WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Wednesday, 2 December 1998

Legislative Council

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THE PRESIDENT (Hon George Cash) took the Chair at 2.00 pm, and read prayers.

BILLS - ASSENT

Message from the Governor received and read notifying assent to the following Bills -

1. Dangerous Goods (Transport) Bill.

2. Dangerous Goods (Transport) (Consequential Provisions) Bill.

SECESSION

Petition

Hon Ray Halligan presented the following petition bearing the signatures of 18 persons -

> To The Honourable the President and Members of the Legislative Council of the Parliament of Western Australia assembled.
>
> We, the undersigned request that the result of the referendum, held on the eighth day of April 1933, asking the people of Western Australia if they were in favour of the State of Western Australia withdrawing from the Federal Commonwealth, be given due reconsideration and taken to a final conclusion.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as duty bound, will ever pray.

[See paper No 532.]

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Direction to Inquire into Privatisation and Contracting Out Public Services - Motion

Resumed from 12 November on the following motion -

> That the House direct the Standing Committee on Public Administration to inquire into the processes and outcomes of privatisation and the outcome of contracting out public services in the following terms -
>
> (1) The extent to which state government enterprises have been privatised since February 1993.
>
> (2) The economic and social impact of transferring state owned enterprises to the private sector.
>
> (3) The cost and quality outcomes of privatisation in terms of the level of savings or additional costs that have resulted from the provision of services by private contractors instead of by government.
>
> (4) The extent to which state government contracts or tenders have since February 1993 been awarded to -
>
> (a) Western Australian companies or businesses;
>
> (b) other Australian companies or businesses;
>
> (c) foreign owned or controlled companies or businesses; and
>
> (d) regionally based businesses.
>
> (5) The extent to which risk is transferred from the public sector to the private sector and to which government companies or businesses are given government guarantees before agreeing to invest in large scale public sector projects.
>
> (6) The extent to which policies have been introduced to guarantee the Western Australian public against financial default by private contractors.
>
> (7) The extent to which "contracting out" of state public services has resulted in greater competition.
>
> (8) The extent to which initiatives have been introduced to prohibit the practice of private companies acting as cartels, rather than competitors, and thereby combining resources to tackle large scale projects.
>
> (9) The extent to which current tendering practices ensure that -
>
> (a) the process is open and fair;

(b) proper procedures are being followed; and

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

(10) The extent to which appropriate checking mechanisms are in place to allow regular monitoring of the performance of contractors and that the Government has in place a set of procedures to deal with breaches of contracts.

(11) A set of criteria or conditions which would allow the Parliament to make judgment on what constitutes "confidentiality" when referring to government contracts.

(12) The extent to which the competitive nature of contracting out has led to employees of contractors being paid below usual rates of pay and conditions.

(13) The extent to which government departments and agencies are prejudiced in the contracting arrangements when private contractors are able to legally pay their employees lower wages and conditions.

(14) The extent to which the Government should specify certain minimum requirements of contracting, including the requirement to -

(a) pay to employees a wage not less than that of an employee of the Government doing comparable work might be paid;

(b) subject the work under contract to the same level of public and parliamentary scrutiny as applies in the public sector; and

(c) the same level or nature of good corporate citizenship as that expected of government departments or agencies.

(15) Any other matters relating to privatisation and contracting out of government services as the committee deems necessary.

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.06 pm]: When I was last speaking to this motion I was commenting on the broad philosophical views of members opposite and suggesting that it was one of the reasons they were promoting this form of inquiry into the whole question of privatisation and contracting out. I was - maybe someone should privatise the phone system!

The PRESIDENT: If the Leader of the House had not said it, I would have. It is well and truly against standing orders and the customs of the House for anyone to have a mobile phone on in this place.

Hon N.F. MOORE: I was indicating that in my opinion this motion has been motivated by some ideological view that everything in this State should be run by the Government or some government agency. There is no doubt that in most enlightened parts of the world, contracting out and privatisation are part of the economic programs of various Governments. In many parts of the world those strategies have been demonstrated to be of great benefit to the people who live in those jurisdictions. Members should consider the simple example of the United Kingdom in the pre-Thatcher days when nationalisation was evident all over the place, with moribund industries and government strangulation of the economy, and compare that with the situation that applies there now. They will see a dramatic difference. It was all brought about by a totally different attitude towards public administration. It was initiated by the Thatcher Government and carried on by successive Governments. I suspect it has been embraced and will be continued by the Blair Labour Government. I would be very surprised to find the current United Kingdom Government going back to the bad old days of Harold Wilson and company. There is no doubt that around the world, privatisation of government activity, where appropriate, and the contracting out of services to the private sector has been remarkably successful. There is no question that the same applies in Western Australia.

I mentioned that because the tone of this motion seems to suggest that we should not be doing it in Western Australia. I refer to the tone rather than the words contained in the motion. The member seems to think that she could profitably fill in her time and the committee's time by inquiring into these issues. I think that many other issues are of greater significance and importance to Western Australia than this one, particularly issues that might be causing problems rather than benefits. I find it interesting that this is the top-of-the-mind issue the member wants to discuss. The Government does not support the motion because it does not believe it is necessary.

It seems to be an ideological hang-up of members opposite that we should cast doubt on those processes, that the Government should be running everything, and that unless one works for the Government one's job is undervalued. That sort of attitude is still alive and well in the Labor Party. That is a good thing, because there will always be a reason not to vote for that party. When Labor members try to pretend they are something other than what they really are, they have been able to get themselves elected in some parts of Australia. The history of the past 15 years or so shows that Labor

Governments have been elected when the Labor Party has pretended not to be socialist - which is what it really is - and has convinced people of that for a time. Interestingly, when Labor members are in government they have done some quite enlightened things. When they are elected to office they do not come out as being screaming lefties; they endeavour to recognise the mixed nature of the economy. It is only when they are in opposition that they revert to where they came from. Members opposite have tried to insert their philosophical views into the School Education Bill without regard to the practical consequences. Again, this ideological claptrap about privatisation and contracting out is part of what they say and do in opposition, although I suspect once they become the Government - as they will sometime in the next century - they will continue with the programs that have been put in place by this Government to make the public sector more efficient, to deliver better services, and to ensure it is done at a price the community can afford, and in a way in which it is not necessary for Governments to continue to go into debt to provide the services that people in this State want. That was the legacy of the last Labor Government. The cost of providing services to the taxpayers of Western Australia was greater than the revenue earned by the Government. The Labor Government took us into debt to pay for those services. It sold assets and other things to raise revenue to pay for the wages of the public servants who carried out the Government's policy. That has been changed; it has been turned around. The debt is coming down.

We are getting some efficiency into the way the Government delivers services, and that has been done by giving the private sector a chance to be involved in those activities in which Government has traditionally been involved. There has not been mass privatisation; in fact, privatisation has been slow in Western Australia compared with some other jurisdictions, but there has been a lot of contracting out of activities to the private sector. That is to be commended. There is no need for this inquiry to take place; it is unnecessary. If the member wants to know what is going on, all she need do is ask questions in the House, and the answers will be provided.

Hon Ljiljanna Ravlich interjected.

Hon N.F. MOORE: The problem with Hon Ljiljanna Ravlich is that if she does not get the answer she wants or has pre-determined in her mind, she thinks something is wrong. The member is so ideologically driven that she cannot see the wood for the trees. I do not have an ideological position on this.

Hon Tom Stephens: You are a conservative reactionary.

Hon N.F. MOORE: It is interesting that Hon Tom Stephens should use that phrase, because conservatism - as I have tried to explain to the member on countless occasions - is not a political philosophy of mine; it is the philosophy of those people who do not want change. The member should read the dictionary.

Hon Tom Stephens: You embody the worst aspects of reactionary conservatism.

Hon N.F. MOORE: Conservatism is a philosophy that says we do not want change, and the epitome of conservatives in modern day politics are the Labor Party and the trade union movement. They do not want any change at all. They seem to think that what we have now is perfect and no change is necessary or even appropriate. With respect to privatisation, contracting out and educational reform, I am happy to regard myself as a radical - if that is of any help to Hon Tom Stephens. I believe change is necessary and I have instigated change wherever I have had a chance.

Hon Tom Stephens: You keep trying to destroy the parliamentary system. You are a constitutional -

The PRESIDENT: Leader of the Opposition, order!

Hon N.F. MOORE: I do not know what the member is talking about.

Hon Tom Stephens: I was going to say constitutional vandal.

Hon N.F. MOORE: What the member said bore no relationship to what I was saying. It is a pity he did not say something to which I could respond in the context of the debate.

The PRESIDENT: Order! We are dealing with an important motion and if we get back to the motion we will make some progress.

Hon N.F. MOORE: I was trying to say that when members opposite try to say that government members are conservative or reactionary, they ignore the reality of political life these days, which is that the progressives and activists in our society are Governments of our type, because we are prepared to move out into the Western Australian community and the economy and make the changes that are necessary to make it better. Part of that is to put to one side the ideological nonsense that somehow or other the Government should provide every service for people. That seems to be part of the thinking of Hon Ljiljanna Ravlich and her colleagues. The Government is not running down an ideological path. We are asking what services people need in the community and how we can best provide those services. If they can best be provided by the Government, that is who will provide them; if they can best be provided by the private sector, that is who will provide them.

Hon E.R.J. Dermer: What service do those bells provide?

Hon N.F. MOORE: What has that got to do with anything? What an interesting question. Members opposite have tried to imply that building a belltower to house the bells that were given to Australia as a gift is a waste of money. Firstly, it was the Government of Carmen Lawrence or Peter Dowding which accepted the bells as a gift and got all the kudos for getting those wonderful, historic bells. They were then left in a shed. The Labor Government was asked by a number of people and groups, including the University of Western Australia, to find a place to house them and to allow them to be rung. The Labor Government refused to do anything about them. Premier Court decided that we should have the bells hung in a tower so they can be rung. It is a $4.5m project which will - I can say this as the Minister for Tourism - be an excellent tourism attraction. Lots of people go to different parts of the world for lots of different reasons - including to look at buildings and to listen to bells. This will be a significant tourist attraction.

Let me talk about wasting money. When we became the Government one of the things we had to do was to write a cheque for $11m to pay for the land on which the Petrochemical Industries Co Ltd project was going to be built. A block of land at Kwinana worth $11m had been set aside for the PICL project which only cost us $250m! This Government had to pay for it because the rates had not been paid. Fully $11m of taxpayers' money went down the tube because of the Labor Government's wonderful stewardship of the Western Australian economy! The Labor Party was an absolute disgrace when it was in government, and Labor members have not improved while in opposition. One would have thought they had learnt by now. When members opposite get into government - as they will, eventually - they will not change these privatised activities or contracting out. They will benefit from them and ensure they collect the money, because they will want to spend it in some other way. Members opposite will realise in government that it is better to privatise and contract out activities and services that can be better provided by the private sector.

Hon Kim Chance: How do you know that?

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order! Members are interjecting over other members at the moment. I remind Hon Ljiljanna Ravlich that she will get an opportunity in due course to reply. If she holds her comments until then, it will be helpful. Let us move back onto the motion.

Hon N.F. MOORE: I say that because that is the history of the Australian Labor Party. Is it not ironic, as one member said by way of interjection, that one of the great privatisers of modern times was former Prime Minister Keating? The Hawke Government was in the same mould. I have no doubt that Mr Beattie and Mr Bacon will continue the reforms that were made by their predecessors in Queensland and Tasmania. I know for a fact that the Premier of New South Wales has not reversed any of the programs that were put in place by Mr Greiner and Mr Fahey when they were Premiers. That is the history of the Labor Party. It accepts the benefits that we create for the economy, and then spends the money, spends some more and sends us broke again. We come in again and fix it up and then it gets back in again, due to the effluxion of time, accepts the benefits that we put in place, spends some more, borrows some more, and then we go broke again and we come in and fix it up. That is the history of the Australian economy and Australian politics.

Interestingly, I was going to speak only for about one minute because I must go to a meeting, so I will conclude my comments. I was forced to respond to interjections that were clearly out of order. They could not have been ignored. One cannot ignore some of the inane comments by members opposite. They will not change one thing when they form a Government.

Hon E.R.J. Dermer: In respect of what?

Hon N.F. MOORE: In respect of privatising and contracting out. However, they will spend more than they earn, because they always have. We do not need an inquiry; it is unnecessary. If Hon Ljiljanna Ravlich has any problems, she should ask some questions.

HON TOM HELM (Mining and Pastoral) [2.21 pm]: It is obvious that the motion should be supported. I am compelled to respond to the comments by Hon Norman Moore about not being driven by ideology and not being afraid of change. Let us consider the change that he supports. Conservative members say that we should privatise the gains and socialise the losses. That is exactly what is going on. He tells us that all he is doing is following former Prime Ministers Keating and Hawke and he asks, "Where is the change in that?" The motion asks for an inquiry, not necessarily change.

Hon Simon O'Brien: When will the inquiry report?

Hon TOM HELM: When does Hon Simon O'Brien want it to report?

Hon Simon O'Brien: There is no date. You are not dinkum at all.

Hon TOM HELM: Are members allowed to amend motions? Am I missing something here? Did the rules change while I was in my room? If Hon Simon O'Brien wants a report, he can move an amendment. Motions are still allowed to be amended, and there is nothing wrong with proposing a reporting date. What Hon Simon O'Brien proposes is simply a red herring. Let us talk about the issue. At least the Leader of the House had the guts to do that, even though he was wrong, of course. Let us talk not about reporting dates but about what the -

Several members interjected.

The PRESIDENT: Order! Hon Simon O'Brien and Hon Ljiljanna Ravlich will come to order.

Hon TOM HELM: I am not here to defend or attack the privatisation process that started in about February 1993, because we do not know whether it is worth attacking. We do not know how successful privatisation has been. We hear the same old lines from the Leader of the House - "go to the Ombudsman" and "ask questions". The whole point of the inquiry is to inquire. It was supposed to ask questions. The record will show that we have asked questions. I as shadow minister and Hon Ljiljanna Ravlich as shadow Minister for Public Sector Management have asked questions but we cannot get answers. If there were something of which government members could be proud, I am sure that we would have the answers. If there were nothing of which to be ashamed, we would have the answers and we would be listening to what the Government had to say, but it is saying nothing. The Leader of the House says that we should go to the Ombudsman and ask questions. We have asked questions on notice and without notice but we have never received answers. In many cases the minister has said, "I can't provide the answer because of commercial confidentiality." Commercial confidentiality - where have I heard that before?

