The member for Roleystone should try to visit a home that he might rent to a tenant.

Aboriginal people do not seek exclusive ownership, but a registered interest in the land. That was Justice Brennan's lead decision, and the Deane and Gaudron decision - with Daryl Dawson dissenting. The decision was 6:1. Brennan's judgment led some people to think that pastoral leases might be extinguished, and Deane and Gaudron's decision led people to believe it would not be, so there was a debate.

The Premier should have known that and got his head around all of it. It took five minutes for the editor and a couple of reporters at *The West Australian* to get some basic understanding of that. However, the Premier of the State and his advisers refused to accept that decision. They tried to scare the pants off people by holding up maps saying their houses were under threat. It was pathetic and shameful. No matter what position the Premier takes on this debate, he should apologise for that.

The second element to the native title decision that is more important to the legal decision is the symbolism attached to it. It is the symbolism of our relationship with our indigenous people. That is what the Premier's ranting and raving was all about. The native title decision said to Aboriginal people that we recognise that they are here, that we would not try to wipe them off the face of the earth, and that we recognise their legitimate interests in this country, which deserve respect. However, the Premier was incapable of taking that on board. Paul Keating's Redfern speech brought tears to the eyes of Aboriginal people who listened to it, because at last a Prime Minister of this country was prepared to offer them the symbolism of acceptance. No other Prime Minister has been able to do it as well. Other Prime Ministers have tried - Gough Whitlam, Malcolm Fraser, Bob Hawke - but Keating succeeded. That will be one of the monuments to him. Members can say what they like about him. They may hate him for other reasons, but he did the right thing in that regard. The Premier could have done the same thing but he failed miserably.

Symbolism is very important. Almost every day on some radio talk show an Aboriginal person can be heard talking about

being a member of the stolen generation. If one switches on the television, one will see every couple of nights something about Aboriginal rights. It is vital to this country that Governments and political leaders embrace the symbolism that is involved in the native title decision. They should not reject it, because by rejecting it we will be going backwards at 100 miles an hour. That decision was handed down in mid-1992. After the federal election, the re-elected Keating Government decided to try to legislate to put a framework around that decision and it came up with the Native Title Act. I point out to the Premier that all legislation is imperfect. Indeed, the Premier is imperfect. However, all legislation can be made to work, if there is goodwill.

The biggest obstacle in the way of the smooth operation of the federal Native Title Act was the ill will of people like the Premier. That was the biggest problem. He was the biggest problem. His attitude was symbolic of the biggest problem. He went out and portrayed that attitude to the mining companies, the pastoralists, the farmers and the people in suburban Perth who became resentful of the fact that Aboriginal people were being accorded something special. The attitude was: "Okay, we will let them vote; okay, we will let them live with their wives without being arrested; okay, we will not steal their children from them; but by geez, we are not going to give them any land, are we?" That was all too much. The Premier's attitude was the big obstacle. That is why the Native Title Act failed to do what it set out to do. One of its goals was to put a legislative framework around that issue. If there had been goodwill, a lot more could have been achieved.

Mining companies had to deal with reality. They listened to the empty rhetoric - they probably liked it - but the next day they had to go out and deal with it. Mining companies internalised the concept of native title just as they internalised the concept of environmentalism; and they dealt with it. They started to lead the way. However, what the Premier has done with the election of the Howard Government and the continued attitude here, is to blow all that away, to waste it. We will return to a stage where Aboriginal people are just outside the door while all the big white fellas are inside doing all the talking and we will chuck them out little bits and pieces. During the negotiations for the federal Native Title Act, Aboriginal people were drawn from all over the country to have input into the debate. Members should recall that it was only 12 months since they had actually been accorded respect - a symbolism - the legal position of native title. After 200 years of being denied native title, of being murdered and having their children taken away from them, for 12 months the door opened and there they stood in the same legal light that everybody else in the country enjoys. However, they were told that there must be a few concessions, otherwise the concept would never find its way into legislation. They gave up claim over property titles issued after the 1975 Racial Discrimination Act in return for the legislative right to negotiate. They gave up a huge amount for the right to negotiate because they wanted to express goodwill and so that the decision would work. Howard came along and, with the support of Harradine, snatched the right to negotiate straight out from underneath them again. That has gone. The attitude was: "Sorry fellas, we did not think you needed the right to negotiate. I know you gave up a lot to get the right to negotiate, but here we are three or four years later taking it off you again. You haven't got it." How do they feel? How do they react?

No wonder they do not like John Howard. No wonder they get up and turn their backs when John Howard gives them a lecture about reconciliation. No wonder they think that Herron is a paternalistic fool. Members should put themselves in their position. The Premier should put himself in the position of Aboriginal people. He is the leader of the State - forget the party politics. The Premier of the State was ranting and raving about what a danger native title was and how Aboriginals would come and steal property off people. Now, what is he doing? His mass extinguishment of native title is here in this Bill. We are prepared to accept the validation of those titles that the Government issued. However, he cannot even tell us how many property titles are involved. That is how hopeless his position is. He cannot say where the property titles are. He comes into the Parliament with a piece of legislation and says, "Look, we will tell you later what it means." We are prepared to support the concept of validation, even though it is the Government's own stupid fault that we are in this position. However, when we ask for a bit of information about what this will mean, the Premier sits opposite and scoffs at the idea and says, "What do you want to know? How are we supposed to know that?"

Mr Court: I did not say that at all. Get your facts right.

Mr CARPENTER: That is what the Premier said, "How are we supposed to know that?" A question was asked as to how much this will cost the State - not a bad question, after all it is the Parliament of Western Australia - and the Premier's reply made the questioner appear as though the Premier thought he was an idiot for asking the question.

Mr Court: No-one in this country can give an estimate of compensation, not a single person, my friend.

Mr CARPENTER: The Premier should get his people out there to do some work on it.

Mr Court: That is what the whole issue has been about. I have never seen such ignorance.

Mr CARPENTER: There is no need to legislate to find out. Does the Premier know what the titles are?

Mr Court: Yes, we do.

Mr CARPENTER: Why are they not here before us? Why are we here legislating for the validation of titles when we do not even know what the titles are?

Mr Court interjected.

Mr CARPENTER: Who knows what the titles are? Who knows what we are validating for? It may be that we are validating for a title that claims the Premier's block in Nedlands.

Mr Court interjected.

Mr CARPENTER: What are we legislating for? We are asking the Premier to give us the information and tell us what we are legislating for. The Premier then says, "Do not be ridiculous. How can anybody know that?"

Mr Court: Who said that?

Mr CARPENTER: I think I have heard the Premier say it about three times.

Mr Court: No, you have not heard me say it once. Do not make it up.

Mr CARPENTER: The Premier should sink back down into his chair because he is in a very unfortunate position in this debate in Western Australia. As a mark of symbolism he should first of all get up and say, "I admit that I behaved in a very unfortunate way a few years ago. Now I will try to put it right for Aboriginal people."

MR BAKER (Joondalup) [3.26 pm]: Needless to say I support this Bill. At the outset I propose to address some of the somewhat emotive arguments raised by the member for Willagee. He referred to a quote and I do not think he gave the name of the person who made it. The quote was along the lines of "Native title is here to stay." Does the member for Willagee recall who made that statement?

Mr Carpenter: No. I said that every lawyer around town was saying that. You will say it is not, will you?

Mr BAKER: The point I am making is that many hundreds of years ago there were people who said that freehold title was here to stay. Look at what has happened to freehold title since that notion was first arrived at as a concept in common law. Look at how our rights in respect of freehold land have been whittled away. There is no objection, I suppose, from the member for Willagee in that regard.

Mr Ripper interjected.

Mr BAKER: It is interesting, in looking at the various rights of people who have interests in freehold land, to see how those rights have been whittled away over the years. For example, the member for Willagee referred to the extinguishment of rights. Many of us have experienced the extinguishment of our rights in respect of freehold land owned by us. There are many examples, such as water and sewerage easements. One does not have a choice. One cannot exercise one's freehold title right and say, "I own this land. I have total dominion over this land. You may not enter. You may not take the easement." One has no choice at all.

Mr Ripper: Procedures are available. There is compensation. It is considered very seriously on a case-by-case basis.

Mr BAKER: In certain circumstances there may be. That is an example of how some rights have been extinguished. Let us look at planning law. Planning law now tells us - and has told us for many years since it was first introduced as a concept or a model - what sort of business we can conduct on premises and how we can use premises. We can be told, even if we have a freehold interest in land, irrespective of whether the land is encumbered in any way, how we can use the land. We can also be told what classes of people we can permit to enter upon the land. We can be told how much noise we can generate from the property. We can also be told at the time we acquire the title that we cannot use the land below a certain depth. Reservations already exist on many titles excluding the owners from, for example, removing minerals from the land up to a certain depth. Reservations in favour of the Crown regarding water rights already exist.

Mr Trenorden: The commission can come in and stop you using your land, with no compensation.

Mr BAKER: I was not aware of that, but it is a classic case involving yet another extinguishment of a right that a person with a freehold interest in land once had. We must accept that from time to time we must surrender rights if that is in the national, state or public interest. We cannot dispute that, but it could be argued that almost every piece of legislation we pass, either directly or indirectly through time, will have the effect of extinguishing, altering or limiting rights that existed prior to its passage through Parliament. We are dealing with a rights issue, an extinguishment issue and a compensation issue. It is a matter of balancing rights. The Bill does that well.

If I am wrong and if, for example, it is believed that the Bill is a racist piece of legislation, someone can mount a test case to the High Court and challenge its validity on the basis of the racial discrimination legislation. A person would have every right to do that. There is already some possibility of that. Beyond that, if it is suggested that the Bill is outside the scope of the amendments to the Native Title Act which were passed earlier this year by Federal Parliament, once again it can be challenged for that reason. At the end of the day, the Bill is being introduced pursuant to a piece of federal legislation which was passed by a Government under a duly elected, democratic parliamentary system. We must accept that we want a

representative democracy applied on a national and state basis, but, if people feel aggrieved, there are certain rights that they can pursue in certain courts.

The member for Willagee said that Aboriginal people do not have the right to pursue their culture. The member will accept that there are many Aboriginal cultures - about 357 at the last count. I will give a classic example of how an Aboriginal person's right to recognise, enjoy and further his culture has already been interfered with by the law. It is a very simple example involving the issue of payback. Payback is a disciplinary measure which is used to resolve disputes involving assaults or behaviour which is not acceptable to certain groups. In most circumstances, a payback using a spear or whatever is considered to be an assault. Our law says that it is unlawful to assault someone, subject to excuses and defences. That is a classic case where a law has interfered with a person's right, as the member for Willagee put it, to exercise or to protect his culture.

Mr Ripper: It is practised somewhat differently in the Liberal Party.

Mr BAKER: We must accept certain compromises in the exercise of our rights, be they in relation to our cultures, lifestyles, use of land and so on. At the end of the day, it is a matter of balancing an individual's interests or a group's interests in pursuing those rights against the broader public interest and, in certain circumstances, it may not appropriate to exercise all those rights.

MR RIEBELING (Burrup) [3.32 pm]: I congratulate the member for Willagee on his contribution.

Mr Trenorden: How did you go with the rest of your margin?

Mr RIEBELING: So be it. If that is how the member gauges the importance of this debate, we will probably not hear from him.

Mr Carpenter: Why are you upset? There are no farmers' properties -

Mr Trenorden: Yes, there are - 30 or 40 in my electorate.

Mr RIEBELING: Are they leasehold?

Mr Trenorden: Leasehold.

Mr RIEBELING: I will refer to leasehold properties in a moment, so the member for Avon will be able to interject at length about the values of leaseholding and who is making the land grab - whether it is the Aborigines or leaseholders who have a special attachment to the land because they have leases to do certain things and they do not necessarily do those functions only on that land. This is the greatest land grab of all time. Leaseholders want freehold title to their land and that mob is going to give it to them.

Mr Trenorden: Of course, because they are paying for it.

Mr RIEBELING: Absolutely, even though they have not paid for it and they do not deserve it. The Government is going to give it to them, and that is fine, but we need to get that on the record.

As the member for Willagee said, the Premier has shown absolute contempt for the rights of Aboriginal people in this State. More than that, he saw it as a great opportunity to say, "Here is a chance to drive a wedge into the community that won't be forgotten in a hurry; we can whip up a lot of racial hatred and misinformation that won't go away for a long time." A classic example of that can be found in the town of Karratha, where the Department of Land Administration was instructed not to negotiate any settlement within the townsite, then the mob opposite ran around town saying, "How awful native title is; the Aborigines won't negotiate." DOLA was told that it could negotiate, but not for any settlement. I do not know what negotiation is if someone cannot settle and say, "Okay, if we extinguish your claim, in compensation we will give you $100." That was not on; there was no possibility of doing that. The Government brings forward racist legislation, whacks it in, and gets it knocked off, but in the meantime it issues 10 000 land titles. That is bad enough, but when the High Court knocks out the legislation and says, "No, this is a piece of racial crap; we can't have this because the Government has not considered" -

Mr Barnett: Is that a direct quote from the High Court?

Mr RIEBELING: Yes, it is pretty close.

Mr Barnett: You really should help to raise the standards of this place.

Mr RIEBELING: When the Government brings forward decent legislation that assists Aboriginal people and when it starts to care about what has happened to Aboriginal people, we will not need a debate such as this. The Government should get up out of the gutter and bring in decent legislation. The Leader of the House knows what the legislation is all about. He knows it is not designed to assist Aboriginal groups; rather, it seeks to wipe out Aborigines' rights. This is the best of the three pieces of legislation; the other two are far worse.

The Government approved 10 000 titles that became illegal. Even worse, after the High Court said that it was illegal and

the legislation was knocked out, the Government went further: It continued to issue titles incorrectly and against the law. We are yet to be told how many of those 10 000 titles were issued after the High Court's determination. However, land title that was issued after the High Court's decision carries with it an even greater emphasis upon the illegality of the State Government's action. It is hoped that one day between now and the committee stage the Government might be able to tell us how many of those titles were passed by the Government and what type of projects were deemed to be so important that the rights of Aboriginal people had to be extinguished absolutely and given no credence at all.

In Karratha, certain pieces of land received clearance. All of a sudden, certain pieces of land were cleared for development. One piece of land - I think it is called Rouse Court - was cleared and eight blocks were developed with no native title clearance because DOLA was not negotiating with the Aboriginal people for clearance of those sites. However, because of DOLA's refusal to manage the land, land at a highly inflated price was given to a small group of people. That small group of people is the same group as is involved in the Industrial and Commercial Employees Housing Authority scandal that is now developing. The Minister for Housing is having an officer prosecuted on 41 counts of fraud. The same people are involved in that development as were involved with that corrupt government official. Those same people are involved in every dodgy deal that is done up there. The day is coming when these people will be brought to task for their activities in corrupting the land in the Karratha area.

Mr Barnett: They are pretty wild allegations that you are making.

Mr RIEBELING: No, they are not. The minister said that there were 41 counts of fraud in relation to Industrial and Commercial Employees Housing Authority sales. The Leader of the House and I know that 99 per cent of all of those sales occurred in the Karratha area.

Mr Barnett: I am aware of the ICEHA situation.

Mr RIEBELING: When all of the evidence comes out, the Leader of the House will be able to stand up and say that I was right and apologise for doubting me.

This legislation is designed to legitimise the illegal action this Government has taken relating to land management in Western Australia. Six years ago this Government was elected on the platform of better management. In that time it has failed in its management of land to such an extent that 10 000 titles were issued illegally after 98 per cent of all lawyers in this State advised the Government that what it intended to do was illegal and that the legislation would get knocked off. The pity of it all is this: The Government used as an excuse for this action that the mining industry wanted the Government to do it. It wanted certainty. This Government created uncertainty. To a great extent these pieces of legislation will remove the ability of Aboriginal people to negotiate and to seek compensation. Because of the absolutely one-sided nature of these pieces of legislation, they will also be open to challenge. If the Government was half reasonable in these pieces of legislation, they would not be open to challenge.

Mr Baker: If you are so certain in that regard, there is no uncertainty.

Mr RIEBELING: The member must have advised Richard Nixon on the madman theory of war. It is crazy to suggest that the legislation is designed so badly that it will get knocked off, and that represents certainty. One demand put to this Government for its legislation was that people wanted some certainty for land management. The drafting of this legislation has not been reasonable. It has been minimalistic. This legislation opts for the lowest common denominator.

Mr Baker: What does the Queensland legislation say?

Mr RIEBELING: I have not read that legislation. If any members on the other side can point out where in these pieces of legislation we have anything other than the minimalist approach for Aboriginal people, I would like them to point that out. I know the member for Avon loves to point to brilliant facts. He often says that when people hear one speech or another, the Government might lose the next election. Those opposite who are interested in voting patterns should look at the Aboriginal vote in the federal seat of Kalgoorlie. They will see how the Labor Party did with the Aboriginal vote. It got it all, not just a small proportion. In one mobile booth, in which 680 people voted, all bar 21 voted for Labor. The others voted for Campbell. Not one voted for the conservatives.

Some people say that Aboriginal people do not know what they want to do, and they make racist remarks; however, Aboriginal people know exactly what they want to do, who looks after their interests and who is removing their rights. They know the Government is attempting to remove their rights and these pieces of legislation give them no rights - and no hope. The greatest thing about the Mabo decision was not so much the wording of the judgment, but rather for the first time in a couple of hundred years Aboriginal people were given hope, one chance in a million that either a conservative or a Labor Government might put in place legislation that would give their kids, the next generation, a chance.

Mr Baker: Did it create certainty or uncertainty?

Mr RIEBELING: It created some uncertainty, but the job of government is to fix that. The Government's job is not to take away the hope of these people. In this legislation we are removing the hope of an entire race of people.

Mr Baker: What about the original federal Native Title Act? Does that create certainty or uncertainty?

Mr RIEBELING: In my view the original attempt by the Western Australian Parliament to create land rights was a genuine attempt to try to resolve some of the problems that were in place. Every piece of legislation needs finetuning; however, in this legislation we are throwing the baby out with the bath water. There was a great ray of hope within the Aboriginal population. I spent almost six months with the Aboriginal people in my area, trying to hose down their expectations of the benefits that would flow from the native title legislation.

Mr Baker: In your view, what percentage of all Aboriginal people in Australia have or would have benefited through the Native Title Act; 99 per cent, or 10 per cent, or 4 per cent?

Mr RIEBELING: My hope is that all will benefit. I do not know how the member has picked 4 per cent as the figure. In my area there is a hope that all Aboriginal people will benefit. The Pilbara region is still mainly an Aboriginal tribal area with definable lands and all is in place, except for the ability of leaseholders to grab the land and misuse it for whatever purpose they wish, and to deny access through that land. One fallacy is that Aboriginal people deny access through their land. What a crazy concept. The biggest locked up pieces of land in Australia are controlled by leaseholders. We cannot go to the best fishing spots in the Pilbara; the leaseholders will not allow it because their sheep are having a nookie. These leaseholders will not allow people through the land because they say it upsets the breeding patterns of the sheep; therefore, people cannot go fishing. In the view of the leaseholders, people who enter their land should close the gate quietly and walk slowly because the sheep are doing naughty things.

Mr Baker: You have to seek a permit to enter onto Aboriginal community land.

Mr Minson: If you want to go from one side of Australia to another, you need a permit. You are not right in saying that Aboriginal people do not lock up their land.

Mr RIEBELING: No. Warambie station has been owned by the Aboriginal people for 20 years. The Minister for Local Government denies access to people to go through Cleaverville.

Mr Omodei: No; I do not.

Mr RIEBELING: Yes, he does. Cleaverville is probably the most popular beach in the north. People must travel through 15 kilometres of an Aboriginal station to get there. That community just lets people go through that land. Those people do not want to lock up that land; they want it to be used, but in a way that they see as appropriate.

Mr Minson: What you are saying is not correct. I was the Minister for Aboriginal Affairs for quite a long time. There is still a lot of land in Aboriginal communities that is not accessible to people. You are incorrect.

Mr RIEBELING: I will tell the member what the position is in my electorate. How does the minister think people get through a leasehold station from the North West Coastal Highway to the coast?

Mr Minson: I just wanted to get that straight.

Mr RIEBELING: The member does not like it because he knows it is true. It is much easier to get through native title land than it is the leasehold stations.

Mr Minson: That is not right.

Mr RIEBELING: I am not wrong.

Mr Baker: The returning officers have to seek the prior permission of the chairmen of the communities for the purpose of conducting polling booths.

Mr RIEBELING: I cannot see the point of that interjection.

Mr Baker: Once again, a permit is needed for something as fundamental as an election to allow people to vote.

Mr RIEBELING: Must permission of the leasehold landowner of a station in the north be granted when a person wants to land an aircraft on the strip for the purpose of conducting mobile voting?

Mr Baker: As a matter of law or a matter of etiquette?

Mr RIEBELING: It does not matter.

Mr Minson: Not at all.

Mr RIEBELING: Of course people must get permission. The Electoral Commission must even get permission to have a permanent polling booth in the school. It owns the polling. The Education Department owns the school.

In my area it is clear that one can get through native-controlled land. There is absolutely no problem accessing any land or

stations that are owned by Aboriginal people. However, if the land or station is not owned by Aboriginal people, huge problems are experienced, especially if good beaches are located on it. I understand that five access points must be allowed to the coast for coastal leased properties which have good beaches, fishing spots, river access and so on. To show that the property owners have a complete contempt for that system, they allow five access points within about a kilometre, so one can get to the worst beach, but no-one uses it. The property owners then whinge when people go through their property to fish. They ring the police and complain that people are illegally accessing their land. The bloke who runs Mardie station swoops on people in his plane such as a Japanese zero did when it came out of the sun. He drops bricks on people. This is the type of person who will get all the land. The member for Avon thinks that is beaut and that we should give this bloke freehold land.

Mr Omodei: I bet he finds your speech interesting.

Mr RIEBELING: Send it to him! I was in court when he was charged for the offence of swooping people. He said he had the right to do that! The old adage is that lawyers should not ask questions to which they do not know the answers. The member for Joondalup would know that. In this case the lawyer, who is now based in Bunbury, said to the person who identified his client, Mr Backman, as the pilot, "Mr Formby says my client has been charged with flying 200 foot above the ground. From that distance, how can you tell that this bloke was the pilot of that plane?" The answer was, "The pilot was just there; he was about five foot away. He swooped so low that he nearly landed in the boat that I was in." That is an example of a question that a lawyer should not ask. The problems experienced with Mardie and Mr Backman and any government office that still deals with that part of the world confirms the problems that exist at that station. I would rather deal with an Aboriginal group to get access through their land than Mr Backman any day of the week.

[Leave granted for speech to be continued.]

Debate thus adjourned.

PORT AUTHORITIES BILL

Committee

The Deputy Chairman of Committees (Ms McHale) in the Chair; Mr Omodei (Minister for Local Government) in charge of the Bill.

Clause 60: Matters to be included in statement of corporate intent -

Progress was reported after the clause had been partly considered.

Ms MacTIERNAN: I move -

> Page 38, line 30 - To insert after "intent" -
>
> and any such exemptions are to be noted in the Statement of Corporate Intent of the relevant port authority

This debate centres on the importance of the statement of corporate intent. The statement of corporate intent will now be the key document of accountability for each of the newly commercialised port authorities. The Opposition agrees that it is an appropriate instrument, but it wants to ensure that the sorts of things that will be in the statement of corporate intent are those things that are set down in subclause (2). The Opposition is concerned that this is a very broad catch-all clause which would enable the minister to exempt any port authority or all port authorities from providing the information that is set out in subclause (2). Obviously that can completely undermine the importance of statement of corporate intent. The Opposition sought to delete subclause (3), which was the power of exemption. It was unsuccessful in doing that. The minister said it was needed because it could be inconvenient in certain circumstances.

Mr Omodei: There may be other practical consideration.

Ms MacTIERNAN: The Opposition does not agree with that, but it lost the numbers on this. It is now trying to take another approach and say to the minister that he can keep his power of exemption, but what the Opposition is asking for gets back to this issue of disclosure that if exemptions are in place, a statement should be appended to the statement of corporate intent detailing that exemptions have been provided to this port authority. It is important to know that this is not simply an issue that the port authority has decided not to address, but rather it has not addressed because it has been provided with an exemption by the minister. It is not an onerous obligation on a port authority to include a paragraph in its statement of corporate intent detailing which of the statutory provisions it has been exempted from reporting on. That is the least possible protection that should be afforded in order to maintain the integrity of this system of accountability.