Hon Max Evans: From the Labor Party.

Hon TOM HELM: That is exactly right; it was from the Labor Party. Where did the Labor Party hear it from? It heard it from Hon Max Evans and his colleagues when they were in opposition. They whinged and moaned and introduced practices to avoid scrutiny. The minister has retained the so-called screens about which he complained in opposition. They are still there and he is still hiding behind them. That is a fair comment.

I come from an industry that has suffered - perhaps it has excelled; let us not be too critical - from privatisation. Much of the iron ore industry has been privatised out of sight. Do members know what? A change is taking place.

Hon Simon O'Brien: They are not government concerns anyway.

Hon TOM HELM: No. Hon Simon O'Brien should listen to the argument. He should not get too excited. We are talking about efficiency and change.

Hon Simon O'Brien: How do they privatise themselves when they are already -

Hon TOM HELM: They can take it from their own company and privatise it.

Hon Derrick Tomlinson: Let us not confuse outsourcing with privatisation.

Hon TOM HELM: We will talk about outsourcing, which to me, as an ex-employee of Hamersley Iron, is privatising. It is the same sort of argument. Industry says that it would be far more efficient and price-effective to outsource - not privatise - some of its activities, but the wheel has turned and iron ore companies are now starting to use their own employees. They are finding that the gap between contractors and their own work force is very narrow, so they are going back to using their own employees. Why would they want to do that?

Hon Derrick Tomlinson: Because of changed conditions in the employees' contracts.

Hon TOM HELM: In one instance, most certainly, but the Broken Hill Proprietary Co Ltd employees' contracts have not been changed. That is a fair comment. Robe River and Hamersley Iron have substantially changed the terms and conditions of employment of their work forces. There is no doubt about that. The figures show that a move back to using their own work force is happening now. In five years, the terms and conditions of employment in Hamersley Iron have changed. In the case of Robe River the period is seven or eight years. Now they are tending to use their own employees, not contractors.

Hon Derrick Tomlinson: But under different conditions.

Hon TOM HELM: No, they are the same terms and conditions of employment for their own employees as they have been for the past five years. The contract has not yet expired. The point is that to a large extent the activities of Hamersley Iron and Robe River are scrutinised by shareholders, particularly when it comes to their return on capital.

Hon Max Evans: I used to do that as the auditor of Robe River.

Hon TOM HELM: Hon Max Evans was the auditor?

Hon Max Evans: Yes. I did it very well.

Hon TOM HELM: Good man; that is cool. At least we have someone with half a brain scrutinising what goes on in some private companies, but who scrutinises what the Government does? Who does that?

Hon Derrick Tomlinson: The same person with half a brain.

Hon TOM HELM: I suspect not. On one hand, we must trust that the secret reports will demonstrate there are advantages

in privatising. In the case of Hamersley Iron Pty Ltd and the Robe River group, that is a public document and the shareholders can ascertain that information. If we as taxpayers were to be given the same opportunity to scrutinise the effect of privatisation, I am sure there would be some good stories to tell. We would like to hear them. Although we ask questions, we do not get answers. That worries us. I suppose I could draw a long bow and say that I am a bit of an ideologist, or I used to be. Since I have been elected to this place I have had a lot to learn. I know changes are taking place, but the older I get, the more I realise that the more things change, the more they stay the same.

We must worry how members opposite can be so hypocritical as to stand in this place and say that everything is fine and that we should trust them. When we were in Government, those opposite were saying the same thing, but that what we were doing was not good enough. We are obliged to highlight that so that when the people of Western Australia go to the polling booths next time, they will know that government business is carried out in secret. The Commission on Government says that it should not be. Perhaps people do not know the effect of the long beds -

Hon Max Evans: Long beds for long men.

Hon TOM HELM: Long beds for some members to hide behind. We have long hospital waiting lists, and other services are not provided satisfactorily; for example, buses do not turn up at the scheduled time. That reflects the need for us to scrutinise the effects of what has been going on since the Government commenced privatisation of many of these services. There is no better way to do that than for us to conduct an inquiry. The Leader of the House has said that the Government has nothing to hide. In that case, if everything is sound and there are no problems, a report should be able to be prepared within a matter of weeks. Hon Simon O'Brien has asked how long the inquiry will take. That is the same as asking how long is a piece of string.

When we commence the inquiry on the effect of privatising the business of government, no doubt we will talk about the belltower. The Minister for Tourism, the Leader of the House, tells us that it could be of great benefit to the State, that perhaps people will pay more in taxes and that more tourists will visit this State. Maybe the people from St Martin-in-the-Fields, where the bells have come from, will want to come to see the bells, but not many others would be interested in listening to these bells that are to be installed in our great State.

Hon Derrick Tomlinson: I do not think we need any bells to enhance this State.

Hon TOM HELM: We might need them to enhance the beauty of some members opposite, but not the river foreshore. We must look at some matters put before us by the Leader of the House. He said that Bob Carr, the Premier of New South Wales, would be an enthusiastic supporter of privatisation. I do not know about that. I spent some time visiting New South Wales as a member of the Joint Standing Committee on Delegated Legislation. I was taken aback by the way in which that State's system of government is scrutinised by committees in that Parliament. If New South Wales were to go down the track of privatisation and found benefit in it, we would find in almost every case that every dollar spent and every policy taking the State in that direction had been scrutinised by the committees of that Parliament set up to do that. We are not asking for a permanent committee to be put in place to look at how government money is spent. We are asking that one standing committee conduct an inquiry and provide a report on how it thinks privatisation is going. It is not like asking questions and not getting the answers.

We strongly suspect an ideological view is being taken by this Government. It is taking the privatisation step because it thinks it will destroy the effectiveness of trade unions and drive down the wages and conditions of employees in this State. It may also be about the fact that some mates of those opposite will make a handsome profit from the privatisation of things that should be provided as social benefits. The inquiry should be reasonably wideranging. The terms of reference will cover most of the matters we should be concerned about.

I get asked about privatisation quite often, although I do not pretend to be an expert in this field. I refer to private health insurance schemes. Since I arrived in Australia 18 years ago I have never been a member of a private health scheme. I have had major surgery and never once have I needed to take out private health insurance for any treatment for either me or my family. Maybe that is a result of having lived up north for such a long time. Nonetheless, I have been in Perth for quite some time now. It always seems to me to be a contradiction - I know this sentiment is not shared by some of my colleagues on this side of the House - to put together an incentive to enable private health insurance companies to make a profit before they ever think about delivering a health service. I am always willing to listen to other arguments in this matter. Some people may want to pay an extra levy because of the situation in which the Health Department of Western Australia finds itself. I can afford to pay the extra levy. Ever since I have been in Australia I could well have afforded to pay for private health cover because I have had more money than quite a lot of people, but I do not believe I should get better health service because of that. We should not look at private health cover and profit at the same time.

Hon Simon O'Brien: Is that the case for all health insurance companies? HBF is my insurer. It must pay its bills, but it is not a private organisation set up for the gain of shareholders.

Hon TOM HELM: Maybe it is not.

Hon Kim Chance: How do they invest in private hospitals if they do not make a profit?

Hon Max Evans: It goes back to mutual funds.

Hon TOM HELM: The health insurance groups must make money before they can provide health cover. Whether people get a return is academic. Nonetheless it is a contradiction. People in the north west are victimised if they belong to a private health scheme because -

Hon Derrick Tomlinson: They are covered by their employer.

Hon TOM HELM: That is not the case.

Hon B.K. Donaldson: That is the other form of privatisation, the ultimate form of privatisation.

Hon TOM HELM: That is not the case; they are not covered by their employer. Those who are covered by their employer are disadvantaged because they are unable to get assistance from the patient assisted travel scheme; and that scheme is not paid by private health insurance. They are unable to get into a public hospital bed if they are covered by private health insurance. Many people come through my office in Newman who are severely disadvantaged because they either have private health cover through their employer or, like me, earn enough money to buy their own private health cover. Therefore, there is no advantage in that either.

The reason for raising this matter is that it demonstrates that in some instances the privatisation is inappropriate. As Australians, we take responsibility for the supply of services that are part of our social ways, such as the provision of health care, pensions, unemployment benefits, education and so on. I hold the view that having a profit motive in the supply of those services flies in the face of our social responsibilities, a view that I will hold until my dying breath. However, it is an argument that is severely diminished - even though I still believe in it - if someone can demonstrate that the cost of providing those services is reduced to us as taxpayers if we privatise them. That is the bottom line. If this inquiry can come up with answers that say that we in this State have been served better because we have privatised this, that or whatever, I will still hold strong to my views; however, I will not be on my feet espousing them again.

However, I suspect that the Government is engaging in the pea-and-thimble trick, and juggling things around. As it has the numbers in the other place it can do virtually what it wants. I know that it will come unstuck with that attitude and that is one of the reasons it will lose government at the next election, because it is not paying attention to what is going on. The things that it said to people in 1993 and 1996 and the things that it is saying to people now are beginning to be proved incorrect. Our bus service is a disgrace.

Several members interjected.

Hon TOM HELM: Our hospitals are a disgrace.

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order! If Hon Ljiljanna Ravlich and the Minister for Finance want to discuss the bus services among themselves, they should go outside.

Hon B.M. Scott: What is so disgraceful?

The PRESIDENT: Order! Hon Barbara Scott is not helping now.

Hon TOM HELM: I am thankful that since the last time I went to hospital I have not been exposed to hospital waiting lists except as they affect friends and constituents of mine. The Leader of the House is back in the Chamber now and he should bear the brunt of the shame that people in Newman are unable to get to Perth to get legitimate treatment. If the person is a rough and ready mineworker, someone like me, who is big enough and ugly enough to look after himself, that is his problem. However, we are now getting children -

Hon Derrick Tomlinson interjected.

The PRESIDENT: Order! Hon Derrick Tomlinson will get his chance in a moment.

Hon TOM HELM: If Hon Derrick Tomlinson would just shut up and listen, he would learn something. He should take it easy and not get excited. The human side of this issue becomes clear when babies and young children are affected by these government cutbacks because of so-called privatisation. That is the part that we must worry about. It is all very well to say yes, we can balance the books and yes, everything is looking rosy in the garden. However, the Government forgets about the effect of cutbacks on those people, and it is getting worse. Although I bring that to the Government's attention, I know it will not make an iota of difference, except that when the Government loses the next election it will know why it has lost. All the rhetoric in the world will not change the minds of those people who have been exposed to that sort of treatment. The Government has an opportunity through this inquiry - if it agrees to it, and it should unless all government members are cowards, as they appear to be -

Hon Max Evans: Come on!

Hon TOM HELM: It is up to the Minister for Finance; he can get on his feet and talk about it. If members opposite agree to this inquiry, they will have an opportunity to demonstrate the benefits of privatisation. However, if they will not agree to it, people will know that their worst fears about the things they have been exposed to are genuine fears. It is something that all members should pay attention to. I support the motion.

HON J.A. SCOTT (South Metropolitan) [2.45 pm]: I support the motion. There are significant impacts as a result of the privatisation program, which is really an offshoot of the overall program of the competition policy and so on that has been occurring in this country for some time. If the Government were to look at the most recent Queensland election and what happened to the Liberal Party in that State, it might take a bit more interest in this motion. Most people indicated that they voted the way they did because of their concern about the effect of the competition policy, particularly on people in rural areas of the State.

Hon Derrick Tomlinson: That was most strongly felt in the National Party seats.

Hon J.A. SCOTT: I think the Queensland Liberal Party felt it too.

Hon Derrick Tomlinson: Certainly in the city area. You are talking about the National Party.

Hon J.A. SCOTT: Yes. Hon Norman Moore, who talked about the ideology of this matter, lives in an electorate with a very large rural component; he may take some notice. I am concerned about the talk of ideology in a State like Western Australia with a very small population. Hon Norman Moore said that the Labor Party had an ideology that nothing should be privatised. In the past that may have been true. There is certainly a residue of that in the Labor Party. On the other hand, many members on the government benches think that everything should be privatised; there is an equal ideology in the other direction. The cracks in that ideology show in a number of departments. For instance, the Department of Conservation and Land Management is becoming a tourist operator, and Fisheries WA is moving into the marketing of lobster.

Hon W.N. Stretch: Where is the privatisation there?

Hon J.A. SCOTT: It seems to be a very mixed approach by some departments.

Hon Simon O'Brien: You are not saying it is a double standard, are you?

Hon J.A. SCOTT: No. However, the ideology does not go the whole way; there is inconsistency. In Western Australia we must look at our particular situation on privatisation because of our very small population. No matter how keenly we might want to bring in competition in certain areas, we are limited in doing that in many ways. If we look at our bus services today, all that has happened is that we have shut down the public system and are subsidising people to run the public system with no real competition existing there at all. The result, on the ground, is a reduced service to people. I do not know whether members on the government benches are in contact with people who actually catch buses. I speak to people who catch buses, including my own children, who tell me all the time about buses that are not turning up at bus stops and how some of them are not only late but do not turn up at all.

Hon M.J. Criddle: When? Now?

Hon J.A. SCOTT: Yes, now! It has happened often and is continuing to happen.

Hon Ray Halligan: When you say "do not turn up at all," do they wait there all day?

Hon J.A. SCOTT: That is right. My daughter now leaves home an hour earlier to ensure she gets a bus. That is not good because the teachers do not like students coming to school too early. It is a problem, but the bus does not turn up.

Several members interjected.

The PRESIDENT: Order! Hon Jim Scott has the floor. He is entitled to raise these issues. They are consistent with the motion before the House. Other members will have an opportunity to speak in due course.

Hon J.A. SCOTT: The other side of the bus issue is the condition of the buses themselves. People have told me that the Government is not spending enough money on servicing buses. I looked at the budget and the Government seemed to be spending just as much on servicing buses. However, when I spoke to people involved in the business I was told the reason as much or more money is being spent as before is the routine maintenance is not being done. The money is being spent on repairing buses which have completely broken down rather than on preventing that. We have seen a running -

Hon Ray Halligan: Not at all.