Mr RIEBELING: I support the amendment. In fact, when we last dealt with this matter I suggested this as a solution and that the minister, when granting an exemption, should table in this Chamber the reasons for the exemption, in order to continue the transparency that is demanded if a port authority is going to be a commercial entity. A certain degree of propriety must exist concerning these matters. The Opposition's last amendment was not accepted. However, I ask the

minister to consider this one. It is not an onerous task for the minister. I say that because when the minister is asked to exempt an authority, the reasons that convinced him to grant the exemption would be clear in his mind, and also probably in writing, and the minister would simply say, "Yes, these are the reasons given by the authority. Therefore I grant the exemption." It may well be that the minister might appreciate being able to report on any matters that are not included in the statement of corporate intent. If a port authority does not comply, the reporting provisions may be a means by which the minister is able to give the authority a swift kick to make sure that it complies with the rules.

Mr OMODEI: The Government supports the amendment. Obviously members opposite are concerned about exemptions by the minister in relation to the statement of corporate intent. The Government sees no problem in having such exemptions noted in the statement of corporate intent of the relevant port authority.

Amendment put and passed.

Ms MacTIERNAN: I thank the minister for listening to our arguments and being prepared to agree to them. He will be receiving the Commission on Government elephant stamp.

Clause, as amended, put and passed.

Clause 61: Statement of corporate intent to be agreed if possible -

Mr RIEBELING: Clause 61 states -

> A board and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

What does that mean? What happens if a statement cannot be agreed? Presumably the board would still have to issue it. Then the minister would write a report on the deficiencies, as he sees them. I do not know what the words "must try" mean. Perhaps the member for Armadale will be able to tell me what that wording means with respect to an obligation on the board to bend to the minister's will, so to speak.

Mr OMODEI: I think the answer to the member for Burrup's question is in clause 63, where subclause (1) states -

> If the board of a port authority and the Minister have not reached agreement on a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the port authority and any subsidiary until a draft statement of corporate intent is agreed to under section 64.

Clause 65(2) states -

> The Minister may, by written notice, direct a board to modify the statement of corporate intent, and the board must comply with any such direction.

Clause 60(2) refers to the port authority's objectives, its major planned achievements, proposed arrangements to facilitate trade, estimates of revenue and expenditure, and so on. One would expect those things to happen fairly soon after the beginning of the financial year; therefore, the minister will have directive powers to make sure -

Mr Riebeling: Does the minister consider that most of the written instructions may revolve around community service obligations and the like?

Mr OMODEI: Not necessarily. If the statement of corporate intent is not ready on time or within a reasonable amount of time -

Mr Riebeling: I am talking about the content, not necessarily the time.

Mr OMODEI: I have just received advice that it may be that the minister does not agree with the pricing principles, or something like that, in the statement of corporate intent. He can send it back to the authority until he is satisfied.

Clause put and passed.

Clauses 62 to 66 put and passed.

New clause 67 -

Ms MacTIERNAN: I move -

> Page 41, after line 23 - To insert the following new clause -
>
> > **67.** (1) Notwithstanding any other provision in Division 2, each port authority must have its Statement of Corporate Intent laid before each House of Parliament or dealt with in accordance with section 133, before the Budget Appropriation Bills are tabled each year.

> (2) Either House of Parliament may require the members of the port authority, and the chief executive to produce to the House evidence of the financial or business affairs of the authority.

We are seeking here to give some content to the process by which a statement of corporate intent is to become the primary instrument of accountability and also to ensure that there is parliamentary scrutiny of this. Subclause (1) would require statements of corporate intent to be lodged with the Parliament at the time the budget papers were produced to the Parliament. Subclause (2) would enable the Parliament to call the relevant minister and the chief executive officers before the House, if it so desired, to give evidence, in much the same way as we do in the budget estimates procedures.

This is not fanciful stuff; this is born out of experience. The first issue is the process for the statement of corporate intent and what has been the experience. We have seen statements of corporate intent, for example, being provided in relation to the Water Corporation, AlintaGas and Western Power, all of which supposedly have an obligation to have these statements ready at the beginning of the financial year.

I will tell members a bit about the track record. The Water Corporation's 1996-97 statement of corporate intent was produced on 26 June 1997 - four days before the end of the financial year to which it was meant to apply! It improved its performance slightly the following year: It produced its 1997-98 report on 11 January 1998 - only six months late!

I turn now to AlintaGas. The Minister for Resources Development is in the Chamber; no doubt he is somewhat ashamed of the performance of AlintaGas, although it is not as bad as that of the Water Corporation. AlintaGas tabled its 1997-98 statement of corporate intent two months into the financial year, and it tabled its 1998-99 statement on 8 September - three months into the financial year. Western Power has tabled its statement of corporate intent a couple of months late in each of the past two years. Westrail tabled its last statement four months into the financial year to which it applied.

These statements of corporate intent are supposed to be available for scrutiny at the beginning of the financial year to which they apply, yet they are inevitably late, and in one notorious case, the statement was produced four days before the end of the financial year to which it applied. That makes the process meaningless. It is because we are concerned that this process will not provide the capacity for us to see in advance what the port authorities are proposing to do that we have sought to set a time limit on when these reports must be laid before the Parliament.

Mr THOMAS: I am enjoying listening to the comments of the member for Armadale and would like to hear more.

Ms MacTIERNAN: That is dangerous! Little men wearing white jackets may arrive -

Mr Omodei: - and take you away!

Ms MacTIERNAN: Yes! I thank the member for that kind comment. The second leg of our amendment is that once the document has been prepared, prior to the financial year to which it applies, and has been tabled in the Parliament, the Parliament must then have the right, as part of the general budget process, to ask both the minister and the chief executive officer of that organisation questions about its statement of corporate intent. The port authorities are listed within the budget papers where a capital appropriation has been made - although that will change with this move - and in theory the Parliament has been able, if it determines that is a priority, to call in the port authorities and question them about their operations for the year. I believe that, given the overall demands on the time of Parliament, this option will not be exercised frequently, and that each year only one port authority at the most will be required to give evidence as part of the estimates process. However, it is important that the Parliament have the capacity to question the Administration about these important tools of commercial development.

In adopting this commercialisation approach, we recognise the importance of government involvement in ports but, given our concern that the Government will still have some exposure to the way in which the ports are administered, the Parliament should have the capacity to scrutinise these agencies, in the same way that it has the capacity to scrutinise government departments. I look forward to hearing the minister's comments on this matter, because the statements of corporate intent are central to the process of accountability that the Government has said it is delivering as part of this legislation.

Mr OMODEI: The Government does not support the amendment, which seeks to make the statements of corporate intent subject to review, because it will not add in any significant way to the accountability requirements that are already in the Bill. Clause 60(2) outlines what must be specified in the statement of corporate intent. Clause 64(2) states -

> The Minister must within 14 days after agreeing to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 133.

Clause 61 states -

> A board and the Minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

That means either 30 June or 1 July. If we add to that the requirement under clause 64(2), the latest that the statement of corporate intent can be tabled in the Parliament is 14 July. In addition, the standing orders provide that the Estimates

Committee may institute inquiries at any time, including on the tabling of the statement of corporate intent. The requirement to provide annual reports is also provided for in clause 68, which states in subclause (1) -

> A port authority must prepare and deliver to the Minister in each year separate annual reports on the operations of the port authority and of each subsidiary in accordance with Schedule 5, clauses 34 and 35.

Subclause (2) states -

> All of the reports under subsection (1) are to be sent to the Minister at the same time.

Subclause (3) states -

> The Minister must within 21 days after the day on which a copy of an annual report of a port authority is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 133.

Mr THOMAS: We are talking about a very important aspect of this legislation: Accountability. The provisions in this Bill are similar to those which appear in the Electricity Corporation Act and the Gas Corporation Act, which constitute Western Power and AlintaGas respectively. The statements of corporate intent that are prescribed in this Bill are described in those Acts as major accountability measures. However, not once since the time that those Acts have been law has the Government complied with that requirement. I am pleased that the Minister for Resources Development is in the Chamber, because he may be able to add something to the debate. On every occasion that I have asked why these documents have not been tabled as prescribed the minister shrugs his shoulders and says, "I have achieved many great things in my time as minister, but that is one mistake I made when we prepared the legislation".

Points of Order

Mr BARNETT: I am perfectly willing to have this debate with the member for Cockburn yet again, but it has nothing to do with the Bill before the Chair.

Mr THOMAS: This is an accountability provision that is, broadly speaking, the model which the Minister for Energy brought into this Parliament for the Gas Corporation Act and the Electricity Corporation Act. This new clause is in almost the same terms, yet the Government has not been able to comply in other agencies.

The DEPUTY CHAIRMAN (Ms McHale): Members are well aware of the standing order which we try to apply with some latitude, particularly when a committee stage is going reasonably well. There is no point of order, but I will draw the member's attention to that order. Perhaps when the member is referring to measures of accountability, he will make his comments pertinent to the Port Authorities Bill.

Debate Resumed

Mr THOMAS: I am pleased that the Minister for Energy will be happy to debate this with me again, so let us have the debate yet again. If the minister does not want to do that, perhaps the Minister for Local Government who is at the Table will debate the issue on his behalf.

This Bill has the same requirements as those prescribed for Western Power and AlintaGas, yet not once have those bodies complied with the requirements. Perhaps the Minister for Local Government can answer, or his colleague the Minister for Energy who indicated he is happy to join the debate can answer.

The DEPUTY CHAIRMAN: The Minister for Local Government who is representing the Minister for Transport in this place will not be able to deal with matters outside his portfolio, and I will not allow the member to engage in debate with the Minister for Energy.

Mr THOMAS: My focus has been appropriately narrowed. Given that the Government has an appalling record of zero out of 100 for complying with the equivalent arrangements which are prescribed under the Electricity Corporation Act and Gas Corporation Act, how can the minister be confident that the relevant minister will comply with the almost identical requirements prescribed in this Bill? Those requirements are important. They have been deliberately designed to set out the corporate intent of the corporations, and they then constitute an index against which performance can be measured. Western Power now includes a statement of corporate intent as an appendix to its annual report. However, as the Minister for Energy knows, we do not get the statement of corporate intent until the year to which it relates is well underway. In that sense it is not achieving the intent for which it is designed. By its nature the statement of corporate intent is a prospective not retrospective document, and if it is not able to be produced in the time prescribed, it is less useful than it is intended to be.

Mr OMODEI: I have tremendous confidence in the Minister for Transport. Clause 61 says clearly that a board and the minister must try to reach agreement on a statement of corporate intent as soon as possible and, in any event, not later than the start of next financial year. Clause 64(2) states that the minister must within 14 days after agreeing to a draft statement of corporate intent lay a copy before each House of Parliament. We cannot be much more specific than that.

Mr THOMAS: I am pleased to have the minister once again read those words to me, and, as he says, he cannot be much more explicit than that. It says this shall be done and presumably if it is not done the people concerned, the minister and the board, are in breach of the Act. However, the Minister for Energy does it year after year.

Mr Omodei: That has nothing to do with me or this Act.

Mr THOMAS: The Minister for Local Government is a member of Cabinet. When I have raised the matter with the Minister for Energy he has shrugged his shoulders and said, "I did a great job but that is one of the things that has proved to be impractical."

Mr Omodei: It must have been an aberration.

Mr THOMAS: It is a persistent aberration as this is the fourth year now.

Ms MacTiernan: It is also the case with Westrail and the Water Corporation.

Mr THOMAS: Yes. Having had that experience, why is the Government rolling up with this legislation again in relation to a different government trading enterprise? Western Power and AlintaGas have found it impossible to comply with the Government's prescribed standards of accountability, yet the Government rolls up with it once again, and says it is explicit.

Ms MacTIERNAN: We have established clearly that the performance of the Government in meeting its requirements to produce the statement of corporate intent has been most unsatisfactory. Will the minister repeat what he said earlier about the capacity of the Estimates Committee to scrutinise these organisations? I want to make this clear as, obviously, we may want to exercise that power. We want to ensure that the minister is clear about this, so when we attempt to do it we will be permitted to do so.

Mr OMODEI: My understanding is that the Parliament has the ability under Standing Order No 4 of the Estimates Committee to institute inquiries at any time including the tabling of the statement of corporate intent.

Ms MacTiernan: Does that also involve calling the chief executive officer to answer questions on the activities of the port authority?

Mr OMODEI: That normally happens in the estimates committee, does it not?