Hon J.A. SCOTT: That is fact, Hon Ray Halligan.

Hon Ray Halligan: That means you have information available. Please present it.

Hon J.A. SCOTT: We must look at both the economic side of the issue and the reality of how the services operate. Somewhere along the road we need to decide what the Government should and should not do. That is the ideological question underlying debate on this motion. I sometimes wonder why the Government seeks to be in government, because it seems to want to hand all these areas of public interest to -

Hon Ken Travers: Their mates.

Hon J.A. SCOTT: Yes. After the selling off of many assets the Government said that it has done a wonderful job of balancing the budget. I am not convinced that the budget is balanced on that basis because I would like to know how balanced the budget would be without the asset sales in recent years.

Hon Derrick Tomlinson: How recent?

Hon J.A. SCOTT: In the last four years.

Hon Derrick Tomlinson: Not since 1990?

Hon J.A. SCOTT: It is not necessarily something attached to the Liberal Party. However, at the end of day we must determine whether we are trying to balance budgets or provide a better service for our community.

Hon Ray Halligan: Hon Jim Scott is a true communist and he is on the right side of the House.

Hon J.A. SCOTT: I am on the right side of the House if I am on the opposite side to Hon Ray Halligan. I strongly believe a Government should be here to serve the public which elected it.

Hon Ray Halligan: And privatisation is a dirty word, obviously.

Hon J.A. SCOTT: No, privatisation is not a dirty word to me. It is something that should be done selectively and carefully after deep analysis not only of the money which will come to the coffers of the Government but also of the services provided because, at the end of the day, I do not want to see these things happening in this community. In the environmental area we have seen greater emphasis on self-monitoring of pollution. I recently raised an urgency motion in this House about many people who have become ill around the Wagerup refinery. Two people who worked at the plant have suffered kidney failure. They complained constantly about this issue but because the Government has a policy of self-monitoring and it trusts companies to do what is right - I am not saying that that company has not taken some steps to rectify the situation - there have been many problems there. We have seen a handing over of all these roles of public protection; not just protection of the public today, but the protection of future generations in this State.

Hon Derrick Tomlinson: Why can't you trust people?

Hon J.A. SCOTT: Because some people have the single motive of making a lot of money.

Hon Derrick Tomlinson: Do you trust yourself?

Hon J.A. SCOTT: I certainly trust myself.

Several members interjected.

The PRESIDENT: Order! I know members are keen to speak, but Hon Jim Scott is entitled to be heard in silence.

Hon J.A. SCOTT: Some of the issues raised in Hon Ljiljanna Ravlich's motion are important, particularly the paragraphs which refer to looking at the cost and quality outcomes of privatisation through the level of savings or the additional costs resulting from the provision of services by private contractors instead of the Government; by that I mean looking at the way the bus services and the hospitals are operating to ensure that they are providing a proper service. I do not know whether it is correct, but I have received feedback that the service has gone backwards. I recently had the experience of going to a public hospital with a child who was running an extremely high temperature. The doctor had said she did not want to give drugs at that point and wanted tests done at the hospital. Even though the child had a dangerously high temperature, we waited many hours to see somebody. That was not the case in the past with my older children. They were promptly dealt with.

Hon Derrick Tomlinson: I can recite my experience as a five-year-old child waiting interminably at Princess Margaret Hospital.

Hon J.A. SCOTT: These things have happened, but the message coming from the hospital staff is one of overworked doctors and people with high stress levels because of insufficient funding. We have seen the selling off of various government services from the hospitals. We saw many strange goings-on when Healthcare Linen was sold and an inquiry was held into that process. I would like to know whether the unit cost of the work which Healthcare Linen did is as cheap in its present, privatised form.

Hon Kim Chance: Very good question.

Hon J.A. SCOTT: Yes. The Government says the changes which have taken place are for the benefit of the community and are about saving money. However, I have not noticed any reductions in bus fares, hospital costs or water and sewerage costs now those services have been farmed out. I would like to know just where these costs have been saved.

Hon Kim Chance: In some cases, costs have increased as a result.

Hon J.A. SCOTT: Yes. Hon Ljiljanna Ravlich's motion is very important. Surely members opposite are not frightened of scrutiny.

Debate adjourned, pursuant to standing orders.

NATIVE TITLE (STATE PROVISIONS) BILL

ACTS AMENDMENT (LAND ADMINISTRATION, MINING AND PETROLEUM) BILL

Discharged, and Referral to Select Committee on Native Title Legislation

On motion by Hon N.F. Moore (Leader of the House), resolved -

> That Orders of the Day Nos 24 and 25 be discharged, and the Bills be referred to the Select Committee on Native Title Legislation.

SCHOOL EDUCATION BILL

Report

Report of Committee adopted.

Third Reading

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [3.02 pm]: I move -

> That the Bill be now read a third time.

It is a requirement in the third reading stage of a Bill that a member argue why the Bill should or should not be read a third time. I find myself in a quandary on this occasion, because I am not sure whether this Bill should be read a third time. I am not sure whether it should be read a third time because of the significant changes that have been made to it since it began its passage through this House. I have had some research done since the committee stage was completed. We have amended some 100 clauses in this Bill. That is a very unusual circumstance. The coalition has been criticised in some debates and in the media by the Leader of the Opposition for having amended the previous Government's legislation in this House. However, I have never known an Opposition of which I was a member to be responsible for that number of amendments to a significant Bill.

Hon Tom Stephens: We have never drafted such bad legislation as you have.

Hon N.F. MOORE: All the legal advice I have received is that what has been created in this House is an absolute mess from a legal and drafting perspective. It will be virtually impossible for the regulations to be drawn up, because of the conflicting nature of a number of clauses. Many of them do not make sense because they have been drafted badly and may have been done better, to quote a member opposite. Therefore, I am in a quandary about whether we should read the Bill a third time or drop it in the bin. Obviously, there is another stage in the parliamentary process if the Bill is read a third time; that is, the Bill will go back to the Legislative Assembly - and hopefully some commonsense will prevail in that place and the Bill will be reconstructed into some order and form which is acceptable. The irony is that I have always believed that the Legislative Council is the place that does that to Bills, rather than the Assembly. That has been the history of this House for a long time. I am the first to acknowledge that during the time that we have been in government, many amendments have been moved and passed in this House which have improved legislation. That is one of the reasons that this House has a very good reputation with regard to what it does with legislation. The Legislation Committee has over the years developed a very good reputation for the work it does in improving legislation. However, on this occasion, what has been done to this Bill has not improved it but has made it a dog's breakfast in all the ways that I have described. It is a sad day to see this House degenerate into a Committee which for all sorts of ideological and other reasons has sought to mangle a Bill - and mangle is what has happened.

I repeat, because I am constrained in my comments on the third reading as to whether the Bill should be passed, that I am not sure whether to argue for it or against it; and I am trying to reach a conclusion on that as I speak. What has happened is really significant. I have talked to people who understand drafting and legislation, and who know that a Bill is not simply a set of words that is chucked onto the Notice Paper or into a Bill because that sounds like a good thing to do at the time. A Bill is a piece of law. What we put into a Bill becomes the black-letter law of Western Australia. We cannot just make up words and put them into a Bill and say, "That is roughly what I have in mind", and regard that as being law-making, because it is not.

This Bill will now go to the Assembly. Many of the amendments will be accepted, because many of them did improve the Bill where drafting improvements were required -

Hon Ljiljanna Ravlich: Sorry; I did not hear that.

Hon N.F. MOORE: All the amendments moved by me did improve the Bill, because they basically fixed up drafting mistakes in other people's amendments. However, the vast majority of the clauses will need to be re-amended or taken out. I suspect that we will end up with a conference of managers down the track, and that the Bill will simply not be introduced into the Western Australian education system. It was the Government's hope and belief in May when this Bill came to this House that it would pass through this Parliament and be introduced into the Western Australian school system by the beginning of the 1999 school year. A rumour was going around at the time that the Labor Party had every intention of ensuring this Bill was not introduced into the school education system in 1999. People were saying to me that the Labor Party would make sure that the Bill was so bad that we could not introduce it. I said I could think of no reason why the Labor Party would do that, because I had listened to the comments being made by the shadow Minister for Education, the member for Belmont, and by Hon Kim Chance and others, who said that even if this Bill were not amended, it would be vastly better than the 1928 Act. I had heard also the comment by the member for Belmont that the Labor Party intended to make a few amendments in the upper House, meaning five or six, yet more than 100 amendments have been made. Those sorts of comments were made by Labor Party members. I could not work out why the Labor Party would want to so emasculate and change this Bill that it could not be introduced at the beginning of the 1999 school year. However, that was the very strong rumour that was around the traps.

Hon Ken Travers: Where did you hear that rumour?

Hon N.F. MOORE: From everyone to whom I spoke. I can only assume now that what was put to us then is what the Labor Party had in mind anyway, because I can think of no other reason why so many of the amendments were made, when it was explained very clearly to the movers of those amendments that they would either make an absolute mess of the Bill, be contrary to some other amendments, or be out of order with another clause. All of those factors were ignored. I watched the blank look on some members' faces. They knew full well that what I was saying was correct, but they decided to completely ignore the legitimate arguments that were put forward in an attempt to fix things up, simply because they wanted to amend this Bill in a way which had been predetermined. What is the point of debating every clause in this Chamber if members have a predetermined position? On 99 per cent of the amendments the members opposite had a predetermined position and there was no way they would change their minds. Hon Ljiljanna Ravlich kept trotting out the line that the Labor Party had not won an amendment in the Assembly, and it would win the point in the Legislative Council. It was like pay-back time. The Bill is not in good shape. It has been amended in policy terms in a significant way. It does not represent the policy view of the Government, yet this Government has the biggest majority in the Legislative Assembly of any party since the First World War.

Hon Ljiljanna Ravlich: How many times have we heard that?

Hon N.F. MOORE: Members will keep hearing it time and time again because it is a fact of life. Any Government elected with that kind of majority is entitled to have the policy of its legislation passed, even if members opposite want to argue about the technicality of the amendments. Members opposite have completely changed the policy of this Bill on many significant and serious issues which were the subject of much debate in the community. A Green Bill was issued and there was enormous public consultation. In this House we heard the narrow views of the State School Teachers Union, a couple of members of the Western Australian Council of State School Organisations, some people in the Labor Party, the Australian Democrats and the Greens (WA). They used their narrow points of view to change the Bill to satisfy their personal requirements, without any consideration of the fact that it had gone through substantial and major consultation in the community. Many people will be very disappointed and angry about what members have done to this Bill. For example, the other night I was talking to a psychologist who asked me when the Bill would be passed because it was desperately needed in the system. I told him not to hold his breath because it had been mangled.

Hon Ljiljanna Ravlich: You could have brought it on six months ago.

Hon N.F. MOORE: The Government did that, and members opposite sent it to a committee during the parliamentary recess. I opposed that vigorously and I still oppose it.

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order! Hon Ljiljanna Ravlich does not seem to understand the rules of this House. It may be that a few people are tired. I have been a member of this place long enough to know what happens when people get tired. Things flare up and some people end up in tears because they are kicked out. I advise members to be careful. I am not tired, but I can see that some others are. This debate is about whether the Bill should be read a third time.

Hon N.F. MOORE: It is the opinion of the Government that the House had long enough to deal with the Bill well ahead of this point in its history. The Bill will now go to the Assembly and it must be substantially amended again. That means

those who wanted its implementation delayed until 2000 will have achieved their end. If that is what some people wanted, they can feel very satisfied at having achieved it. I repeat that many people want this Bill passed, and passed in the form in which it began. That has not been achieved. Members opposite will wear the consequences of their actions. There is some ultimate hope for this Bill; that is, the Assembly will fix it up and the Opposition will agree to it - whether in a conference of managers or some other process. I can only hope that is the case. In that sense, one could argue that it should be read a third time now. However, if at the end of the day it is not changed in any substantial way, it is my view, which I will put to the Minister for Education, that the Bill should be put in the bin and the whole exercise should be viewed as a bad dream.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [3.14 pm]: I have not taken much time of the House in the debate on this legislation. The Labor Party supports the legislation and supports the third reading. The Opposition calls upon the Government to do what it has so far proved incapable of doing; that is, understand that the upper House has been elected to fulfil the role of a House of Review for the activities of this Government. One of those activities is to produce good legislation for this Parliament. So far, the Government has consistently shown that it is incapable of doing that. That has been the case in the production of this Bill since it was tabled in this House. More importantly, during debate on this legislation I watched the Government belligerently oppose the efforts of the non-government majority to deal expeditiously with the legislation. When a move was made to send the legislation to a committee expeditiously, the Government, instead of cooperating, dragged its feet, fought, screamed, clawed and tried to prevent the orderly handling of the Bill through the committee system of this House. Eventually the Government was faced with the inevitable reality that the legislation would go to a committee. However, even in the committee system the House has not been well served by government members in facilitating the orderly consideration of all clauses of the Bill. It is time members opposite accepted that this House is under new management. That management is under people committed to the system of legislative review of the activities of government.

Several members interjected.

The PRESIDENT: Order! The question before the Chair is whether the Bill should be read a third time. I am trying to hear whether the Leader of the Opposition is addressing himself to that question. Most other members of this House are having a private argument among themselves by interjection. I can see something developing. If members are tired, they should leave the Chamber and have a rest somewhere else.

Hon TOM STEPHENS: I support the third reading of this Bill because this House has done its job in difficult circumstances with a reluctant and belligerent Government, which has endeavoured to utilise, through the services of its leader in this place, bully-boy tactics to threaten and cajole non-government members into allowing the legislation to be passed in this place without amendment or any review. The Government wants to deliver to the people of Western Australia that which this conservative Government thinks it is entitled to deliver, without accepting the will of the people who put into this place a non-government membership that provides protection for the people of Western Australia from the excesses of this Government. I have been a member of this place long enough to have watched the excesses of the people opposite and their predecessors when they had control of this place. People of my party, for the entire period in which we have formed a parliamentary party in this State, have not had the capacity to put up legislation with any hope of its getting through this place, unless it conformed to the wishes of the conservatives who have dominated this Chamber from its inception.

Hon Derrick Tomlinson interjected.

The PRESIDENT: Order! Hon Derrick Tomlinson will come to order.

Hon TOM STEPHENS: As a result, unlike this Government, the Labor Government had to shape and form its legislative agenda based on the firm knowledge of what it had some prospect of getting through this place.

Hon Mark Nevill interjected.

Hon TOM STEPHENS: Indeed, an Opposition that regularly threatened and cajoled us and ended up creating for us legislation that was unworkable in so many cases.

The PRESIDENT: Leader of the Opposition, I have no idea of how your most recent comments relate to whether this Bill should be read a third time. The Leader of the Opposition knows the rules. He should tell us why it should or should not be read a third time.

Hon TOM STEPHENS: The reasons that this Bill should be read a third time are advanced by rejecting those propositions that are put to this House by the Government, that somehow or other the non-government members in this place have misused their role. I want to show the House that that proposition which was advanced by the Leader of the Government is a fallacious proposition. We, in stark contrast to the misbehaviour of members opposite when they dominated this House when we were in government, have applied ourselves to the consideration of legislation, particularly in reference to this Bill, in a very judicious way. We have not gone to any great excess as members opposite did while they controlled this place when we were in government, and instead have caused the rejection of only one Bill so far. Only one Bill has failed to pass

this House in the entire period in which the Government has been in office; I think it was the Hairdressers Registration Repeal Bill. This Bill and other legislation that we support in this House should not go down; it has been improved by virtue of the amendments moved in committee, particularly by members on this side of the House, by the standing committee and to some extent by the very large number of government amendments, all of which have improved upon the legislation. I pay tribute to the dedicated work done in improving this legislation by Hon Ljiljanna Ravlich, who was joined and assisted in that process by Hon Kim Chance through his work on the Standing Committee on Public Administration, and clearly assisted in that committee work by Hon Christine Sharp and Hon Helen Hodgson. As I understand the committee's report, they were assisted by government members of that committee as well to the extent that they were able to participate and contribute.

This Bill has produced for the people of Western Australia the opportunity now of preventing compulsory school fees in government schools and the minister's proposed increase in school fees. The prospect of that is now no longer available to this Government by this amended legislation. We have through the amendments passed in this House preserved children's rights to attend their local government school. We have improved the parents' rights to have decisions affecting their children reviewed. We have provided a safeguard for the future of government schools as an integrated public school system and we have reduced the draconian penalties that were otherwise on offer from the Government. We have provided for better controls on advertising in government schools. That is to name only a few of the important features of the amendments that have been carried by this House. I say to all members of this House that they are constrained firstly by the standing orders of this place which prevent them from reflecting upon the decisions of this place.

Hon E.R.J. Dermer interjected.

The PRESIDENT: Order, Hon Ed Dermer! The Leader of the Opposition is doing a reasonable job in putting his case. He does not need the member's help.

Hon TOM STEPHENS: They are also left with the overwhelming evidence of better legislation now before this House by virtue of consideration of this Bill in committee. For all of those reasons, I commend the work of the members I have mentioned. I take strong exception to the Leader of the House with his bully-boy, bovver-boots approach to legislating in this place. We have had to put up with the antics of that type of approach from this leader and his predecessors; and, when we were in Government, the belligerent approach of his predecessors while in opposition.

Hon N.F. Moore: Can I make a very serious suggestion to you?

Hon TOM STEPHENS: Yes.

Hon N.F. Moore: On the weekend read the Bill and then you will know what you have done. Make a proper judgment of it and tell me what you think. You admitted you had not read it.

Hon TOM STEPHENS: I say to the Leader of the Government that this Bill is going into the firm hands of the Government. It can, if it chooses, rip up the Bill; or if there are by chance some limited technical deficiencies caused by this government leader adopting the strategy that he has embarked upon in this House whereby he had the House sit until 2.30 in the morning, they can be attended to. The Leader of the House repeats, time after time, the same words: The reason an approach should be adopted is that it is the Government's approach. That is not a good enough argument to put before the Committee of this House; nor is it good enough an argument to put before the whole House as it now considers this Bill in its third reading. The Leader of the Government should lift his game and improve upon his capacity to negotiate in the best interests of the people of Western Australia. He should produce and display a real capacity to negotiate over legislation and to do that through the utilisation of the committee system of this place and also through a more conciliatory approach to other members of this place who do not happen to constitute the government ranks of this House, which should after all be a House of Review. We put up with him for too long when we were in government and we have no obligation now to allow him to stand over this place.

Hon N.F. Moore interjected.

The PRESIDENT: Order! The Leader of the House will come to order! The Leader of the Opposition will also come to order and will concentrate on why the Bill should or should not be read a third time, and not go back into history for whatever reason.

Hon TOM STEPHENS: This Bill should be given a third reading. It should be put into law in double-quick time. It is now simply incumbent upon the Government to get on with that task, even if it requires some tinkering at the edges to sort out any technical deficiencies that may have arisen in the processes of this House by virtue of the extraordinary pressures that were placed upon it by the way the Government chose to handle this legislation. There is a better way of handling legislation, and that is to show some sense of cooperation and some reality of cooperation in this place. All of Western Australia would be well served by that approach being adopted and embraced by government members. It is about time that they got on and joined in that embrace on behalf of the people of Western Australia.

HON DERRICK TOMLINSON (East Metropolitan) [3.28 pm]: I deliberately refrained from participating in this debate

for two reasons. One is an acknowledgment that I have been critical of the Government's Bill from a very early stage. I expressed my criticism in the second reading debate. For that reason I was conscious of my mother's teaching at a very early age when she said to me, "Derrick, if you have nothing good to say, say nothing." It was my intention not to express my own criticism of the Bill, but rather to not participate in the debate.

Another reason I have refrained from speaking until now is the proposition that if fewer of us spoke, the quicker would be the Bill's passage. In the past few days the fallacy of that notion has been demonstrated. I do not believe the Bill should be read a third time. Those of us who represent the Swan Valley and perhaps even those who represent the south west of the State, certainly Hon Nick Griffiths and Hon Ljiljanna Ravlich, will appreciate the wisdom of our vignerons who say that if we start with bad material, we will end up with a bad product. In this instance we began with material which was flawed.

The fundamental flaw of the Bill is that rather than having a clear statement of legal principles for the administration and management of a school education system in Western Australia, it is cluttered with what I call "administrivia"; that is, details of the management of schools which have no place in legislation and which are best dealt with either by delegated legislation in the form of regulations, by administrative procedures, or by some other form of management process. As a result of the Bill's being cluttered with administrivia about which there was so much concern, amendments were passed which were not about the principles of the Bill in the main but about the administrivia. Its passage has been fraught with constant bickering about tiny matters of detail which have little bearing on the administrative and management process of the schooling system in Western Australia. We dealt with administrative detail that would have been better dealt with in another place. Rather than this House's concentrating on establishing a few sound principles of law, it found itself engaged in continuing squabbles about trivial details of administration. I expected that would be the fate of the Bill when I read it the first time. I am embarrassed to say that my expectations have been realised. In the first instance, we started with inadequate legislation.

My second concern is that consideration of the Bill in this House has resulted in amendments which, in some instances, are grammatically and logically unsound, make no sense in administrative law, are virtually impossible to translate into management practice and are now beyond redemption.

This Bill probably went through a public scrutiny greater than that received by most other legislation presented to this Parliament. It had a long gestation. I indicated in the second reading debate that review of the 1928 Education Act began under minister Pearce when Dr John Greenway, former Deputy Director General of Education, was appointed to review the Act. That stage of the process did not get very far. It produced no product for consideration by the Parliament. The second stage of the review began with Hon Norman Moore and the appointment of Fred Tubby, the Parliamentary Secretary for Education, to head a committee to review the Act. It was a committee process of review which took public and private submissions, consulted all the stakeholders and produced a Bill. The Bill was then released as a Green Paper, and a comprehensive process of review was undertaken.

In some respects it was an inadequate review because the people who felt strongly about it came away feeling that they had not been heard. That is not unusual. Each of us wants to believe that once we have spoken, there will be action because ours is the infallible truth. So those who believed their contribution to this legislation was infallible saw the redraft of the Bill and said, "Oops, they have not listened to me; the Bill is flawed." However, there was a process of review and the Bill that came out of the Green Paper review was substantially different from the Green Paper that went into the review. However, it did not embrace all of the recommendations for change that came from that review.

The Bill then came to this place where the decision was made to refer the Bill to the Standing Committee on Public Administration. I was critical of referring it before the second reading debate because the principle of the Bill had not at that stage been adopted by the House. That was the will of the House. Regrettably, it was referred to a committee which, by its own acknowledgment, did not have the power to consider the principle of the Bill. It had the power to consider the Bill as an administrative document - a document of government administration or one of establishing the procedures of public agencies. It considered the Bill in those terms. It did not consider the principle of the Bill, even though it may have done so because the principle of the Bill had not been established in the second reading speech. The committee established its own principles of consideration of the Bill and produced a report based on those principles.

I anticipate that the committee considered many of the submissions made in the public consultation process. I am sure the committee considered the submission from the Western Australian Council of State School Organisations. As a member of the Legislative Council, I certainly received strong submissions from WACSSO. I received the strong submissions of the State School Teachers Union of Western Australia. As a member of this place, I also received the strong submissions from the various proponents of home education. I recognised in some of the committee's recommendations some of the submissions of those organisations. I also recognised that the committee did not adopt all of the recommendations of interest groups. The committee produced a report with which I felt quite comfortable. I felt that many aspects of the committee's report and its recommendations were an improvement on the Bill. However, I could not accept other aspects of the committee's report because of the argument, ideological basis or rationale behind those recommendations. Nevertheless, the committee did a commendable job in the time which the Legislative Council set for it to carry out its task. I commend the committee for meeting that deadline, which I was very sceptical it would meet.

What occurred when the committee's report came to this place? A decision was made, which I supported, that rather than have the committee's recommendations read as part of the Bill, each recommendation was to be debated in order. I strongly supported that notion. Given the variation in my own acceptance of the committee's recommendations, I could see a strong basis for holding a thorough debate on each recommendation.

We then saw amendments to the committee's recommendations by the committee itself, amendments of the committee's recommendations made by the Government, and then amendments of the amendments. In addition to that process of considering the report of the committee, a series of amendments were moved which reflected nothing more than the submissions of special interest groups, such as the State School Teachers Union and WACSSO. Those were the very submissions made by the special interest groups to the committee which were not accepted by the committee.

We then had what might be described as a dog's breakfast: It was a melee of recommendations on recommendations; a melee of amendments on amendments; and a melee of amendments which did not meet any requirements of legal or even grammatical consistency. We had the spectacle last night of an amendment being ruled out of order because its consequences had not been properly considered. I pay tribute to Hon Helen Hodgson, who at least recognised the consequences of some of her amendments moved at an earlier stage and moved that those amendments be rescinded. Other amendments which had the same, or similar, nonsensical consequences to those which Hon Helen Hodgson recognised, now stand as part of this Bill. Therefore, the Bill does not stand up to scrutiny. I am embarrassed to say that this Bill is a worse product as a consequence of the process of scrutiny in this place than its initial form. We started with inadequate legislation. However, rather than producing improved legislation by undertaking the processes of this place through scrutiny by a standing committee and the Committee of the Whole, a measure was produced which will not stand up to public scrutiny, let alone be able to be translated into management practice. For that reason, the Bill should not be read a third time.

Sitting suspended from 3.45 to 4.00 pm

HON KIM CHANCE (Agricultural) [4.00 pm]: I support the motion that the Bill be read a third time. I want to raise a number of issues in respect of the procedure for the handling of this Bill. I intend to do that in the same non-adversarial manner as did Hon Derrick Tomlinson; and in some important areas my views are not entirely different from his. I am grateful for the positive comments made by Hon Derrick Tomlinson about the work of the Standing Committee on Public Administration on this legislation.

This Bill was an early test of the new standing orders. It has been observed by some, including me, that the standing orders appear to have failed their first test. It has been suggested to me that the construction of the standing orders did not ever contemplate their being used in respect of a Bill as large and as complex as this Bill. However, I am not sure on reflection that my first view is correct. I acknowledge that we have had a problem, but perhaps it was due not to a failure of Standing Order No 230, but rather to the way in which we have interpreted and used that new standing order.

When I argued for the referral of this legislation to the Standing Committee on Public Administration, I gave an undertaking that the Bill would return to the House in time for finalisation of debate before Christmas; and at least I have been able to keep that undertaking. I also set a standard. That standard was that the committee would be successful if, as a result of its referral, it came back to this place with 20 or 30 amendments rather than in excess of 100 amendments, which was then a theoretical possibility. However, by my own measure, we have failed to meet that test, and that does not sit particularly comfortably with me.

The committee's work in this area has helped significantly. The majority of the amendments that were introduced by the committee were supported by the Government; and, with one or two exceptions, the committee's amendments were passed without a great deal of debate. It is true, as Hon Derrick Tomlinson said, that the committee was forced to amend some of those amendments. I believe five or six amendments were subject to further amendment, in some cases because the committee had not considered fully the outcome or result of the amendment, and subsequently became aware of that outcome and was thus forced to make the changes. In other cases amendments were made because simple typographical matters needed to be corrected.

I hope sincerely that we can learn from the procedure that we have used to deal with this Bill. The primary reason for the failure of that procedure is that not only did the committee system and the House reach the limit of their resources, but also they broke through and far exceeded the limit of their resources. I will return to that matter shortly.

Two fairly persistent criticisms have been made about the amendments that came from sources other than the committee. The first criticism was about their drafting. The second criticism was, apart from logic and grammar, about the unintended effect of those amendments on other parts of the legislation. Both of those criticisms can be attributed to the deficiencies in the resources that are available to an Opposition to draft its amendments. That is a matter for the House to consider in the future, but the Opposition will do, and always has done, the best that it can with the resources that are available to it. However, the Opposition's resources in this area will never match the Government's resources. It has been the case for years that no matter who is in government at any one time, government legislation must be amended in the debate in the second House, because even with the resources of government, drafting errors are made and are fixed in the process of debate

through the two Houses. The potential for Oppositions to make mistakes, given their vastly inferior drafting resources, is obviously very much higher, and that is the matter to which I refer when I say that we reached and exceeded the limits of our resources in a Bill of this nature.