Ms MacTIERNAN: Yes. However, my concern, and why we are keen to have it expressly put in this legislation, is that we have seen very shonky practices occur in relation to Westrail. Westrail was not corporatised, yet it was taken out of the budget process. When the Department of Transport came in to the Estimates Committee and we sought to ask questions about major expenditure items in the Department of Transport's budget related to Westrail - we are talking about sums in excess of $100m - we were told initially by the Treasurer that because Westrail was corporatised, which it was not, it had been taken out of the process and therefore it was not able to be scrutinised by the Parliament. That is an appalling state of affairs. If what the minister says to us today is correct, many of my concerns about this process will be allayed. However, I want that guaranteed by the minister. If that is the case, the concerns we have outlined are not as severe as we thought.

Mr OMODEI: The member for Armadale knows that all government departments that receive funds from the consolidated fund are subject to the scrutiny of the Estimates Committee.

Ms MacTiernan: Yes, but these are not going to receive funds from consolidated revenue.

Mr OMODEI: Some may, some may not. Where there is a community service obligation, obviously it will.

Ms MacTiernan: However, if there is a CSO, there will be no capacity to bring them before the Estimates Committee.

Mr OMODEI: If departments have no CSO and no call on consolidated funds, that is correct, as with other corporate bodies such as the Water Corporation.

Ms MacTIERNAN: Does the minister understand how this operates? In the case of Westrail into which very large sums of consolidated revenue are poured, we found that the way in which they are described in the budget papers actually isolated Westrail from scrutiny; for example, the Department of Transport now claims that it is "purchasing" these services from Westrail, therefore it is not money going to Westrail, it is money going to the Department of Transport and the Department of Transport is not able to answer questions on the operation of Westrail. Therefore, $112m is going to Westrail annually with no capacity to scrutinise the agency about that. The CSOs that the minister talked about are seen as part of the Treasury budget. Again, Westrail does not come in. The only person whom we can ask questions of about the performance of the CSOs at Westrail is the Treasurer. Westrail has managed, notwithstanding the fact that it is getting in excess of $150m of government money each year, to put itself in a position where it cannot be scrutinised.

Mr Omodei: I find it strange that it is not possible to scrutinise an organisation over its CSOs. Members of Parliament can obviously question the Treasurer or the Minister for Finance about the CSOs. They would have to be able to do that because there would be a draw on the consolidated fund. However, if they chose not to do so, that is up to them.

Ms MacTIERNAN: No, it is not that we choose not to do it. We are told that they do not come in any more because the CSO appears on the Treasury budget. The draw is through the Treasury budget and, therefore, it is not open for discussion.

Mr Omodei: You still have not convinced me to pass this amendment.

Ms MacTIERNAN: I can see that. Can the minister clarify the standing orders he referred to? Were they standing orders of an Legislative Assembly committee or a Legislative Council committee?

Mr Omodei: I can clarify that. I do not have that information.

Ms MacTIERNAN: Was the minister not just reading from them?

Mr Omodei: I was reading, "the ability under existing standing orders of the Estimates Committee". I am not sure whether that is the upper House or lower House, or both. I will clarify that.

Ms MacTIERNAN: Given the limited time, we will not continue with this debate. We have made the point about the statements of corporate intent. We will be interested in getting feedback from the minister on the powers of the Estimates Committee although, as I say, the experience with Westrail has shown that notwithstanding very large lumps of government money going into it, it has managed to insulate itself from proper parliamentary scrutiny through the estimates process. Perhaps with a new minister, we might have a more open approach.

Amendment put and negatived.

Clause put and passed.

Clause 68 put and passed.

Clause 69: Contents of annual reports -

Ms MacTIERNAN: I move -

> Page 43, after line 26 - To insert the following -
>
> (e) details of all payments and remuneration made to each of the directors of the Board of the port authority.

Clause 69, which we generally support, outlines all the matters which need to be listed in the annual report. One of the things that it does not list is remuneration to directors. In line with the disclosure requirements of the Corporations Law, we should require the port authorities to specify the remuneration that is paid to directors. I note that this is in fact already done in some of the agencies. I am curious to know why this has been omitted in this instance. Before we continue with the debate, can the minister explain why such a requirement has been omitted in the Bill for the port authority? As I understand it, in most publicly listed companies the remuneration that is paid to directors must be disclosed. The Bill refers to empowering directors in the same way, giving directors the same accountability and responsibility that we give to directors of private corporations. It is, therefore, important to have a similar provision of disclosure of the remuneration paid to the directors.

Mr OMODEI: The Government does not support the amendment. It will add another reporting requirement and will place another burden on port authorities which is neither justified nor in keeping with requiring them to act commercially, as required by the provisions of clause 34. More important, no similar provision is applied to any private business which may choose to enter a similar field.

Mr Riebeling: Is there an obligation to advise shareholders of what directors are paid?

Mr OMODEI: Not individually.

Ms MacTiernan: There is in publicly listed companies.

Mr OMODEI: Individual payments to persons?

Mr Riebeling: Yes. Could you find out what the chairman of Broken Hill Proprietary Co Ltd is paid?

Mr OMODEI: One has only to read the paper.

Mr Riebeling: If you were a BHP shareholder, you would know.

Mr OMODEI: It is a question of competing on an equitable basis with other organisations in the stevedoring business.

Mr Riebeling: As it is their asset, don't you think the people of Western Australia would like to know how much people are being paid to direct that asset?

Mr OMODEI: We have already talked about directors being paid separately and those accountability measures. Does the member have to know every single detail?

Mr Riebeling: No, just how much.

Mr OMODEI: How much in total or individually?

Ms MacTiernan: Minister, when this amendment was drafted we did not know that clause 10 would be amended. I have been conferring with one of my Legislative Council colleagues about how these matters operate in the private sector. Generally a lump-sum remuneration is listed, not remuneration in respect of each director. I propose to amend the amendment.

Mr OMODEI: I was about to say what the member for Armadale said. I suggest the words "of all payments and" and "each of" be deleted so the amendment reads "details of remuneration made to the directors of the Board of the port authority".

Ms MacTiernan: Why do you want to take out "payments"?

Mr OMODEI: It covers meal allowances and that sort of thing. Surely it would not be necessary to include that.

Ms MacTiernan: I am not saying that we need to itemise it, but we need a lump sum.

Mr OMODEI: We are talking about details of remuneration made to the directors of the board of the port authority. Surely that is adequate.

Ms MacTiernan: Yes. It is progress and I am prepared to accept it.

Amendment, by leave, withdrawn.

Mr RIEBELING: The minister mentioned meal allowances and the like. The minister said those matters would not be included in remuneration. I am not sure whether he said it would be provided as a bulk figure.

Mr Omodei: What we would do is give a figure of the bulk salary not including out-of-pocket expenses.

Mr RIEBELING: As members are aware, the meal side of remuneration for City of Perth councillors was huge. It went into hundred of thousands of dollars.

Mr Omodei: The maximum was $50 000-odd; it was over the top.

Mr RIEBELING: Yes. Allowances of that nature can be abused. I am not saying they will be abused and there is little chance of it, but when we are putting in place a statement of what the directorship of the board authority costs, it would not take a great deal to say, "Directors' fees $X, out-of-pocket expenses $Y."

Mr Omodei: Keeping track of these tiny things is quite onerous. We are talking about ensuring that these people are competitive with other subsidiaries.

Mr RIEBELING: I know, but if they are professional and competitive, their balance sheets would contain that information. One of the items would be expenses. It would not take any more effort than pressing a button on a computer to produce the total.

Mr Omodei: It is not done in the private sector so why do it when we are trying to commercialise these people?

Mr RIEBELING: We are talking about government and there must be a higher degree of accountability in government. All these payments should be accounted for. The minister is indicating that they will be small sums so there is no major problem. If the Dampier Port Authority spends $400 and the Geraldton Port Authority $20 000, even the minister may want to ask about the discrepancy. It is a simple mechanism.

Mr Omodei: Don't you think you are going too far? Next you will be asking how much pocket money they will get.

Mr RIEBELING: They will not be getting any unless it is included in the directors' fees.

Ms MacTIERNAN: I note that Western Power goes into far more detail than has been suggested here. When we drafted the original amendment we were concerned about matters that have been dealt with. The member for Burrup has a point about not limiting the details to remuneration. We want to work out for the public and the consumers how much it costs to pay directors to operate the port authority. I am not suggesting that we need to detail each line item. At the end of the day I am interested in the overall cost. We do not need a detailed description of how much was paid for what.

My suggestion is to take out the word "details" and substitute "include total value of payments of remuneration made to the directors of the board". It would not include the expenses incurred in the board putting on a lunch or the sorts of things of which the board might partake. We are talking about the moneys paid to the directors, not the fringe benefits. That is far less onerous that the requirement placed on Western Power which needs to specify how many directors are receiving moneys in different salary ranges. We are looking at something far less onerous but which will provide a degree of accountability. In this way we will know how much money has been paid to the directors, which is important, given that they will have a fair amount of autonomy. Will the minister accommodate the amendment?

Mr Omodei: We will try.

Ms MacTIERNAN: I move -

Page 43, after line 26 - To insert the following -

(e) include details of total value of payments and remuneration made to directors of the Board of the port authority.

There is no requirement now for information to be provided on directors' remuneration and only a simple lump sum figure needs to be included.

Mr OMODEI: I cannot see a problem. Obviously the Opposition is concerned again about some accountability measure and wants to make sure that an authority's directors' remuneration is covered. I am prepared to agree to the amendment moved by the member for Armadale, which refers to the total payment and remuneration and not necessarily specific remuneration for each director. I was thinking about some of the matters that were going through her mind. Overseas travel and most other payments would be picked up in the annual report.

Ms MacTiernan: One day we will be in government and you will be in opposition. You will want to be able to draw these things down.

Mr OMODEI: I will be watching the member very closely.

Mr RIEBELING: I congratulate the minister on acceding to the amendment. One of the benefits of the amendment would be that if the payments to directors are out of kilter with the importance of the volume of work that the port authority performs, it will be easily identifiable. For example, if the Albany Port Authority pays more to its directors than the Fremantle Port Authority does to its directors, one could ask why it is justifiable.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 70: Deletion of commercially sensitive matters from reports -

Mr RIEBELING: I understand the need in many cases for the hiding or deletion of commercially sensitive information.

Mr Omodei: It is not a question of hiding; it is a question of competition.

Mr RIEBELING: Would the minister be happy with the word "deleting"? It makes accountability and scrutiny of the operation just that much harder, especially from the point of view of the Opposition. Even if people do not like the role that the Opposition plays because it seems so negative, one of its roles is to scrutinise the accounts of government trading authorities to make sure that all is above board. When commercially sensitive material is deleted, it makes that task all that much harder to do. The Auditor General has commented on the ever-increasing number of government transactions that are not able to be looked at because of their commercial sensitivity. Ever-increasing amounts of money running into billions of dollars per annum are not able to be scrutinised to the same degree as previously. I am convinced that the general public is not aware that Oppositions - and therefore the public - will be unable to scrutinise what is going on inside government trading authorities, such as port authorities, after this Bill goes through. I am not sure whether the Auditor General made any comment about port authorities in his last report, but on accountability issues he has been consistent in his criticism of the ever-increasing volume of legislation, such as clause 70, which makes it difficult for even him to get a handle on exactly what government authorities are doing. I would be more than happy to stop talking if the minister can convince me that the Auditor General will have complete access to the financial transactions of the port authorities.

Mr OMODEI: The member is jumping at shadows. The Auditor General has access to all of the books of the port authorities. If the minister complies with a request under subclause (1), the copies of the report must include a statement that a matter of a commercially sensitive nature has been deleted from it. He must put a notice in the annual report. The annual report must comply with Corporations Law which provides that commercially sensitive material can be deleted. This is not unusual and it happens all the time in the private sector. It is not only covered under Corporations Law and the requirement under this clause to make a notation on the annual report but also the Auditor General has total access to the activities of the port authorities.

Ms MacTIERNAN: We have effectively had the debate on this matter during the interpretation provision when the Opposition attempted to insert a definition of "commercially sensitive". I reiterate, as mentioned by the member for Burrup, our deep concern that the term commercially sensitive has been vastly overused. Although we recognise genuine commercially sensitive issues, the term should be defined to ensure that its limitations are clear. Given the guillotine is about to drop and chop up the democratic process, I will not prolong debate.

Clause put and passed.

Clauses 71 to 95 put and passed.

Clause 96: Port authority to approve pilots and ensure that pilotage services are available -

Mr OMODEI: I move -

Page 63, lines 4 to 6 - To delete the lines and substitute the following -

(5) A port authority is responsible for ensuring that pilotage services are provided in its port -

(a) by the port authority;

(b) if regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, by a person who holds such a licence; or

(c) partly under paragraph (a) and partly under paragraph (b).

(6) A reference in subsection (5) to pilotage services provided by the port authority includes a reference to pilotage services provided under a contract or arrangement under section 35(2).

(7) Despite section 37, any charges for pilotage services provided in a port -

(a) are to be determined in accordance with the regulations; and

(b) are to be paid to the port authority, irrespective of how or by whom they are provided.

(8) If regulations under section 143 provide that a person providing pilotage services in the port needs a licence referred to in that section, subsection (7) does not apply in relation to pilotage services provided by a person who holds such a licence.

This provision gives the port authority the power to approve a competent person as a pilot for the port. It will make the port authority responsible for ensuring that at least one approved pilot is available for the port at all times. It also makes it an offence for a person to act as a pilot in a port unless the person is approved as a pilot for the port. A penalty is provided should this offence occur. The port authority is responsible for ensuring that the pilotage service it provides, or which is provided by another person, for example, a company, is available to the extent that services are needed in the port. It will remain the responsibility of a port authority to ensure the provision of a pilotage service within that port. The amendment will give the port authority flexibility to provide the service either in its own right, through a contractor or by way of licensees. Where the services are provided by the port authority or the contractor, the fee for those services will be prescribed in regulation and collected by the port authority. When the service is provided by a licensee, fees will be determined by private treaty.

Mr RIEBELING: Could the Minister enlighten us on how the provision changes the existing situation? Forgive me for being cynical about the minister's motives, but inevitably this sort of legislation reduces the benefits to existing positions in the working arm of the port authority, be it to pilots and crews. Usually such provision results in a reduction in the number of pilots and crews. Will the emphasis on having "at least one approved pilot" be the same as the requirement currently in place? Also, it refers to the setting of wages.

Mr OMODEI: The clause has nothing to do with the setting of wages. This provision will not affect what is currently in place. It will add flexibility because different port authorities have different ways of providing pilotage. Under this provision, they will be able to provide services in their own right, through a contractor or by way of licensees.

Ms MacTiernan: Basically, it will allow you to contract it out.

Mr OMODEI: They already contract out. It will give the flexibility to do it by the authorities' own pilotage, contractors or licensees.

Mr Riebeling: What happens at Fremantle?

Mr OMODEI: Fremantle already contracts out. It will give more flexibility.

Mr Riebeling: How many pilots are in Fremantle?

Mr OMODEI: Between 14 to 16.

Mr Riebeling: The provision reads "at least one"; what will be the impact on Fremantle?

Mr OMODEI: The authority will have at least one!

Mr Riebeling: Do you envisage a reduction, say, in 10 pilots?

Mr OMODEI: An emphatic no.

Amendment put and passed:

Clause, as amended, put and passed.

Clauses 97 to 99 put and passed.

Clause 100: Immunity from liability for pilot's negligence -

Ms MacTIERNAN: This is an extraordinary provision. The State, port authority, the approved pilot and his employer will not be liable for any loss or damages which may arise from an act or omission by a person approved as a pilot by a port authority in the conduct of navigation of a vessel. A private pilot could go off his scone at the local public bar, and take out a ship which he sinks and he would have no responsibility. I cannot believe that the clause is as bad as it appears at first blush. I seek an explanation. Major loss could be involved. Presumably, it will still be covered by WorkSafe, which raises implications. Potentially, major losses by a shipping company or other affected vessels could occur. Why do we say that pilots can be as negligent as they like, but they will not be required to be responsible for their actions?

Mr OMODEI: I am told that this provision has existed in the Pilots' Limitations of Liability Act since the early 1800s. Under maritime law, the master of a ship is in charge at all times and the pilot only gives advice. This occurs all around the world. Obviously, if we did not have such a clause, we would not get any pilots.

Ms MacTIERNAN: I am not sure that that is true. Professional indemnity insurance would be available for pilots. I cannot see that it would mean that people would not be prepared to do the job. That argument would mean that people would not be prepared to be obstetricians.

Mr Omodei: Who will pay the premium?

Ms MacTIERNAN: The same people who pay the premium at the moment. I am not proposing to oppose this clause now the minister has given me that explanation, although I am not convinced by it. I trust that the minister is giving me truthful advice. If this is an existing and international provision, it would be wrong for me to seek to change it without thoroughly researching the matter. I certainly would not be prepared to do anything as cavalier as that. We will not oppose it. However, I flag -

Mr Omodei: You are a doubting Thomasina!

Ms MacTIERNAN: I am not. I have asked a question, and I will accept the minister's answer. I accept also that given that that is the case, it would be inappropriate, without a proper and lengthy study of the issue, to move to have it changed. However, I am surprised by that practice, and I suspect that although the concept of professional indemnity insurance was not in vogue in 1801, or whenever this was first introduced, times have moved on and that problem could now be dealt with.

Mr OMODEI: To satisfy the member and me, I will have my advisers double-check that and will send her a copy of that advice.

Ms MacTiernan: I believe you, but I am more interested in whether this issue has come up for discussion and whether there has been any attempt to amend the practice in this area.

Mr OMODEI: I give the member a commitment to follow up that matter and obtain advice.

Clause put and passed.

Clauses 101 to 132 put and passed.

Clause 133: Supplementary provision about laying documents before Parliament -

Mr OMODEI: I move -

Page 79, line 25 - To insert after "section" the following -

35(5),

Page 79, line 25 - To insert before "72(2)" the following -

68(3),

Page 79, line 26 - To insert after "8(7)" the following -

or Schedule 3, clause 33(6) or 37(1)

Various clauses, including clause 68(3), require documents to be laid before the Parliament. This clause makes provision for the administrative arrangements in respect of the filing of documents with the Clerk. However, due to an oversight,

clause 68(3), annual reporting requirements, schedule 5, clause 33(6), order by the Treasurer, and schedule 5, clause 37(1), audit by the Auditor General, were inadvertently omitted. These amendments will address that anomaly.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 134 to 140 put and passed.

Clause 141: Adoption of other laws, codes etc. -

Mr OMODEI: I move -

Page 83, line 23 - To insert after "as" the following -

the International Maritime Organization,

Australia is a member of the International Maritime Organization, which is the pre-eminent body for the setting of accepted standards in the marine industry. This amendment will rectify the omission of that organisation.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 142 to 144 put and passed.

Schedule 1 put and passed.

Schedule 2: Provisions about the constitution and proceedings of boards -

Mr OMODEI: I move-

Page 89, after line 11 - To insert the following -

(4) Despite section 10(2) -

(a) the chairperson is to be paid out of the funds of the port authority such additional remuneration and allowances as are determined by the Minister; and

(b) the deputy chairperson is to be paid additional remuneration and allowances out of the funds of the port authority if, and to the extent that, the Minister so determines.

Amendment put and passed.

Schedule, as amended, put and passed.

Schedule 3: Provisions about duties of CEO and staff -

Ms MacTIERNAN: I move -

Page 96, after line 4 - To insert the following -

(3) It shall be a defence to a charge laid, pursuant to paragraph (1), that it was in the public interest to disclose the information which is the subject of a charge.

This amendment provides a protection for whistleblowers. Clause 5 provides that an officer or former officer of a port authority must not make improper use of information acquired by virtue of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person, or to cause detriment to the port authority. It is a matter of some notoriety that this Government, notwithstanding its claim to want to present open and accountable government, has taken very draconian measures against whistleblowers. In no case have we seen this displayed more clearly than in the case of the Matson report of Main Roads WA. That report was not a commercially sensitive document; the release of that report did nothing to jeopardise the commercial interests of anybody, including Main Roads, and it certainly did not jeopardise the interests of any third parties; and that report did not provide for the gain or benefit of the person who leaked it.

We accept that if people use commercially sensitive information for an improper purpose, some limitation must be placed on the openness of that documentation. However, we do not accept that this clause is adequate. In our view, this clause contravenes the recommendations of the Royal Commission into Commercial Activities of Government and Other Matters, and of the Commission on Government.

Mr RIEBELING: I would like to hear more about what the member for Armadale is saying about this schedule.

Ms MacTIERNAN: The Royal Commission into Commercial Activities of Government and Other Matters identified that

the legislation currently governing secrecy within the public sector was completely inappropriate for the modern age, and recommended an extensive review of those requirements to encourage openness within government. This matter was referred for consideration to the Commission on Government, which made a series of recommendations. Fundamentally, COG recommended that data be classified into two categories - protected and unprotected. Guidelines need to be established on the basis that data is to be protected. Clearly, commercial contracts and personnel files would be classes of documents that should be protected. Criticism of government policy would not be protected data.

Having made that distinction, and having introduced that system of classification, the secrecy provisions should apply only to protected data. Unfortunately, the Government, which was in opposition in the 1980s and was so concerned about openness, accountability and government secrecy - I understand those concerns - has completely changed its tune since getting into government. It has not acted on the recommendations of the Commission on Government, and we are still stuck with an antiquated system of secrecy laws which are no longer appropriate.

The notion of causing detriment to a port authority will be a contentious issue, and the Opposition is not suggesting that. However, there will be times when the public needs to know information, and we should make a distinction between protected and unprotected data. We cannot make those sorts of extensive changes by tacking something on to this legislation. However, we must recognise the failure of the Government, and my proposal, while it does not do the complete job, will provide some amelioration of the situation. Proposed new paragraph (3) will provide a defence to a charge laid pursuant to paragraph (1). The secrecy provision will be retained, but the defence to that charge is that it was in the public interest to disclose the information which is the subject of the charge. If a person charged with an offence can demonstrate that they were not motivated by a desire for personal gain or to harm the port authority but rather it was in the public interest, that constitutes a defence to a charge that has been laid under that provision. That is completely in accord with the recommendations of the Royal Commission into Commercial Activities of Government and Other Matters and of the Commission on Government. It is hard to see how the Government could defend any opposition to this proposal, because it simply seeks to give some defence where a person has acted in the interests of the public.

Mr OMODEI: The Government does not agree to the amendment. The appropriate venue for concern about the propriety of actions of an authority is the Anti-Corruption Commission. The provision deals with the improper use of information, and there should be no defence involved. If the member's amendment were to proceed any disgruntled employee could destroy the authority's competitiveness by releasing information.

Ms MacTiernan: How would that be in the public interest?

Mr OMODEI: The member for Armadale is saying that the release of the information must be in the public interest. However, under that guise, a range of information could be released. Sufficient mechanisms are available via the Estimates Committee, the Parliament, and the statement of corporate intent; or, alternatively, by way of complaint to the Anti-Corruption Commission.

Ms MacTIERNAN: The minister has failed to grasp the proposition contained in the amendment. The minister's criticism would be valid if we said that a defence to the charge was that the person claimed it was in the public interest. However, we are not saying that. We are saying that a person who releases that information would be charged. The matter would then go to court and that person would have to establish in an objective way that the release of the information was in the public interest. It is not a question of the person saying only that it was done in the public interest; they must demonstrate that it was in the public interest that such information was released.

Mr Omodei: That does not occur in the Public Service. Public servants do not have that defence, so why should an employee of an authority?

Ms MacTIERNAN: No, and I said that the situation in the public sector is basically unacceptable. It has been found to be unacceptable by the royal commission and the Commission on Government, but the Government has not sought to change it. The Opposition knows it cannot rewrite the Public Sector Management Act here, nor can it set up in this provision something that reflects more closely the recommendations of the Commission on Government to set up classificatory guidelines.

Mr Omodei: You have not commented on the access to the Anti-Corruption Commission.

Ms MacTIERNAN: Because a lot of this is not a matter of corruption. For example, the person who leaked the Matson document could not go to the Anti-Corruption Commission to say that Main Roads intended to contract out, but a policy document said that would be a bad thing. It is not a matter of corruption, but it would be in the public's interest to know the impact of a government policy. The Bunbury Port Authority is proposing to contract out stevedoring services. If a senior person within the port authority wrote a report saying that this would have dire concerns, one cannot lodge a complaint with the Anti-Corruption Commission.