The Public Administration Committee was heavily constrained in the way it dealt with the Bill. It was constrained because it was unable to appoint staff prior to prorogation, for obvious reasons, and for reasons which I support and of which I am not critical. The committee was unable to appoint staff prior to prorogation because of the obvious fact that post-prorogation, the committee would have had to wait for the House to refer the matter to it again; and had it employed staff prior to prorogation, and had the House then decided not to continue with the referral post-prorogation, that money would have been wasted, and that was something that we obviously could not do.

With regard to the time it took the committee to deal with the referral, I have said before that the committee took one month and six days to put the first report together. The majority of recommendations flowing from the committee report were ultimately supported by the Government. I go back to the question of drafting. Taking into account the committee's recommendations and the amendments received from the three opposition parties and the government parties, I can account for at least eight different persons who drafted the amendments with which we have just dealt. There may be more, but I can say with certainty that eight different persons drafted amendments. When eight people draft amendments, with the best will in the world, even if they are all going along in the same basic direction - we acknowledge that we were not - it is almost certain that the amendments will diverge from each other, and in places contradict each other. That is something we, as members of Parliament, must try to address. Members must consider how legislation of this nature will be handled in the future. I no longer believe that it is as simple as merely reviewing Standing Order No 230.

I regret to say that I believe the minister also has not helped this process because of his comments, which have been persistently and consistently derogative. In making those statements he did not take into account the difficulties of the House and the Opposition in producing the amendments. To calmly analyse the criticism of the Leader of the House, it seems to have two fundamental elements. The first is that the Opposition held views and voted in policy directions with which the Government disagreed. There is nothing particularly new in that, and certainly the precedents for a numerically superior Opposition in this place making such amendments to government legislation are manifold. The second issue of the leader's criticism is that the drafting of opposition amendments was deficient. I have already addressed that. The Opposition does not have, and never can have, the resources of government in this area. The main point is that members should be asking themselves how committees should be used in their analysis of this type of Bill in future. Members of the committee were restricted by a number of factors, some of which I have been through. I will go through the three key areas very quickly.

The PRESIDENT: Order! The member must be quick because up to this point, when he was discussing the procedure as it affected the composition of the current Bill, everything was on target. He is now getting into a procedural debate. I ask the member to recognise that and be very brief in his comments.

Hon KIM CHANCE: It is, and it goes to the point. When dealing with this Bill, the committee was restricted by limited resources in the first instance; a very short reporting date, in the second instance; and by its own standing orders which prevented it from dealing with a number of issues. That was mentioned by both the Leader of the House and Hon Derrick Tomlinson. Under its standing orders, the committee could not address key areas of the legislation; for example, fees and objects. If this legislation in its current state presents difficulties since the amendments have been dealt with, many of those difficulties lie in those two areas of principle. I feel confident that, had the committee had the time and the resources, it could have dealt with those issues in a better way than they have now been dealt with. It would possibly have saved days of debate and the end result would have been better legislation. That does not in any way suggest that the committee is the fount of all wisdom but in complex areas such as this, it is a better way of dealing with matters of that nature, even if the committee does not reach unanimous agreement, than to battle it out in this House. The committee has three government and three opposition members, and it did not reach a position in which it could recommend a course of action to the House. However, the position of all the members was clearly debated in the report and the House had only to consider that position. Preferably, if the committee had had access to parliamentary counsel, who could have enumerated the legislative outcome of the two different positions, the House would have been saved hours of pointless work. That is not just the work done by members of this House, but also the work that must now be done outside this place.

It has been alleged that some clauses in the amended Bill contradict other clauses. If that is the case, it is deplorable, but I do not know if it is the case. Had the committee been able to work on the whole Bill, it simply would not have happened. That is the point of my comments. The debate would have proceeded more efficiently and effectively, and the result would have been better legislation. I have mentioned before in different forums that the standing orders of the Standing Committee on Public Administration are unnecessarily restricted. This is yet another example of the difficulties of the Public Administration Committee in performing its task, as a result of that restriction.

In conclusion, I make it very clear that, to the extent that mistakes have been made in this Bill - any Bill that is debated in committee for as many days as this one was will contain some mistakes made by members individually or collectively - if we can learn from those mistakes and try to prevent it happening again, we will have made some positive use of the debate

on this Bill. Notwithstanding that, with acknowledgment of some of the difficulties, it is a better Bill now than it was previously, although that is probably an adversarial statement with which people will disagree. I also acknowledge the role of the Leader of the House in this debate. He had a particularly difficult time getting it through. I know that last night he would have much preferred to be in another particular place, and I am genuinely sorry that he was not able to be there for that important occasion. Similarly, from the committee's point of view, I acknowledge the work of members of the legislative review team who were of enormous assistance, particularly Mr Ken Booth. From the committee's point of view, I thank the Minister for Education for making their time so generously available to the committee.

HON LJILJANNA RAVLICH (East Metropolitan) [4.19 pm]: I support the third reading and I express my dismay at the behaviour of the Government with regard to this legislation. I place on the record that I found its response to some of the issues confronting the House to be frustrating and uncooperative. It took every opportunity to play politics in regard to this matter, rather than come up with appropriate compromises in relation to this legislation.

Hon Derrick Tomlinson was right when he said that he was critical of the Government's Bill because it was an administrative Bill and some of the recommendations made in the Green Bill were not reflected in the final Bill. That was also the perception of the members of the Australian Labor Party. It is one thing for the Government to say that it has consulted extensively - this consultation process has taken 18 months or two years - but it is another thing to take note of what people are saying in that consultation process. We are interested in not only the quantity of consultation, but also the quality of consultation and whether what people are telling the Government has been taken into account by the Government and whether it uses that information to effect a change in the proposed legislation.

The PRESIDENT: Those comments are more suited to the second reading stage. The member is meant to be telling the House why the Bill should or should not be read a third time.

Hon LJILJANNA RAVLICH: The Bill should be read a third time because the changes which were effected in this place through the amendments moved by Hon Kim Chance, representing the members of the Standing Committee on Public Administration, and members of the Australian Labor Party, the Democrats and the Greens (WA) represented the collective view of the people on this side of the House of the areas of the Bill which were deficient. Those amendments were passed in this place and it was a fairly laborious process. The process of legislating is a laborious process, especially when we have a Bill the size of the School Education Bill. To suggest that there would be no problems with that process is being too simplistic and idealistic. We are only at a certain stage of the process. This Bill must still go through further stages. For members opposite to say that it is hopeless legislation, it is a dog's breakfast and it is a mangle of a Bill, does nothing but incite public anxiety to generate a sense of blame by the Leader of the House. The Leader of the House uses this emotive language so he can pin the blame on someone. No blame can be pinned on anyone in regard to this legislation. The process has not yet been completed. I support the third reading in the process of this legislation. I will not succumb to the emotional blackmail by the Leader of the House on this issue.

Hon N.F. Moore: Do not make silly comments like that.

Hon LJILJANNA RAVLICH: It is not a silly comment. It is the way that the Leader of the House delivers the message: "If you do not do what we want, this Bill is doomed for the rubbish bin. If you will not do what I say and if you do not trust me, the whole state education system will fall down." What a load of nonsense. He must think that I came down in the last shower. I will not cop that sort of blackmail. The passage of this legislation is nowhere near complete. We on this side of the House have endeavoured to amend the areas of the legislation which we deemed were deficient. I congratulate the members on this side of the House for their efforts in that regard. The ALP is very proud of the achievements of this House. The Government has a real difficulty with the fact that something historical has taken place in this Chamber. For the first time in history, we have undertaken a legitimate review process. There may be a slight flaw in that review process, but having waited for decades for a legitimate review process to be undertaken by this place, I am very grateful that we have achieved it. I am grateful that we were able to achieve those amendments because they enhance the School Education Bill and will be of enormous benefit to Western Australian school children, their communities and their parents. For the first time in history, this House is operating as a real House of review.

I do not know whether the Leader of the House would have been happier if we had left his Picasso and had put only a brushstroke on it, rather than many brushstrokes. This is about passing good legislation. It is not about passing six, 40, 80 or 100 amendments; that is irrelevant. The merits of what we have gone through should be judged at the end of the process. I am confident that we will have good legislation as a result of this process. The Leader of the House must get it into his head that we are exercising a legitimate function in this place. We are not taking anything away from the Government. We are doing what we are legally here to do - represent our constituents. We have done that and all members on this side of the House should be proud of their efforts in that regard. I am proud of the efforts of the members because there is nothing surer than the fact that this Bill required close scrutiny and it received that close scrutiny. Irrespective of the protests by the Government at every stage of this process, the members were committed to ensuring that there was debate and scrutiny of the legislation and that we thoroughly analysed it. A problem was created in the other place. When the Bill was initially discussed in that place, and the Labor amendments were proposed, many of those amendments were rammed through.

The PRESIDENT: That may be the member's view, but standing orders prevent the member from discussing what happened in the other place. We are meant to be hearing why the Bill should or should not be read a third time in its current form.

Hon LJILJANNA RAVLICH: We have ended up with a good piece of legislation which may require some tidying up. The Government may not like the fact that we have made changes to key areas such as local area intake, school fees and a number of other key policy areas. However, we will always have a point of difference with the Government in that regard. The Government's argument that we should not change the policy of the Bill, nor should we touch the Bill because it is the Government, does not wash any longer. We are quite within our rights to make those amendments and we have made them for all the right reasons. We have made those amendments because the legislation will be strengthened and benefits will accrue from that. A number of arguments have been used by the Leader of the House and members opposite. The Leader of the House said in passing that he was concerned that we had caused delays in the passage of this Bill. The Leader of the House must accept some responsibility for the length of time it has taken for this legislation to pass through this place. Many pieces of legislation must still pass through this place in the next four days' sittings. The Standing Committee on Public Administration and the members in this place have worked within a tight time frame and everyone has worked to the best of their abilities in the interests of all of the stakeholders. I commend the members of the Standing Committee on Public Administration because I know the amount of time it took to analyse this legislation and to get those amendments in the shape in which they were presented.

I put on record my sincere thanks to Hon Kim Chance, who has been of enormous assistance in handling the School Education Bill, not only in his capacity as Chairman of the Standing Committee on Public Administration but also as a colleague. He has certainly taken on the challenge of the work regarding the Bill, and like a true trooper he has not let down anybody and has been a great support to me.

This Bill must be read a third time. Too much good work has been put into this legislation for that not to happen. I am confident that when this legislation finally becomes law, some of the problems that the Government now sees as insurmountable will not seem so insurmountable when the heat is taken out of the argument and when they are looked at in the cold light of day. Given the resources of the State, I cannot see any problem which is so great that the School Education Bill is deemed suitable only for the dustbin. That is emotional nonsense. The Leader of the House is playing politics and in this instance we should be putting politics aside, looking at good legislation and considering the educational wellbeing of Western Australian children as our priority, rather than scaremongering in the Western Australian media. I support the third reading.

Question put and passed.

Bill read a third time and returned to the Assembly with amendments.

GAS PIPELINES ACCESS (WESTERN AUSTRALIA) BILL

Second Reading

Resumed from 13 October.

HON MARK NEVILL (Mining and Pastoral) [4.32 pm]: The Opposition supports the Gas Pipelines Access (WA) Bill and will move some important amendments in the committee stage. Before speaking on the Bill, I will run through the second reading speech on the Bill which I regard as being surreal. It does not appear to reflect the situation in Western Australia or the Bill itself. In the second paragraph is the claim -

> The Bill is integral to the ongoing energy reform process in Western Australia and maintains this State at the forefront of reform of Australia's natural gas industry.

Nothing could be further from the truth. The head of the National Competition Council has been critical of Western Australia's performance in energy reform, particularly in the gas industry. If anything, it has lagged the field. To suggest that it is in the forefront is mythology. It goes on to say -

> . . . large consumers will be able to contract directly with a gas supplier of their choice for the supply of gas and contract separately with a pipeline operator for the transportation of gas.

More impediments are on the major pipelines in Western Australia than in any other gas pipeline system in Australia because of the regulatory regime that has been built up in this State. Many third parties have tried to access our pipeline system and encountered all sorts of trouble in trying to negotiate contracts to determine a fair and reasonable price. The speech goes on -

> . . . retain a balance between Australia-wide consistency and the State's flexibility to deal with its unique regional differences.

Nowhere have I seen clearly spelt out what are these unique regional differences. No balance exists between Australia-wide consistency and state flexibility. This Bill derogates significantly from the national access code as it is proposed to be

implemented in most other States. In this State we have transition periods, which are lengthy; and we have extremely high gas tariffs even with the sale of the Dampier-Bunbury natural gas pipeline. Those tariffs will come down to $1 per gigajoule only by the year 2000. That is not cheap, but expensive, gas. The price that Kingstream achieved to Geraldton was less than 50¢ per GJ. If that price were equated to Perth, it is about 70¢ per GJ. The target that has been set for the year 2000 is $1 per GJ. When the gas pipeline was sold, that price was far too high. One of the reasons that the pipeline attracted such a high bid was a significant profit margin in that price. It means that an extra 15 to 20¢ is going straight to the operator for every GJ of gas that comes to the south west to pay for the premium that was paid for the pipe.

Hon Derrick Tomlinson: Is that 15 to 20¢ for the operation of the pipeline?

Hon MARK NEVILL: Yes, we are talking about transmission tariffs.

It would have been far better to have the bidding on a series of prices at, say, 75, 80, 85 and 90¢ per terajoule and selling the pipeline at the optimum price. That would have resulted in a much lower price for the pipeline than the $2.3b that it sold for, but there would be the prospect of obtaining gas at 80¢ per gigajoule, which would have impacted greatly on employment, downstream processing, manufacturing and, of course, energy prices. The speech goes on to say that the objectives of this Bill are -

> To provide an open and transparent process . . .

There is still no open and transparent process on the goldfields gas pipeline. That will not arrive until January 2000, and even then certain protections are built into the Bill. The objectives are also to safeguard against the abuse of monopoly power in the transmission and distribution of natural gas. No attempt has been made by this Government to tackle those abuses of monopoly power over the past two to three years.