Mr Omodei: If tomorrow the member for Armadale were in government would she allow her employees to run around willy-nilly giving out information of that kind?

Ms MacTIERNAN: If a public servant is inappropriately giving out information, he or she will be charged. However, they would have a defence if it were done in the public interest. The Australian Labor Party has learnt from the 1980s, and we admit that mistakes were made. We would implement a far more open system of government. We realise it is crazy to go down this road to keep these things secret; it does not work and it creates more problems for the Government. We do not have mates to pay off with contracts, so we are not going to have the same need for the level of secrecy in which this Government engages. That is why we are not opposing the legislation, but we are seeking to provide something better.

The minister has not answered my question on why the principles of the Commission on Government have not been incorporated into this Bill.

Mr OMODEI: I am only repeating myself in saying that the appropriate venue for the concerns about the propriety of actions of an authority is the Anti-Corruption Commission.

Mr RIEBELING: I think the member for Armadale has explained that what the Opposition is attempting to do is not necessarily to do with corruption.

Mr Omodei: You are trying to wreck a few port authorities.

Mr RIEBELING: No, we do not wreck them. We want them to operate in a transparent manner.

The CHAIRMAN: The time has arrived for the completion of all remaining stages of this business and under the sessional order every question necessary to complete the business must be put without further debate or amendment.

Amendment put and negatived.

Schedule put and passed.

Schedules 4 to 7 put.

The CHAIRMAN: Order! The question is that the amendment standing on the notice paper in the name of the minister, schedules 4 to 7, as amended, and the title of the Bill, be agreed to, and that I do now leave the Chair and report the Bill with amendments.

Question put and passed.

Amendments agreed to under the foregoing resolution were as follows -

Schedule 5

Page 127, line 26 to page 128, line 14 - To delete the lines and substitute the following -

(6) Where the Treasurer makes an order under subclause (2), the Treasurer is to cause the text of the order to be laid before each House of Parliament or dealt with under section 133 within 14 days after the order is made.

Page 131, line 1 - To delete the lines and substitute the following -

be laid before each House of Parliament or dealt with under section 133 within 14 days after

Page 131, line 9 - To delete "36" and substitute "35".

Schedule 6

Page 142, line 2 - To delete "business" and substitute "contract".

Page 142, line 11 - To delete "agreement" and substitute "contract or arrangement and section 96(7) does not apply in relation to pilotage services so provided".

Report

Bill reported, with amendments.

The DEPUTY SPEAKER: The time arrived while we were in Committee for the completion of all remaining stages of this business. I am required under the sessional order to put every question to complete the business without further debate or amendment.

Report adopted.

Third Reading

Bill read a third time and transmitted to the Council.

PORT AUTHORITIES (CONSEQUENTIAL PROVISIONS) BILL

Second Reading

Resumed from 18 June.

The DEPUTY SPEAKER: The time has arrived for completion of all remaining stages of this business, and under the sessional order every question necessary to complete the business must be put without further debate or amendment. The question is that the Bill be now read a second time.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and transmitted to the Council.

MARITIME FEES AND CHARGES (TAXING) BILL

Second Reading

Resumed from 18 June.

The DEPUTY SPEAKER: The time has arrived for completion of all remaining stages of this business, and under the sessional order every question necessary to complete the business must be put without further debate or amendment. The question is that the Bill be now read a second time.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate and transmitted to the Council.

BILLS - RECEIPT AND FIRST READING

1. Bail Amendment Bill.

2. Acts Amendment (Video and Audio Links) Bill.

Bills received from the Council; and, on motions by Mr Barnett (Leader of the House), read a first time.

ADJOURNMENT OF THE HOUSE

MR BARNETT (Cottesloe - Leader of the House) [5.41 pm]: I move -

That the House do now adjourn.

The sessional order applied to the two associated port authorities Bills. I inform members that, with cooperation, the major Bill was completed and that we had a total of nine hours' debate on it, which is a fair result.

Question put and passed.

House adjourned at 5.42 pm

QUESTIONS ON NOTICE

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

EDUCATION

Budget Allocation for Science Projects

386. Mr BROWN to the Minister for Education:

Will the Minister advise how much has been allocated in the Education budget to continue to implement science projects in schools?

Mr BARNETT replied:

The Education Department implemented a strategic initiative, the Science Project, for the three years 1995-97 to identify and implement strategies to assist teachers to improve their provision of science education in schools. Funding for this Project was directed to provide professional development for teachers. From 1998, science is one of the eight learning areas being implemented in the Curriculum Improvement Program over the five-year period 1999-2003. The following allocation of funds has been made for implementing this Program in 1998/99 -

$3.1095 million to the Cross Curriculum Branch of Central Office

$1.345 million direct allocation to Districts

$1.09 million to Education Department as a proportion of the Curriculum Council monies for implementation of the Curriculum Framework.

Examples of specific funding for science initiatives -

Teacher secondments: Three teachers are currently seconded to the Scitech Discovery Centre, the Water and Rivers Commission and the Tammin Landcare Centre, and are funded by the Education Department to provide support for teachers of science.

Australian Academy of Science Symposium: A teacher was funded to participate in the Australian Academy of Science Symposium in Canberra in 1998.

Regional Science Technicians: A total of $34 838.33 is allocated to seven senior high schools for regional science technicians to purchase specialised equipment and to provide support for laboratory assistants in other schools.

Research: In 1997 the Department contributed a one-off payment of $35 000 towards a research project that will extend over three years and that aims to identify and document examples of integration of science, mathematics and technology in the middle years of schooling.

In addition, the Education Department continues to promote science through competitions, a focus on technology, and opportunities for travel by staff and students to attend conferences and special events.

GOVERNMENT DEPARTMENTS AND AGENCIES

Act of Grace Payments

837. Mr BROWN to the Minister for Lands; Fair Trading; Parliamentary and Electoral Affairs:

(1) In the -

(a) 1996-97 financial year; and
(b) 1997-98 financial year

did the Minister approve any act of grace payments up to a maximum of $2,000 from any department or agency under the Minister's control?

(2) Who were such payments made to?

(3) What was the amount of each payment?

(4) In the -

(a) 1996-97 financial year; and
(b) 1997-98 financial year

did the Minister seek the Treasurer's approval for any act of grace payments between the amount of $2,000 and $50,000 from any department or agency under the Minister's control?

(5) What was the amount of each payment?

(6) Who was each payment to be made to?

(7) What was the purpose of each payment?

(8) In the -

(a) 1996-97 financial year; and
(b) 1997-98 financial year

did the Minister seek approval from the Treasurer and/or Governor to make any act of grace payments over $50,000 from any department or agency under the Minister's control?

(9) How many such payments were approved?

(10) How many such payments were made?

(11) What was the amount of each payment?

(12) To whom was each payment made?

(13) What was the reason or purpose of each payment being made?

Mr SHAVE replied:

WESTERN AUSTRALIAN ELECTORAL COMMISSION

(1) No.

(2)-(3) Not applicable.

(4) No.

(5)-(7) Not applicable.

(8) No.

(9)-(13) Not applicable.

LANDCORP

(1) The Minister did not approve any ex-gratia payments in 1996/97 and 1997/98.

(2)-(13) Not applicable.

DOLA

(1) (a) Yes.
(b) No.

(2)-(3) (a)

Michelle Ellis	$119.00
Thomas Asbridge	$82.95
Vanessa Jones	$150.00
Paul Dean	$59.95

(b) Not applicable.

(4) (a)-(b) Yes.

(5)-(6)

(a)	$44,000	Dainford Holdings Pty Ltd
(b)	$30,717	BJ and RC Thompson
	$3,000	Pre-Loved Transportable Homes Pty Ltd

(7) The payment to Dainford Holdings Pty Ltd was compensation for the granting of an easement over land registered in the company's name. The payment to BJ and RC Thompson was for costs incurred by BJ & RC Thompson due to DOLA's incorrect zoning of an auctioned property. The payment to Pre-Loved Transportable Homes Pty Ltd was compensation for the resumption of the owner’s land. The resumption being as a consequence of a surveying error made by a DOLA contracted surveyor.

(8) (a)-(b) No.

(9)-(13)
Not applicable.

MINISTRY OF FAIR TRADING

(1)-(3) Yes.

Michael Cain	$ 330.44	1997/98
R Deardon	$ 949.76	1997/98
K Smith	$ 220.00	1997/98
M Adams	$ 2,000.00	1997/98

(4)-(6) Yes.

Ventura P/L	$ 3,278.50	1996/97
F.W. Cocks	$ 18,570.87	1997/98

(7) The reason for the payment to Ventura P/L was an incorrect registration approved by the Business Names Branch. The registration was subsequently cancelled and the payment related to reimbursing the proprietor for monies spent on the registered name and other associated costs. The reason for the payment to F.W. Cocks was to reimburse him for the costs associated with an action for a claim of monies from a fund controlled by the Real Estate and Business Agents Supervisory Board.

(8) No.

(9)-(13)
Not applicable.

JOY 98 YOUTH FESTIVAL

899. Ms ANWYL to the Minister for Youth:

(1) In reference to the JOY 98 youth festival run by the Office of Youth Affairs, has there been a formal evaluation process for JOY 98?

(2) What are the names, addresses and occupations of the people involved in the evaluation process?

(3) If there has not been an evaluation process, why not?

Mr BOARD replied:

I am advised that:

(1)-(2) All schools which visited the event were requested to complete a survey questionnaire. The questionnaire provided feedback on how the event was organised, and the range and standard of the activities, and suggestions if a similar event were to be held in the future. Comments were generally very positive about all aspects of the event.

(3) Not applicable.

JOY 98 YOUTH FESTIVAL

900. Ms ANWYL to the Minister for Youth:

I refer to the JOY 98 youth festival run by the Office of Youth Affairs and in estimates regarding attendance it was reported that 80,000 young people attended over the four day period -

(a) how was this number measured;
(b) does this number include primary school children who attended;
(c) what number of primary school children attended the festival on the first two days; and
(d) what were the ages of the primary school children who attended?

Mr BOARD replied:

(a) The attendance figure is an estimate. This figure was determined using accepted techniques for estimating attendance at public events, including formal bookings, consumption of refreshments, feedback from exhibitors, the level of participation in activities, advice from security at the main entry and exit points and observation.

(b) Yes.

(c) An estimated 2000.

(d) Year 7 (approximately 12 years).

JOY 98 YOUTH FESTIVAL

901. Ms ANWYL to the Minister for Youth:

I refer to the JOY 98 youth festival run by the Office of Youth Affairs, which targeted the 12 - 25 age range -

(a) given this age range, why were primary children in attendance on the first two days;
(b) were this age group given access to resources aimed at young people aged 12 - 25;
(c) if so, why;
(d) what were the costs for the contracted conference organisers;
(e) do these costs include the cost for the hire of -

(i) air conditioners;
(ii) marquees;
(iii) fencing;

(f) if not, what were the costs for the hire of -

(i) air conditioners;
(ii) marquees;
(iii) fencing;

(g) will the Office of Youth Affairs be running an event such as JOY again; and
(h) if so, what details have been organised?

Mr BOARD replied:

I am advised that:

(a)-(c) Organised visits for school children were restricted to Year 7 and above. It is not possible to determine the age range of the general public who attended the event.

(d) $47 000.

(e) No.

(f) (i) $8 700
(ii) $70 273
(iii) $4 180

(g)-(h) It is possible that a major event will be organised in 2000, although its nature has not yet been determined.

MR ROSS HUGHES

909. Ms MacTIERNAN to the Minister for Lands:

(1) Has Mr Ross Hughes ever been employed by the Minister's office in a consultancy or advisory capacity?

(2) If yes to question (1) above -

(a) on what date was Mr Hughes employed;
(b) is he still employed by the Minister's office;
(c) what are/were the terms of his employment; and
(d) what remuneration does/did Mr Hughes receive?

Mr SHAVE replied:

(1) Yes.

(2) (a) 11 February 1997.
(b) Yes.
(c) Consultant/Contract for Service.
(d) $150.00 per hour.

MR ROSS HUGHES

910. Ms MacTIERNAN to the Minister for Fair Trading:

(1) Has Mr Ross Hughes ever been employed by the Minister's office in a consultancy or advisory capacity?

(2) If yes to question (1) above -

(a) on what date was Mr Hughes employed;
(b) is he still employed by the Minister's office;
(c) what are/were the terms of his employment; and
(d) what remuneration does/did Mr Hughes receive?