The other objective of the Bill is to promote a competitive market for gas. To a large degree, in the short to medium term, that opportunity has been lost. The Government had an opportunity to build a second pipeline to the south west but it failed to grasp it. It would have resulted in two competing pipelines, one of which could have carried raw, untreated, industrial quality gas to the south west in competition with the existing pipeline. That would have provided pipeline-on-pipeline competition, which is the way to create competition in gas prices. Instead, we have the preservation of a monopoly which has been expanded with the expenditure of a further $800m on looping it to increase its capacity. We have built in a larger monopoly between the North West Shelf and the south west of Western Australia. That monopoly will carry gas to the south at $1 a gigajoule by 2000. That will be expensive gas by any measure.

We have been talking about the cost of transmission of gas. I refer now to the cost of purchasing gas. We now have left in the north west only one group that can supply large quantities of gas; that is, the North West Shelf joint ventures. Earlier this year when the Australian Competition and Consumer Commission examined the authorisation application to allow the North West Shelf operators to market gas collectively into the south west, the State Government did not have a position. That is amazing. Rather than the five or six partners in the North West Shelf being required to sell their gas separately, as they do overseas through shipping, they can market gas collectively into the south west. There will not be any competition.

We have a monopoly pipeline with one supplier. The only government body at the ACCC hearings, in which I participated, was Western Power, which opposed the authorisation. No submission was made by the group that seems to work very closely - AlintaGas, the Office of Energy and the Department of Resources Development - about whether it should sell the gas collectively or be required to sell it by its members competing among themselves for those contracts. No submissions were made by the Government and no-one from Government attended the public hearing. In response to answers to questions in Parliament I was told that private discussions were held. Basically the Government has let the North West Shelf remain as a monopoly supplier. No-one can compete with the NWS joint ventures for the large quantities of gas. We also have a monopoly pipeline - everything that derogates from what we would consider to be effective competition.

In his second reading speech the minister said -

> Western Australia agreed to enact the gas pipelines access law as a law of Western Australia by means of complementary legislation. This has enabled Western Australia to modify the law so that it suits Western Australia's specific circumstances.

I am still at a loss to understand what is meant by "Western Australia's specific circumstances". I cannot see how Western Australia's circumstances in relation to major transmission pipelines are different from those in any other State. I can see no reason that they should be treated differently. In every State except Western Australia, the Australian Competition and Consumer Commission regulates transmission pipelines. Everywhere else in Australia the Australian Competition Tribunal will conduct administrative appeals. In Western Australia we will be establishing our own Western Australian Gas Review Board. I wonder whether it is necessary. On examination there is no substance in the Government's arguments. Elsewhere in Australia the Federal Court will deal with matters of law concerning the regulation of transmission pipelines. In Western Australia it will be dealt with in the Supreme Court.

The minister also said -

> Ring fencing of the gas distribution and trading activities of AlintaGas is to be made consistent with the provisions of the code by 1 July 2002.

That is another three years. Why does AlintaGas need the protection in selling gas to the goldfields? There is no ring fencing of the distribution and reticulation network in the goldfields and the sale of gas. The Government is allowing that franchise to continue for 10 years. What is the necessity for that? Why can there not be competition? No-one else will go into Kalgoorlie and lay another gas reticulation system. Why should there not be ring fencing of the sale of the gas and the reticulation system so that other people can sell gas into Kalgoorlie-Boulder and so that people can amalgamate their needs and buy that one contract from a supplier to get the benefit of competition?

Everywhere I look in this Government's gas policy, almost without exception, I see an arrangement which is anticompetitive. The Government began well when it was elected. It followed part of the Carnegie inquiry's recommendation and split up the State Energy Commission of Western Australia, which it did quite well. The disaggregation of the North West Shelf contracts was also done well. However, after that, it has fallen into a hole and got it wrong in almost every case. Late last year the Energy Coordination Amendment Bill was introduced in this place. It provides for the establishment of the Office of Energy as a full-blown regulator. This Bill replaces that regulator; yet the Energy Coordination Amendment Bill is still on the Notice Paper. It is an example of the lack of clarity in the approach of the minister and the Government to energy matters. It reflects their confusion. It is an amazing piece of legislation that was introduced into this House without reference to industry and almost no reference to AlintaGas or Western Power. It obviously cannot proceed in its present form, if it is to proceed at all, because it conflicts with this legislation. It shows this Government's paucity of vision. The national access code, which the Opposition will support today, arose from Council of Australian Governments discussions in, I think, the early 1990s.

An agreement was made to set up a common code across all States. The Office of Energy's annual report for 1998 indicates the variation from the code. I quote from page 26 of the report regarding how the national access code relates to Western Australian arrangements as follows -

> Derogations or variations from the code, agreed for Western Australia, include:
>
> > a new Western Australian Independent Gas Pipeline Access Regulator will regulate transmission and distribution pipelines within the State. In other States, the Australian Competition and Consumer Commission . . . will regulate transmission lines and States Regulators, distribution pipelines;

Distribution pipelines are those which come off the goldfields and Dampier-Bunbury pipelines. To continue -

> > the responsible Minister for transmission pipelines is the Western Australian Minister for Energy, a State Appeals Body will handle appeals and the ultimate court of appeal will be the Supreme Court. In other States, the Federal Minister, the Australian Competition Tribunal and the Federal Court apply;
> >
> > access arrangements under the access National Gas Access Code will not replace current arrangements until the year 2000 for the DBNGP, AlintaGas' South West & Mid West distribution systems and the Goldfields Gas Pipeline.

The report further states about this legislation -

> The Bill is aimed at redressing the strong negotiating position of monopoly pipeline owners and allowing shippers of gas to negotiate access arrangements with those owners on fair terms.

If that is the case, the Bill is an admission by the Government of its failure in the regulation of the goldfields gas pipeline. A review of that pipeline is under way. However, nowhere in the Bill can I find a clause which allows the Government to enforce the recommendations of that review. Also, that review is not independent as it is being carried out in conjunction with the Department of Resources Development, and does not have the features of what one normally considers to be an independent, arm's length review. That statement in the report is an admission that the Government has failed. Undoubtedly, many people believe that to be the case.

On 7 November last year the natural gas pipeline access agreement was signed and the national third party access code for pipelines was agreed to as part of a national framework. The commonwealth legislation is in place and the South Australian legislation, of which I have a copy, was the template measure as the first to be implemented. I can see no reason for this State not to have legislation identical to South Australia's. By our derogation, we have introduced a great number of unnecessary differences into our legislation.

The existing pipelines have significant transition periods, which are clearly far too long. The transition period for the goldfields gas pipeline ends on 1 January 2000. If this review recommends agreement on lower tariffs and the Government cannot enforce or achieve agreement by that stage, perhaps the date for national code commencement should be brought

forward to 1 January of next year. Therefore, fair and reasonable tariffs would be established on that pipeline. I am uncomfortable with the lengthy transition period on the goldfields gas pipeline.

The Bill establishes the statutory office of gas regulator, the WA gas disputes arbitrator and the WA gas disputes board. The terminology of the statutory bodies is different from that found in other Acts, which is confusing. Other Acts in other jurisdictions refer to a code registrar, a local regulator and an appeals body. We have the additional office of arbitrator, and it is difficult to cross-reference the bodies. It must be understood that it is like, say, the mining legislation in different States as the issue is complicated without a unified scheme. Western Australia has headed in its own direction for no clear reason, resulting in confusing terminology.

I have a number of specific criticisms of this Bill which are of concern. I have mentioned that the derogation from the national approach is unnecessary and that Western Australia is the only State not to agree to the ACCC being the regulator of the transmission pipelines. I will move amendments during the committee stage to bring Western Australia into line with other States in that regard, which is the main area of amendment proposed by the Opposition. The Standing Committee on Constitutional Affairs recommended that the issue of who should regulate the pipeline should be debated fully in the House. That is recommendation No 18 of the committee's report on this Bill. The report poses arguments favouring a state-based regulator and the Australian Competition and Consumer Commission as the regulator, and recommends that the clause be fully debated in the House. I intend to hold that debate.

Having the Australian Competition and Consumer Commission as the regulator of transmission pipelines is supported by the Chamber of Commerce and Industry, the Chamber of Minerals and Energy, the Australian Pipelines Association and the Australian Petroleum Production Exploration Association. The argument in favour of a state-based regulator is, firstly, that such a regulator will be aware of, and take into account, the unique circumstances in Western Australia. I do not know what is unique about the Dampier-Bunbury natural gas or the goldfields gas pipelines. I do not think they are much different from any other large transmission pipeline around Australia.

Hon N.F. Moore: They do not cross any state boundaries.

Hon MARK NEVILL: What would it matter if they did?

[Questions without notice taken.]

Hon MARK NEVILL: I asked what were the unique circumstances in Western Australia. We have only two transmission pipelines - the Dampier-Bunbury natural gas pipeline and the goldfields gas pipeline. The Office of Energy, in a briefing note to Hon Helen Hodgson, stated -

> A local Regulator understands Western Australia's unique conditions. Such factors as low population density, resource development based economy, standard tariffs for residential and small business customers and regional development. An Eastern States regulator is more likely to be more familiar with higher population densities, gas markets where the majority of gas transported is sold to residential customers and single gas fields servicing pipelines. In particular, Eastern States gas transmission pipelines are unlikely to have access arrangements that allow a wide variety of services such as back haul.

What is so unique about that? There are several pipelines throughout remote areas of Queensland as well as in South Australia. All pipelines end up in higher population density areas around Australia. What is so surprising about back-haul services? In fact, BHP has gas-producing reservoirs in the southern Carnarvon Basin. If it wanted to use that gas for its hot briquette iron plant in Port Hedland, it would get a back-haul rate from the southernmost point up to Karratha, because the vast majority of gas would go the other way. Gas would virtually be transported for nothing because one is saving the North West Shelf partners from shipping gas down to the point where it comes in. The back-haul rate for that should be nothing. I understand that, because of the way in which it was set up, it pays more for back-haul than for transmission in the normal direction from north to south.

Those anomalies have grown up in our state system - they are not only anomalies but also absolutely against commercial practice. It is nonsense to suggest that eastern States gas transmission pipeline operators would not understand services such as back-haul. I am sure that in central Queensland, where there are several gas pipelines, back-haul would be involved, and as more Cooper Basin fields come on stream, back-haul is bound to be involved. There is nothing unique about tariffs for small business customers and resource projects. They are run-of-the-mill for any pipeline operator. These days they are big operators such as Epic Energy, AGL and Boral. The argument is nonsense; they are not unique factors at all.

The unique factor in Western Australia is that Epic Energy owns the Dampier-Bunbury natural gas pipeline. It is clear that it paid a significant premium above the second bidder for the pipeline. There are suggestions that it paid $1b more than the next bidder. It must get a return on the capital that it has invested. We might find in future that the Government is under tremendous pressure to keep up those tariffs so that the pipeline does not lose funds. I can imagine the enormous pressure on the State Government if that pipeline were not profitable simply because of the $2.4b capital that it spent. That is why it is unique, and it presents a danger to any regulator who is not absolutely at arm's length from the Government.

The second unique aspect is the goldfields gas pipeline, on which we still have extremely high tariffs. The Government has allowed Western Mining to book a $37m profit on infrastructure bonds on that pipeline. If an independent regulator controlled that pipeline, the benefit of the infrastructure bonds would have been shared between the consumers and the pipeline operator. However, Western Mining Corporation received the lot. It recently sold its pipeline for $402m. That is a profit of about $90m, not including the funds it would have received for depreciation since the pipeline was built. If those funds are added to the $90m, obviously it is more. The cost of the laterals that went with that pipeline would be no more than $30m. The laterals are the pipelines that go off the goldfields gas pipeline to Kambalda, Leinster and Mt Keith. Western Mining's 62.5 per cent share sold for about $370m, without the laterals included. It paid 62 per cent of the $450m that the pipeline cost to build. That is a profit of at least $90m. Western Mining, for its share, booked a profit of about $127m. It also made a profit on the tariffs, which have been extremely high, and it also has the benefit of the cheap energy from the pipeline. I do not begrudge it that. However, on a monopoly pipeline, one normally receives a healthy rate of return on the investment, commensurate with the risk. That would be a return on the capital of the long-term bond rate plus at least 1 per cent and perhaps an extra 1 or 2 per cent for the goldfields gas pipeline. That is a decision that the regulator would make. Obviously, more risk is attached to that pipeline than to the Dampier to Bunbury pipeline, so a better rate of return would be allowed.

They are the unique situations in this State and they are dangerous situations for a local regulator. There could be enormous pressures on the Government from the Australian Gas Light Company, which is likely to end up with a large share of the pipeline now that it is out of the hands of the developers and in the hands of a pipeline operator. That is a healthy development. I am concerned that a local regulator will be dealing with the two transmission pipelines. The unique circumstances are not publicised by the Government. The Leader of the House referred to the other argument in favour of a state-based regulator; that is, all our pipelines are internal and no pipelines are traversing state borders. That situation exists in the Northern Territory, yet the Australian Competition and Consumer Commission is the regulator on the Darwin to Alice Springs or Mereenie gas basin pipeline. The argument about crossing borders is spurious. It would not surprise me to see pipelines crossing our border within 10 years. It is still desirable to have a consistent national set of decisions on those big pipelines. The arguments in favour of the ACCC are listed in the report of the Standing Committee on Constitutional Affairs. It states that there are a limited number of people in Western Australia from whom the regulator might be chosen. The ACCC is already in existence and has the capability to rigorously apply the code. We do not need an interstate pipeline to have the ACCC perform the function of a regulator of transmission pipelines. The powers and responsibilities of the Minister for Energy are clearly set out in the legislation and the ACCC as the regulator will not detract from those powers and responsibilities. The ACCC would not interfere with the state-based regime. The local regulator would have to follow the protocols laid down by the ACCC.

The other significant criticism of the Bill is that the regulator has already been short listed by a committee of three public servants: Dr Les Farrant, who is head of the Office of Energy; Dr Des Kelly, who has recently retired from the Department of Resources Development; and Digby Blight from the Ministry of the Premier and Cabinet. That does not give me a great deal of confidence that the person being appointed will be truly independent. Someone outside of government should be appointed to ensure that independence. Dr Des Kelly and Dr Les Farrant have been very closely involved in the sale of the Dampier to Bunbury natural gas pipeline, in the goldfields gas pipeline legislation and in all the policy issues that are occurring. They are too close to be selecting an independent regulator. Nominations were sought for positions arising from the natural gas pipelines access agreement. There was also an advertisement for a regulator, an arbitrator and a panel of experts to sit on the appeals body. When I read the selection criteria for the gas regulator, I thought that they perfectly fitted Dr Des Kelly. There have been rumours that Dr Des Kelly has been earmarked for the position of the state regulator. He is too close to the scene to be seen as an independent regulator. I could not imagine the Government appointing Dr Kelly when he is one of the three people on the selection panel. I discount those strong rumours. I do not believe that those rumours are true, but that is the concern that has been expressed in business circles. I will not read the job description, but it could lead to the suggestion that someone might be earmarked for that position. It might be useful for the Leader of the House to scotch that rumour. I know it is a dangerous situation for me to put him in, but it would give the industry more confidence.

A side issue about the appointment by the Government of the local regulator also concerns me. I recently asked a question in Parliament about the appointment of Hon Richard Lewis to the Western Power board. I have no axe to grind with him. He is a competent person and is suitable to be employed on government boards for which his skills are suited. I asked -

(1) On what date was Mr Lewis appointed?

(2) Who on the Western Power board was consulted in respect of this appointment?

(3) On what date was the consultation undertaken in the case of each board member outlined in answer to (2)?

I asked that question because section 7(2) of the Electricity Corporation Act refers to the board of directors and states that in making nominations for appointment to the board, the Minister must ensure that each nomination is made only after consultation with the board. The answer to the question was that the minister, the member for Cottesloe, consulted only the

chairman. The chairman of Western Power is Malcolm MacPherson. I did not ask the obvious next question of whom Mr MacPherson consulted on the board and when. It appears that the minister has consulted only the chairman. The Act requires him to consult with the board. It is a lot harder for a chairman to say no to a minister's suggestion than it is to convince a board. The most recent report of the Auditor General states -

> The main reasons for governance by a board rather than direct control are:
>
> . Establishing a degree of independence from government;
>
> . Providing additional skill and experience; and/or
>
> . Ensuring that interest groups have high-level input.

Someone would be appointed to a board to provide additional skill and experience to it. We look at the makeup of the board and plug what might be a gap in the skills needed. To do that, we must consult with the board. In the summary of recommendations the Auditor General states -

> Legislation establishing a new board or reconstituting an existing one should ensure that membership is on the basis of relevant expertise and experience rather than on representational status;
>
> Board appointments should specify the required criteria and the appointment process. Decisions should be adequately documented.

For boards, such as those of Western Power and AlintaGas, which involve large amounts of funds and onerous responsibilities for the directors, a more formal procedure must be undertaken. It is important to get the right people in those positions and not only appoint someone who is owed a favour or has provided long and faithful service to the party. I have no problems with that on smaller boards, but on the bigger boards we must comply with the rigorous process. It is important for the regulator and the arbitrator to be absolutely independent and at arm's length from the Government. If that does not happen, it is almost certain that there will be trouble further down the track.

Hon Richard Lewis is the chairman of the East Perth Development Authority. Western Power is in the process of buying the East Perth power station. There is a real conflict of interest there. I am sure Western Power will not want to sell the power station for the price the East Perth Development Authority will want to pay.

Hon Peter Foss: If there is a conflict, there are ways of dealing with it.

Hon MARK NEVILL: That is right. He should not have anything to do with that deal. With corporatised bodies, such as Western Power and AlintaGas, which are competing with each other and private companies, I do not think it is appropriate that there should be too close a link between the minister and members of the board. I am not suggesting that has happened in this case, but it is a danger to avoid.

Hon Peter Foss: You must go a bit the other way. You cannot appoint a board if you cannot verify the capacity of the members. We appoint a lot of people to boards who come up through the system whom we might not have heard of.

Hon MARK NEVILL: It is a balancing act. It is a very odd appointment to make when a major deal is going through between Western Power -

Hon Peter Foss: I do not know that there is a major deal. Sometimes ministers are not aware of the commerciality that might be contemplated. One problem is that they keep at a distance and may not be aware of what is being commercially transacted by the body.

Hon MARK NEVILL: I am sure Hon Richard Lewis would not be involved in any deal -

Hon Peter Foss: When a minister appoints somebody to a board he does not necessarily have full knowledge of all of commercial dealings of those government trading enterprises. Generally speaking, the minister would not have. It is possible to appoint someone, without the minister being aware that a proposal may be either in the wind or in the future.

Hon MARK NEVILL: That is quite possible. I am just pointing out there are potential dangers.

Hon Peter Foss: That happens with any commercial bodies.

Hon MARK NEVILL: Another criticism of this Bill is quite important and was picked up in the report of the Legislation Committee; that is, the fact that the regulator in this Bill - even if he is independent - deals with gas only. He is not the regulator for electricity. Electricity is one area in this State in which independent regulation is sorely needed. In this State, Western Power owns the grid. Private companies like TransAlta and Normandy Power in Kalgoorlie are trying to sell into the grid and to other groups. We are never sure of what Western Power is doing with its tariffs. It could easily price out some companies because there is no transparency. That grid should have been separated from Western Power - I am not saying privatised - a couple of years ago. There is absolutely no reason that should not have been done.

Hon Peter Foss: The New Zealand idea is that a minister handles the fixed assets, another minister handles the operating company and another is the regulator. There are three ministers so that each must look after a different proposal.

Hon MARK NEVILL: I am not aware of that scheme.

Hon Peter Foss: It did it with the hospitals.

Hon MARK NEVILL: It does not bother me particularly that the Minister for Energy looks after the transmission system as well as the power production side as long as they operate separately. There are many complaints from industry about Western Power being able to undercut whatever price these companies offer because Western Power can vary the transmission tariff to get under that price. This is the problem. People in the industry tell me that in this State an electricity regulator is needed more than a gas regulator. The recommendation on page 11 of the report, and it is the right one, states -

> Consistent with the Committee's views expressed in previous reports on access regimes, the Committee favours the establishment, at an early opportunity, of an Office of Regulation. This Office could undertake the regulation of all access regimes covered by the National Competition Policy. Moreover, the Committee believes that such an Office could be cost effective and provide industry with ready access to a body of expertise and ensure independence from the relevant Minister.

That means that this office of regulation would deal with gas regulation, electricity regulation, water regulation and third party rail access regulation. That is what the committee chaired by Hon Murray Nixon recommended. That is what industry wants.

The PRESIDENT: Order! It being 6.00 pm, I must interrupt the debate. Before I leave the Chair, I advise members that in the foyer outside the post office at six o'clock there is to be the launch of the Internet web site of the Parliament of Western Australia. To encourage members to attend, there will be some light refreshments. That launch will be followed by the launch of the latest edition of the *Western Australian Parliamentary Handbook*. I leave it to members to consider their futures.

Sitting suspended from 6.01 to 7.30 pm

Hon MARK NEVILL: I was supporting the recommendation of the committee to have one regulator for gas, electricity, water, rail and any other service that may need regulation under national competition policy. That is the model used in New South Wales in the Independent Pricing and Regulatory Tribunal, which is a tribunal that deals with these issues.

Hon Peter Foss: I think they have it in Victoria.

Hon MARK NEVILL: Victoria has an Organisation of the Regulator-General. The New South Wales body, whether because of its structure or regulator, is held in high esteem around Australia and it has been operating for a number of years. That is a model that we in Western Australia should look closely at and get this local gas regulator into that body. There is not enough full-time work for a gas regulator. The advertisement states that the regulator will be responsible for the financial management of the office and the appointment of staff; and it is anticipated that remuneration will be in the vicinity of $100 000 per annum. I say he would be battling to do two days' work a week. Initially he may be busy, but once the situation is established, I doubt that it would be a full-time job. If those other regulatory areas of electricity and so on are brought in, that sort of salary is justified for a competent regulator. I hope the Government goes down that path. However, from my experience of the way the Office of Energy works, it would resist any move in that direction. We need only look back at the Energy Coordination Bill when the Government wanted it to become a full-blown regulator. The proposed regulator was the minister. It can never be said that the minister is independent, because he is not independent of the political process. That was the way the Office of Energy and government policy was being dragged before us. I cannot see that changing unless the members of the government parties get their heads together in their party room and insist that a separate office of regulation be established. If that is not done, I am certain the bureaucrats will roll them and they certainly will not get it. I am not confident that it will be independent.

This one-page document entitled "Advantages of the Local Regulator for Transmission Pipelines and the Independence of the Local Regulator" were provided by the Office of Energy. Frankly, I find none of the arguments convincing in either of these two documents. The first argument states that the Western Australian Parliament retains control over the local regulator, whereas if the ACCC were to regulate transmission pipelines, the Western Australian Parliament would lose this control. If the Government wanted to get the control back, the Government need only pass another Bill. The way it is put in here is that it is lost forever, which is an absolute nonsense. It states that the regulator would hear matters related to transmission pipelines and distribution pipelines in one hearing, and therefore consistency would be reached in the judgments. The same argument applies if the ACCC is looking at the major transmission pipelines around Australia; consistency is reached, so I cannot see any great advantage one way or the other. I do not see it as an argument that gives an advantage to a local regulator. For those people who are not familiar with the detail of the Bill, I am not against the local regulator, who should cover distribution pipelines and reticulation pipelines. We are talking only about the major pipelines, which are of large diameter, usually very long, have many third parties accessing them, and different groups having gas being

shipped along that pipeline. I will not go through these items, but if any member would like a copy, I am happy to supply them. However, they are not convincing arguments to have a local regulator look after our pipelines.

If examples of best practice are considered, we must have certainty, and we get that with the ACCC; we get a national scheme. We must have consultation. The ACCC has a special gas division - it is a very skilled area - and has been working under a lot of pressure over the past couple of years getting a national access code agreed to and the uniform legislation in place. That work will recede and it should be able to focus more on these fine-tuning access and tariff issues in the transmission pipelines in the year to come. I will touch on cost effectiveness later.

If we are to have efficiency, the state regulator must use the same protocols as the ACCC when it is looking at the national pipelines. I do not see that the state regulator will have any greater sensitivity at the end of the day than the ACCC.

Transparency is another important characteristic in this type of regulation. The people who have been putting our gas legislation together have a history of opaqueness. There has never been any transparency at all. Ministers have even been reluctant to answer questions fully in Parliament. They have shown reluctance to pursue information from these bodies, so I do not have any great confidence in our independent regulator being truly independent and at arm's length from government and of his providing transparency. Members may also note that the regulator will be appointed by the Government. The conditions under which he can be suspended will be determined by the minister, and his salary will be set by the minister. The overall funding allocation for his staff will also be set by the minister, who will be able to issue directions to the regulator. We can see that the regulator will be controlled by the Government. That is of concern to me. The Government also has two key players in the energy market with Western Power and AlintaGas. It does not seem entirely appropriate to have anything but a truly independent regulator. If those two major pipelines can be brought under the ACCC to ensure that some national standards are at arm's length, and people who have the necessary skills are making determinations, we will have a much better scheme.

An additional cost will be incurred in supporting both the ACCC and the state-based regulator for transmission pipelines. Companies such as Epic Energy Pty Ltd and AGL Pipelines (WA) Pty Ltd will be paying towards the cost of the ACCC's gas regulation activities. They will also be paying for the activities of the state-based regulator.

Another of my criticisms of the Bill is that it provides, rather arbitrarily, that minor laterals off the goldfields gas pipeline will be regulated pipelines for no reason at this stage. That will impose costs for trivial reasons. I do not think any of those laterals should be included until a dispute arises. If a lateral is going out to, say, Laverton, which is owned by Boral, which could do a deal with, say, the Granny Smith mine, I see no need for the state-based regulator to be involved. The regulator should be involved only if a problem arises and the parties cannot agree. If they have a problem, an automatic process is available whereby they can go straight to the National Competition Council and that pipeline would be included in the scheme. It should incur extra costs only when necessary. It could be that one company might use the same pipeline for 20 years without any third party being involved. What would be the point in that being a regulated pipeline? It should be regulated only when problems arise. The inclusion of these minor laterals is arbitrary and it will impose many unnecessary costs and keep people busy for no good reason.

The finding by the ACCC under the Trade Practices Act against the AlintaGas-Epic Energy deal over the Kingstream steel mill gas contract was that the contract was anticompetitive. That got through the state system. When the Minister for Energy originally objected to it, I thought he was right to do that. He later agreed to it and finally the deal got into trouble with the ACCC. The lesson in that is that we need the ACCC. When push comes to shove it is too cozy to have the state-based regulator not truly at arm's length from those people.

The continuing anticompetitive actions by Western Power make an independent energy regulator in Western Australia an absolute priority. Members may be aware that a writ has been issued by Goldfields Power Ltd against Western Power over Western Power's "discriminatory behaviour" in the goldfields. That is yet to be determined; nonetheless, problems exist. I will not apportion blame, but it seems to me that some of these groups complain when someone is having a lend of them while at the same time they are having a lend of someone else. There is both good and bad in some of these government agencies and private companies.

I have covered only the areas of the Bill that are the Labor Party's main concerns. The arguments for having transmission pipelines under the ACCC are strong and they should be supported by the House. The Government should restrict the local regulator to distribution and reticulation pipelines and include under that body electricity, water, rail and whatever. The Labor Party supports the Bill.

HON J.A. SCOTT (South Metropolitan) [7.47 pm]: The Greens (WA) support the Bill. Like the Labor Party, we have a few concerns with the Bill, such as the selection and remuneration levels of the regulator, because they are to be controlled by the minister. Furthermore, we have some concerns over the way in which the regulations emanating from the Bill will not come before this Parliament. We realise that is as a result of technical issues. As the minister will know, we had the same problem with the Government Railways (Access) Bill, under which the code was not to come before this House because it was not to be considered in the same way as a regulation. I do not like processes which prohibit the Parliament

from scrutinising potential changes. I am somewhat surprised that State Governments are happy to relinquish powers to scrutinise such changes. I appreciate that technically there is nothing we can do about that. However, altogether, the Bill is much better than the Government Railways (Access) Bill and is without many of its problems. Generally, the Greens (WA) supports the legislation. A couple of amendments will be moved by the ALP and the Democrats which will be of interest to my party and are likely to receive its support.