Mr SHAVE replied:

(1) Yes.

(2) (a) 11 February 1997.
(b) Yes.
(c) Consultant/Contract for Service.
(d) $150.00 per hour.

REAL ESTATE COMPLAINT

Residential Equities Solutions and Investments WA Pty Ltd

1000. Ms MacTIERNAN to the Minister for Fair Trading:

(1) What action has been taken by the Ministry for Fair Trading in response to the complaint by the Minister for Housing against Charles Patrick O'Leary and/or Residential Equities Solutions and Investments Western Australia Pty Ltd that they acted as real estate agents without licenses and charged commissions without written authority?

(2) When was the referral made to the Ministry?

(3) Has the matter been referred by Ministry staff to the Real Estate Agents Supervisory Board?

(4) If not, why not?

(5) If yes, on what date was it referred, and what was the outcome?

Mr SHAVE replied:

I am advised:

(1) The Ministry is investigating the conduct of Mr O'Leary in respect of the activities of Residential Equity Solutions and Investments Western Australia Pty Ltd (RESIWA). Legal advice to the Ministry was that although RESIWA appeared to have breached the *Real Estate and Business Agents Act 1978*, no action could be taken because the company was by then defunct. With the agreement of the Crown Solicitor's Office, the Ministry resolved to investigate O'Leary's role in RESIWA in conjunction with other investigations which concerned O'Leary and the Sure Sale scheme. The Ministry is currently awaiting advice from the Crown Solicitor's Office in relation to the latter matters. Decisions concerning the order in which prosecution might be brought will be made when that advice is received.

(2) 30 March 1998.

(3) No.

(4) These matters are being considered, at this stage, only as prosecutions which are conducted in the Court of Petty Sessions and not before the Real Estate and Business Agents Supervisory Board.

(5) Not applicable.

LANDCORP, MUNDIJONG LAND HOLDINGS

1023. Dr EDWARDS to the Minister for Lands:

(1) What parcels of land are owned by LandCorp in and around Mundijong?

(2) For each land holding -

(a) when was it purchased;
(b) from whom was it purchased;
(c) at what price; and
(d) what are the future plans for this site?

Mr SHAVE replied:

(1) None.

(2) Not applicable.

QUESTIONS WITHOUT NOTICE

BARTHOLOMAEUS, MR NEIL, DISCIPLINARY ACTION

273. Dr GALLOP to the Premier:

Last Wednesday, the Premier told the House that former WorkSafe chief, Neil Bartholomaeus, had been given seven days to explain why disciplinary action should not be taken against him.

(1) Has the Premier now received Mr Bartholomaeus' explanation?

(2) When will the Premier complete the assessment required of him under the Public Sector Management Act?

Mr COURT replied:

(1)-(2) Mr Bartholomaeus responded promptly. I have sought to have an independent person assess all that information and provide a recommendation. I do not have a formal response from the person requested.

Mr Brown: Who?

Mr COURT: I will not name that person until I have a formal response. I will try to provide that information during question time.

Dr Gallop: Is that person from within government or outside government?

Mr COURT: Outside government.

BUNBURY SENIOR HIGH SCHOOL, SALE

274. Mr OSBORNE to the Minister for Education:

The West Australian of 14 October reported that the Education Department is considering the sale of the Bunbury Senior High School for a value estimated at $16m. This unsubstantiated comment has created deep concern in my electorate. What is the situation regarding this historic school?

Mr BARNETT replied:

I thank the member for some notice of this question. I think the member is a graduate -

Mr Osborne: No.

Mr BARNETT: I thought he was. The Bunbury region has three senior high schools - Bunbury, Newton Moore and Australind. They are all good schools which are well supported by the communities with viable student populations in the range of 900 to 1 100. However, Bunbury is going through the process of local area education planning which tends to be controversial in every area. We could leave Bunbury unchanged; that would be the easiest thing to do. However, the reality is that a decision must be made in the next year or so about whether another school or middle school is built in the Eaton region. Perhaps in five to seven years another school will be required to the south of Bunbury.

Local area planning is considering the best options for the future. It is only my opinion, but there is merit in giving parents a choice. A senior college for years 11 and 12 could be developed as part of a university-TAFE campus. That has some attraction. Bunbury High School could become a senior college. One of the schools could become a specialist vocational school. Those issues must be examined.

There is no prospect of Bunbury Senior High School disappearing. It is a magnificent site and is part of the history of Bunbury. My preference is for that to become the senior college with academic preference and to see one of the other schools developed vocationally. It is early days. Some concern in the area has been expressed, and I have extended the discussion process. There is no sense of urgency in Bunbury, but I urge people in the region to look to the future.

Changes are happening, for example, in Mandurah where a new middle school and a new senior college will be built. That will be very attractive and will give the people of Mandurah choice. People in Bunbury and the rest of the south west should also look at choices for the future.

CABINET SUBCOMMITTEE ON CRIME, DISCUSSIONS OF BIKIE THREAT

275. Mrs ROBERTS to the Premier:

Given the Deputy Premier's revelation in today's edition of *The West Australian* that the bikie war on our streets has not been discussed at any of the much vaunted cabinet subcommittee on crime meetings and that the Premier is yet to take positive action to remove the bikie threat from our streets, rather than expressing anger and making silly, flippant comments, will

he now show leadership and immediately convene a meeting of the cabinet subcommittee so that it can devise a strategy aimed at making the streets safe from these organised criminals?

Mr COURT replied:

I understand the Deputy Premier said that the matter was not on the "formal" agenda. The issues have been discussed.

Mrs Roberts: That is sophistry.

Mr COURT: Is the Opposition's solution to the problem to pass it on to the committee?

Dr Gallop: You set that committee up to solve some of the problems and you have not discussed it.

Mr COURT: The Minister for Police has been keeping me informed of the bikie issue on a regular basis. He is being fully briefed constantly by the police. The issue has highlighted the need for us to have improved surveillance powers in place. We have also been fast-tracking legislation on confiscation of profits of crime. We have been working on it for some time, but it is proving to be difficult.

Mrs Roberts: I asked about your cabinet subcommittee.

Mr COURT: We do not have to wait for a cabinet subcommittee. I have been dealing directly with the Minister for Police and doing something.

The constant criticism the opposition spokesperson on this matter has been making of the way in which the police have been handling this exercise is of no help at all to the police, who are trying to control a difficult situation. She should start taking a more responsible position on these matters when the police are trying to do something. She just wants to promote a situation which puts the public safety at risk. As far as I am concerned her actions are totally irresponsible.

In response to the first question asked by the Leader of the Opposition, the person sought to investigate the former WorkSafe Commissioner issue is Wayne Martin QC who has accepted the position and is preparing a report. I do not envisage it will take very long.

BANKS, WITHDRAWAL OF SERVICES

276. Mr TRENORDEN to the Minister for Regional Development:

Does the Minister concur with David Murray, the managing director of the Commonwealth Bank, that people should thank banks for withdrawing their services or does he think it would be more appropriate for banks to thank rural Western Australians for creating 87 per cent of the wealth of the country and turn gratitude into service?

Mr Graham interjected.

Mr COWAN replied:

In answer to the question from the member for Avon and a supplementary asked by the member for Pilbara, first, the people of Wagin are hardly likely to say thank you to Mr Murray for the way in which that bank has operated in that area. Given that personal banking probably has the highest profit margins of banking, I am amazed that anyone in Mr Murray's position would make that statement, for the simple reason that the withdrawal of personal banking services in regional Western Australia is completely contrary to all the philosophical principles that banks espouse. It is not as though the banks are making losses. They are making significant profits. The interesting feature is that by closing branches they are depleting the level of personal banking services, which generate the greatest profit margin the banks enjoy. I cannot understand why the banks would have that view.

Dr Gallop: Can I ask a question?

Mr COWAN: No, the leader can get on his feet and ask. In response to the member for Avon's question -

Several members interjected.

Mr COWAN: If members opposite do not want to ask any more questions, they should keep interjecting and I will go back to the start and stay on my feet until the Deputy Speaker sits me down. I am sure that he will allow me to answer the question. If members opposite want to keep interjecting, the Deputy Speaker will realise that that is at their expense and not at mine.

The Government has dealt with this issue. It established a task force with the banking industry and financial institutions to look at ways and means of overcoming the problem of delivering cash facilities in regional Western Australia. An agreement was reached about how they would go about delivering those services in the country. It disappoints me that, notwithstanding the fact that the financial institutions were party to the agreement about how they would provide services or, where they felt necessary -

Dr Gallop: This is a long answer.

Mr COWAN: If the leader keeps interjecting, it will get longer.

Several members interjected.

The DEPUTY SPEAKER: The most relevant remark the Deputy Premier made was that constant interjecting prolongs the answer. If members wish the Deputy Premier to finish his answer, they should listen and we can all get on with question time.

Mr COWAN: I will wind up my answer. The Government established a task force and set down some agreed procedures. It was anticipated that those procedures would provide not the best service but a good compromise. It disappoints me that, notwithstanding the fact that they were represented on that task force, some banks have chosen not to follow those procedures. It is disappointing to hear a person of Mr Murray's stature making those comments. This was not a political beat-up. The withdrawal of services to country areas is real and it is being felt by many people.

BIKIE GANGS - LEGISLATION

277. Mrs ROBERTS to the Minister for Police:

As the Labor Party has offered the Government bipartisan support for legislation that will assist in removing the bikie menace from our streets -

(1) What, if any, legislation does the Government have to deal with outlaw motorcycle gangs that it wants dealt with urgently?

(2) When will we see that legislation?

(3) Has the minister sought similar undertakings from other political parties to ensure the smooth passage of the legislation through the other place?

Mr PRINCE replied:

(1)-(2) The passage of the Surveillance Devices Bill would really help.

Mrs Roberts: Where was that in March, April, May, June and July?

Mr PRINCE: The member asked what was happening in relation to the other place, and I am answering. It would help if that Bill were passed through the other place. The member for Midland and I understand that. In the course of the debate on that Bill in this place, we went through in great detail the devices that can be used by those people in drug dealing and other illegal activities in which they are involved.

In a sense, the confiscation of profits legislation is similar to the retail legislation in America, and deals with legitimate and illegitimate business, money and money laundering and so on. That is the way to reduce their activities and bring them to heel. That legislation is still in preparation; it is in the hands of the Attorney General and I represent him in this House. I expect he will be able to fast track it, but it is not easy to prepare. As soon as it is available, obviously I will speak with the member and ensure that she is briefed as thoroughly as possible.

(3) With regard to the other matters, clearly cooperation is useful. The Democrats in the other House have been offered briefings, and Hon Norm Kelly has had a number of briefings on various pieces of legislation. I cannot tell the member whether members of the Greens (WA) have had briefings. If they have not, I would be very surprised.

Mrs Roberts: Briefings on the legislation and seeking bipartisan support for a package are different things.

Mr PRINCE: It is much the same in the sense that providing explanations and briefings, and having discussions and so on prior to the debate usually leads to a cooperative passage through Parliament.

TRANSPORT - REVIEW OF CONCESSIONAL FARES

278. Mrs HOLMES to the minister representing the Minister for Transport:

Further to my question without notice of 12 May 1998 -

(1) Can the minister advise the status of the review of concession fares that was scheduled for completion last October?

(2) At the completion of the review, will the minister also advise how long it will be before he is in a position to make a decision regarding the provision of concession fares to the carers of extremely disabled war veterans, who are few in number?

Mr OMODEI replied:

The Minister for Transport has provided the following response -

(1) The draft review has been completed.

(2) In the course of conducting the review, the Department of Transport sought clarification from the Department of Veterans' Affairs on the criteria that agency used to provide concessions.

With regard to free travel on public transport, it advised that carers accompanying a veteran who holds a Transperth free pass will be issued with a free pass if a doctor has certified that the veteran requires the assistance of a carer to use public transport. Both passes are issued by the Department of Veterans' Affairs.

POLICE - CANNINGTON

279. Ms McHALE to the Minister for Police:

(1) Is the minister aware that figures released by the Insurance Council of Australia show that home burglary and car theft claims are the highest in Perth in the suburbs of Cannington, Victoria Park, Maddington, Armadale and South Perth, all of which come within the Cannington police district?

(2) Is he also aware that the per capita ratio of operational police officers in the Cannington station is 1:1446, in contrast to the Perth station, which is 1:52?

(3) How can the minister justify the gross under resourcing of the Cannington area?

(4) When will the minister ensure that adequate police resources are provided to assist and serve the people in the south east metropolitan region so that they can feel safe in their homes and neighbourhood?

Mr PRINCE replied:

(1)-(4) I am aware of the statistics with regard to offences committed in various police districts around the metropolitan area, although not in the detail the member has in front of her. I am also aware of some of the ratios that she has quoted. In fact, I believe that the information might have been provided in answer to questions on notice.

With regard to the Cannington area, as the member would be aware - I am sure she has seen it - there is a completely new purpose-built, state-of-the-art police district office. It is fully equipped and has a significant number of officers operating out of it. There are more police officers now than ever before and the budget is bigger than it has ever been. The commissioner, deputy commissioners and most police officers I speak to say they have never been better resourced.

As I said to people in the Midland area this morning, problem-oriented policing, forming teams and attacking particular target problems lead to significant improvements. As I said in reply to a question a few weeks ago, Joondalup, for example, started the burglary team and the clear-up rate went up significantly. Midland has done much the same. Problem-oriented policing is having a significant effect.

Dr Gallop: Waiting lists follow you around wherever you go, don't they? They do; they are attached to you.

Mr PRINCE: The Leader of the Opposition is truly just a slogan shouter.

The problem-oriented policing system that is being used in Cannington will have an effect. If members want a detailed briefing, I will obtain it.

HEAD LICE

280. Mr MASTERS to the Minister for Health:

Head lice have been a major problem for at least one school in my electorate. In the past, the Government has provided head lice treatment free of charge to schools for distribution to parents for use on their children.

(1) Is the scheme set to continue?

(2) If not, will the minister please indicate the approximate cost for parents of head lice treatment materials?

(3) Can any special consideration be given to schools located in towns that do not have a pharmacy?

Mr DAY replied:

I thank the member for some notice of this question.

Several members interjected.

Mr DAY: Members were looking at the member for Mandurah. As the father of three primary school-aged children I can relate to this matter. I am advised that the Health Department has never provided schools with free head lice treatment for provision to parents. In fact, for many years the department has funded the free distribution of head lice lotion to local government authorities for distribution to disadvantaged families, defined as those on a pension or in possession of a health care benefit card. Head lice lotions are available over the counter from pharmacies for between $4 and $14 a bottle. In addition, local government authorities and schools can purchase bulk head lice lotion from several pharmaceutical wholesalers at a cost of approximately $3 a bottle. Therefore, for schools located in towns that do not have a pharmacy, the bulk purchase of head lice lotion from a pharmaceutical wholesaler is possible. I understand also that no other Australian State or Territory currently funds the free provision of head lice lotion for distribution to parents.

It is important to realise that the use of head lice lotion alone is no panacea or quick fix for the problem; it is necessary also to use other good health practices such as regular combing and, when eggs or lice are found, to use a fine-toothed metal comb. I listened to an interesting discussion on ABC radio this afternoon and I was interested to learn of the use of various oils such as olive oil, soya bean oil, baby oil or lavender oil in combination with other forms of treatment. I know that there is no simple solution to the problem.

Several members interjected.

Mr DAY: It was interesting to hear the caller who rang in to say that he had used DDT on his child many years ago. It was interesting also to hear the caller who rang to say that she had used kerosene. To an extent it is a laughing matter, but it is not a laughing matter for parents who are trying to deal with the problem on a recurrent basis. For many people it is a problem that simply will not go away. The only way to deal effectively with it in the long term is for the community to work together and to be ever vigilant about the presence of lice and to take immediate action to eradicate them.

MAIN ROADS INQUIRY

281. Ms MacTIERNAN to the Premier:

I refer to the claim yesterday by a Main Roads Western Australia officer in a Legislative Council estimates committee hearing that there had been a major development in the private-eye case the previous day, and ask -

(1) Will the Premier confirm that that development was, in fact, a meeting between the Commissioner of Main Roads and the last remaining suspect, at which the suspect, an employee who has given more than 30 years' service to the Government, emphatically denied any involvement in the leaking of the Matson report or any other document to the Opposition?

(2) Will the Premier now bring this farcical witch-hunt to an end?

Mr COURT replied:

No, I cannot confirm what the member has alleged. I am advised by the minister that the chief executive officer is having meetings with certain parties and they hope to have the issue resolved shortly.

"HEY MINISTER" COLUMN

282. Mrs van de KLASHORST to the Minister for Youth:

There is a column in the *Midland-Kalamunda Reporter* called "Hey Minister" wherein the minister has answered questions and comments from young people. Will he please tell the House how that column is assisting our local young people?

Mr BOARD replied:

The Office of Youth Affairs is particularly keen to hear from young people around Western Australia. That has been evidenced by the success of the Youth Advisory Council of Western Australia and, obviously, the new website, which is attracting 50 000 visits a month. The "Hey Minister" column, which is being run in 11 community newspapers every fortnight in the Perth metropolitan region, is a free column. I take this opportunity to thank Community Newspapers for its community spirit. It is keen for young people to have access to my office through the Office of Youth Affairs. The purpose of the column is to raise issues to which young people respond via the website. It is proving to be a key way of seeking young people's views on a range of issues. In fact, young people communicate with other youth advisory councils through it. I commend the site to members to raise with their schools and youth groups and I look forward to continued support from Community Newspapers.

MAIN ROADS INQUIRY

283. Ms MacTIERNAN to the Premier:

I refer to the report by the Premier's office into the Main Roads private-eye fiasco and its claim that the initial estimation of costs for the International Investigation Agency inquiry was only $5 000 and that therefore only verbal quotes were

required, and ask: Given that the quotes provided by IIA contain no such limitation and given that the only Main Roads documents which refer to costs are -

(a) the document recording the initial expenditure approval of $15 000; and

(b) a memo which says that Main Roads had no idea what the cost would be but making an estimate of $15 000 -

what evidence supports Main Roads' claim that the original estimate of the cost was $5 000 or less?

Mr COURT replied:

I thank the member for some notice of this question.

The Commissioner of Main Roads Western Australia has confirmed that he expected that the preliminary report that IIA was engaged to prepare would take one to two weeks, and would cost less than $5 000. This matter was discussed at a preliminary meeting with IIA and Main Roads on 8 January 1998. The acting executive director, human resources has advised that he subsequently gave approval for funds to the value of $15 000 to be expended for the IIA contract - that is, $5 000 for the preliminary report and an estimated $10 000 for any subsequent report.

PLANNING APPEAL SYSTEM

284. Mr MASTERS to the Minister for Planning:

Yesterday in this House there was a censure motion against the Minister for Planning based on the current dual appeal system. Will the minister inform the House how long the system has been in place and whether the Government intends to make any changes to it?

Mr KIERATH replied:

I thank the member for some notice of this question. He is absolutely right: The law in this State - that is, to appeal either to the minister or to the Town Planning Appeal Tribunal - has been in place for 20 years. That includes the entire 10 years when the Labor Party was in government. Is that not fascinating? Labor members spent 10 years in government and they did nothing about it. If the law is so unfair, why did the Labor Government not change the law? I have been advised that at least one Labor minister refused point-blank to change the law; one minister said, "Not on your nelly." Even more interesting, we on this side are in the process of changing those laws. My office has briefed the member for Maylands on the future changes. During its 10 years in Government, the Labor Party did nothing about it. When we are in government and doing something about it, the Opposition criticises us.

Yesterday the member for Maylands suggested a deliberate delay had occurred in a freedom of information request. I sought information to determine if any truth could be attached to that allegation. The following facts show the incompetence of the Opposition: My office received the application on Tuesday, 13 October. My officer had a query so a phone call was made to the member for Maylands, but she was not in. Later the member returned the call and left a message, as did my officer. Someone from my office rang the member for Maylands at least once every day to try to clarify precisely what she wanted. Finally, the member rang back yesterday. Hours later in this House she complained about the delay. The delay resulted from the member and her office; not from this side of the House. It is ironic that she caused the delay and yet she attacks me for delaying the FOI request. I believe that members of this House should accept their shortcomings whatever they may be. This was a dismal and pathetic attempt at political point scoring.

On a lighter note, it reminded me of a conversation I had recently when someone asked me what was the greatest wine-producing area of this State. I had to reply in terms of "whine"; it must be the front bench of the ALP.

MR CLAY GWILLIAM

285. Mrs ROBERTS to the Minister for Police:

I refer to Mr Clay Gwilliam who was last week charged with perjury relating to the Argyle case.

(1) How does the minister justify Mr Gwilliam continuing with police duties despite the very serious charge against him?

(2) How does the minister reconcile this treatment of Mr Gwilliam with the 10-month suspension of officers Clarke, McMurtrie, Scanlan and Parker who were never charged with any offences?

(3) Is a policy in place to deal with these accusations and, if so, will the minister table it?

Mr PRINCE replied:

(1)-(3) Mr Gwilliam has been charged with the offence. He is not convicted and the trial process is some months away. Under those circumstances, it is not appropriate to deal with him other than perhaps in a way the Commissioner of Police thinks appropriate with normal discipline. That is something that the commissioner must determine now.

Mrs Roberts: When he gets back from Egypt?

Mr PRINCE: No. The process involves Commissioner Jack MacKaay and others who deal with professional standards and so on. The method by which disciplinary matters are dealt with in the Police Service has changed this year. There has been agreement that matters covered by section 8 will go to the industrial commission. That process is still in the formative stage and being worked through. I shall give the member a briefing note to explain what the Government is doing now because the processes have been changed and modified in the past 12 to 18 months.

STEPFAMILIES

286. Mrs HODSON-THOMAS to the Minister for Family and Children's Services:

One of the projects commissioned by the poverty task force was research into issues affecting stepfamilies. Can the minister advise as to the main findings of the research and what the State Government is doing to address issues surrounding stepfamilies?

The DEPUTY SPEAKER: Today two questions have been asked of ministers in the following terms: "Can the minister advise or give advice?" That is very close to asking for an opinion which is something that ministers cannot provide. I suggest the member looks at her question and directs it in a more definite manner. I will allow this question, but I ask all members to bear that in mind.

Mrs PARKER replied:

It is important for us to know that 25 per cent of all families in Australia today are stepfamilies of one form or another. The research found that people in stepfamilies were often not aware of the specific support services that are available to them. Stepfamilies have complex relationships and they involve a number of adults and children who need specific support services. The Government provides a range of support services and I would like to draw the attention of the House to a number of them. We have produced a *Living With Step Families* booklet and video which has been commended as a leader in its field around Australia and I shall table it. It may prove to be an interesting resource as step-parenting can often create stress in families. It may be of use to members' constituents.

I also mention that parenting information centres are proving to be very popular around the State. Recently I opened the parenting information centre in Geraldton and a couple of weeks ago I opened the mobile parenting centre in Kalgoorlie. A total of 250 people a week make inquiries at the centre in Geraldton; that is a significant number of people. Those parenting information centres are able to respond to requests for information and support regarding stepfamilies. In April next year a specific focus will be placed on stepfamilies in those parenting information centres. The State Government contributes funding to the Young Womens Christian Association to provide a step-parents' project to assist stepfamilies. The issue of stepfamilies and step-parenting affects at least one in four families in Australia today. Resources, support services and programs are available to help in specific ways.

FINANCIAL COUNSELLING SERVICES

287. Mr RIPPER to the Minister for Family and Children's Services:

(1) Is the minister aware that -

(a) the Lady Gowrie Community Advocacy Centre in Belmont has 140 open cases, which is well over the recommended case load and cannot take on new clients?

(b) the management committee is considering closing or relocating the service because government funding is inadequate for the workload experienced?

(2) How many other financial counselling services are similarly hard-pressed?

(3) What action will the minister take to assist these financial counselling services and their poverty-stricken clients?

Mrs PARKER replied:

(1)-(3) I can make some inquiries regarding the workload of the Lady Gowrie Community Advocacy Centre.

I would like to put on record a statement I made earlier in the week. This Government has a significant commitment to providing financial counselling support throughout the State. The Government now funds a network of 52 financial counselling centres. In the period 1998-99 that statewide network was funded at a cost of more than $2m and it provided financial counselling support to families who were either in crisis or wanted to do some long-term planning. That is a significant contribution by this Government. I will look at the circumstances at the Lady Gowrie centre. Financial counselling support to families in need has never been so extensive across the State and has never been funded at a level anywhere close to $2m as it was this year.