Finally, Hon Mark Nevill raised the point, which will be basis of one of his amendments, that the Australian Competition and Consumer Commission should oversee the pipeline regime. I foresee the day in which national grids of pipelines run from Western Australia across state boundaries. It will be a difficult system to regulate if the same approach is adopted as applied with different gauge railway lines in differing States in the old days. We should look forward to the days when some of our major lines become part of those interstate links. I am largely happy to support the Bill.

HON HELEN HODGSON (North Metropolitan) [7.52 pm]: I will canvass a few areas of interest in this general topic. I start with comment on national competition policy per se. The Australian Democrats are not opposed to national competition policy for the sake of it; however, we must remember what it is meant to be about. The Hilmer report stated -

> Competition policy is not about the pursuit of competition . . . Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.

On occasions we start to think about competition policy as an end in itself; that is, that competition is what we seek to achieve, whereas the endeavour is to use competition to improve efficiency and economic growth. I am worried about some changes in this aspect of competition policy as applied in this State. Some issues were drawn to my attention by a gas producer which is developing some new gas fields. Occasions arise in the pursuit of competition and the implementation of a heavily regulated regime to encourage competition, that the opposite effect results. I refer to Tap Oil. I doubt whether the company will mind me mentioning it in the House. Representatives of the company have spoken to me and to other members of Parliament. This is a fairly small company compared to other gas and oil producers with an operating profit of about $4.1m last year. I understand it has some $34.4m invested in joint ventures. I do not have the expertise of Hon Mark Nevill in geology; members must forgive me my explanation of oil platforms and exploration basins as sometimes the language is unfamiliar.

Hon N.D. Griffiths: Hansard will fix it!

Hon HELEN HODGSON: Hansard is excellent at fixing up such things! Tap Oil is working in the Harriet area fields, known as the northern Carnarvon basin. This is part of the developing areas offshore in the north west of the State. Tap Oil has decided to establish a production plant on Varanus Island to convert the raw product into a marketable product. This is then carried by a pipeline to join the main Dampier-Bunbury gas pipeline. Under the legislation, as this company is working and generating a marketable product on the island, it will be required to make its pipeline accessible. What is wrong with that? In theory, nothing is wrong if there is surplus capacity. The company would not say a problem arises where it has surplus capacity. I understand it has entered into contracts to sell its surplus capacity, and to share the facility in that way. However, the problem arises when looking at developing a field and exploring to increase production. It will find, when the infrastructure is in place, that it is required to make the infrastructure available to other people. Does one then put in another pipeline, and bear the cost of the new infrastructure which must be made available to other producers as well? It seems that this aspect of competition policy under the legislation could have a serious impact in deterring companies from exploration and putting infrastructure in place. The point of competition policy is to ensure that it facilitates economic growth. If one is required to make one's infrastructure available to the point that it inhibits the company's development, how is that facilitating economic growth?

Tap Oil has made arrangements in the past to utilise excess capacity by allowing other operators exploring the basin to use its facilities to transport gas. When being briefed on this legislation, I asked: What happens if one of the companies which enters into such agreement had been to the regulator and had been told that the agreement must be put in place; however, down the track the company increases its production and wants to take back that capacity? The answer was that it depends on the contract put in place, but probably it cannot take it back. Once the agreement is in place, it is will be hard to find a way out of it. This is contrary to normal commercial principles. Normally, one is required to sell only what one does not need. Surplus capacity can be sold on. If it is required, the sale is stopped. Nevertheless, the legislation, in my understanding of its structure, can inappropriately lock people into such arrangements. In this case, that is because the definition of "pipeline" is such that it could capture this pipeline because the production facilities are on the island, as opposed to other producers with facilities onshore closer to the Dampier-Bunbury pipeline. That is an example of competition policy perhaps going adrift. Why impose a more onerous obligation on a small and growing company which is producing economic growth for the State? That company may need to re-think its business plan and operation as a consequence of this change.

Another aspect which flows from that point is that the legislation was created largely to deal with a situation developing in South Australia in the Cooper Basin. A situation has developed in the context of a mature field where a person had a

difficulty with a particular producer who had been granted exemptions from the Trade Practices Act, and that policy is now being forced to be implemented across the country. We are looking at new developing exploration fields in Western Australia as opposed to developed fields with existing pipelines and existing resource flows and so on. We must consider that matter. I agree with the comments that were made earlier about uniform legislation setting in place guidelines across the country. We must always look at the exception as well as the rule. When looking at developing growing fields and trying to encourage companies to put in infrastructure, some exceptions could be granted which would encourage growth and development, particularly when we are talking about gas, which is a relatively clean resource. Members will recognise that we should be encouraging the use of gas as opposed to other forms of energy.

A further point raised by the same company in the context of this Bill concerns me. The provisions for ring fencing can cause serious problems for some of these companies which have set up infrastructure. The ring fencing provisions require that the owner of the pipeline is legally separated from the rest of the producer's exploration and economic interests. The intention is to ensure that we are dealing with this issue at arm's length and to provide some form of transparency. By imposing the ring fencing provisions on existing corporate structures, those organisations are being penalised for the corporate structure they chose when they established their business under an old regime and are being required to introduce a new regime. What is required in setting up a new company and transferring assets to that company? Legally, probably not much, until we start talking about potential capital gains tax problems. This matter was brought to my attention because of the capital gains tax implications. The ring fencing provisions can impose an obligation to set up another corporate entity with no proper rollover protection under the capital gains tax provision in the federal tax legislation. It is a federal matter and we do not have any control over it. When the federal Gas Pipeline Bill was dealt with, an undertaking was given that the appropriate amendments would be made to taxation legislation to ensure that it would not produce any unintended consequences. Those amendments have not yet been made. To the best of my knowledge no movement has been made to draft those amendments. I have not been able to find any public rulings stating that rollover relief will be available in these situations. I am not in a position to search for private rulings. However, I suspect that someone might have gone to the trouble of trying to obtain one.

The Australian Petroleum Production and Exploration Association Limited is concerned about the potential implication for a number of its members. The technicalities are that if a member transfers from one wholly-owned company to another wholly-owned company, that member will receive rollover relief. That is not the way in which these resource projects are structured. More often than not, these resource projects involve joint ventures. Joint ventures are a type of commercial animal that does not have an entity of its own. A partnership is one creature, but a joint venture is merely a sharing of a resource; a sharing of income and/or expenditure depending on the terms of that joint venture. Something that was wholly owned in one situation cannot be rolled over into another wholly-owned entity when the whole structure of the joint venture does not accommodate that sort of arrangement. What are the alternatives? It must be transferred at value. Once we start talking about value, we then must look at whether a capital gains tax consequence will be created. If it is transferred at full value, which is most likely market value and will be more than a person paid to set it up, that person will have a liability. If that person transfers it at less than full value, the capital gains tax provisions can deem it to be at full value. If that does not happen, the person has not paid the correct amount into the new entity and that will affect his tariff pricing arrangement. It is a bit of a tangle. Whichever way we look at it, ultimately there will be a liability; either a capital gains tax liability, unless the Commonwealth Government changes its legislation or, if it is not a capital gains tax liability, the tariffs will be set on the wrong basis and the person will risk falling foul of the regulator. It is an example of how coming into an existing business and changing the ground rules underneath that business can have a totally unintended consequence. We are not in a position to correct that because we cannot do anything about capital gains tax rollovers. However, listed on the Notice Paper is a couple of alternative methods of dealing with this to ensure that it does not cause a problem for companies which find themselves in this situation. At the appropriate point in the committee stage we will look at those amendments and try to find a way of dealing with the problems that can arise.

The third aspect applies to uniform as a whole. I have read the committee report and I congratulate its members for the excellent work which they have done in a relatively short time, given the complexity of this piece of legislation. It is a difficult piece of legislation to follow because it contains three separate schedules which interact with one another, one of which is federal provisions. There is also the enabling Act, which is attached to the front, and that means that there are about four sets of definitions depending on the part of the legislation being dealt with. I congratulate the members and staff of that committee for coming to grips with the legislation in the way that they did.

Clause 25 in the committee report attracted my attention. It informs us that the Interpretation Act does not apply, but the report states that there is no power for any changes to the code to be scrutinised by the Parliament of Western Australia. The minister will agree to changes to the code through the ministerial council and those changes will then be circulated in the South Australian *Government Gazette*. People must find out whether changes have been made to legislation which covers the country in the South Australian *Government Gazette*. A notice of the change is also expected to be circulated in a newspaper circulating throughout the country, but it is a departure from the norm when people who are watching for government notices with a legally binding effect look for them in the Western Australian *Government Gazette.* Unless they are aware of the difference in this piece of legislation, difficulties will arise in the future. That is apart from the fact that this

Parliament has no say in whether those changes should be adopted. It is not our legislation. It is in the code, and the minister who makes these decisions will do so without any requirement to submit these changes to Parliament even by way of tabling. That is a proposition with which I have some trouble, because it affects taxpayers of Western Australia just as much as it affects taxpayers of South Australia.

The issues of the independence of the regulator have already been raised extensively by Hon Mark Nevill. I listened with great interest to what he said about the argument in favour of using the Australian Competition and Consumer Commission as an independent regulator. I firmly agree that the regulator must be kept as independent from the minister's office as possible, because it will basically be making decisions that bind government as well as independent players. As with any person who is making these types of regulatory decisions, the independence must be preserved as much as possible. Therefore, I looked with some interest at the provisions to try to protect the independence of the regulator. The key provision says that in the exercise of the specific functions the regulator is independent of direction by the minister, and that allays my concerns to some extent. However, the whole issue of how the regulator is appointed needs to be addressed. I will deal with that in more detail during the committee stage of the debate.

I have raised my chief concerns with this legislation. Being uniform legislation, and given the fact that competition payments are possibly at risk on this piece of legislation, I think there is probably more good than bad in it; however, I think we should be more careful to ensure that the interests of some of the developing sectors of Western Australian industry are better protected from unintended consequences. We must be careful about maintaining the independence of the regulator of any of the schemes. It concerns me when uniform legislation is constructed in a way that removes the ability of this Parliament to properly scrutinise any changes to that legislation that may be put forward in the future. The Australian Democrats will be supporting the Bill.

Debate adjourned, on motion by Hon Muriel Patterson.

SURVEILLANCE DEVICES BILL

Second Reading

Resumed from 21 October.

HON N.D. GRIFFITHS (East Metropolitan) [8.13 pm]: Firstly, I note the title of the Bill: The Surveillance Devices Bill 1997. The numerals say a lot about it. This Bill is very welcome. It is long overdue. However, this Bill has had an unhappy history. In fact, it is a history not atypical of this Government's handling of legislation. A cursory glance at the document "Progress of Bills Introduced into the Parliament of WA" for the second session of the thirty-fifth Parliament will reveal just how this Bill has progressed. Before I venture into that, I point out that I anticipate the Bill will progress with greater speed this evening, certainly insofar as the efforts of the Australian Labor Party are concerned, because members on this side are not interested in delaying matters, as Hon Simon O'Brien well knows. However, if he interjects, he may cause a 30-second delay. Mind you, Mr President, I do enjoy his interjections. I do not want him to think for one moment that I mind his interjections. Hon Simon O'Brien should make it his wittiest.

Hon Simon O'Brien: Does the member want a simultaneous one, because they take longer?

The PRESIDENT: Order! If there is a 30-second delay, it will be so that Hon Simon O'Brien can be thrown out.

Hon N.D. GRIFFITHS: If that were to occur, it would be the shortest suspension in our history. However, I am sure he would enjoy the experience, as we all would.

The first reading of this Bill was on 15 October 1997 in the Legislative Assembly; the second reading was agreed to on 21 November 1997; and the Bill was discussed in committee on 26 November 1997. Unfortunately, the Government did not lose its majority. On 15 October 1998 it was further discussed in committee, and on 21 October 1998 the Bill was third read. Therefore, it took more than a year to progress through the Legislative Assembly. That says something about how the Government manages its legislative program; it says something about how important this Government sees matters which -

Hon Peter Foss: It was all the consultation that was holding it up. Consultation can hold things up enormously.

Hon N.D. GRIFFITHS: One thing I like about the Government is that it is damned when it consults and it is damned when it does not consult. However, it is very consistent in that it is damned. With respect to this Bill, which the community has been told is extremely important - it is an important Bill - it took over a year to get through the other place, with all of its differing procedures, where the Government of the day has the capacity to move matters along somewhat speedily. It was first read in this place on 21 October 1998. Today is 2 December 1998, which is the first occasion on which the Australian Labor Party has had a chance to deal with this Bill. However, I can assure the House that we do not propose to delay the matter.

A Surveillance Devices Bill is important for a number of reasons, some of which were dealt with with particularity in the minister's second reading speech. I note in that speech that the minister made reference to the importance, in the fight against

organised and serious crime, of the use of listening devices authorised under the Listening Devices Act 1978. However, it has been acknowledged for many years that that Act is deficient, in particular since April 1994, or very soon after, when the High Court of Australia handed down its decision in Coco v R. The second reading speech makes particular reference to that. Several major problems were identified in a review of this area which took place in 1987, and others have been identified since then. One example given in the second reading speech was -

> Police are unable to enter premises to install devices in the absence of an express provision. This problem was highlighted in 1994 . . .

Reference is then made to the case. It is not a matter which has been unknown to the Government. I think it is appropriate that some reference be made to the case which was handed down in April 1994. The case is reported in 179 *Commonwealth Law Reports* at page 427. I will quote from the joint judgment of the Chief Justice, and Justices Brennan, Gaudron and McHugh. I will read parts of pages 435 and 436. Briefly the words of the judgment are -

> Every unauthorised entry upon private property is a trespass, the right of a person in possession or entitled to possession of premises to exclude others from those premises being a fundamental common law right . . . . In accordance with that principle, a police officer who enters or remains on private property without the leave or licence of the person in possession or entitled to possession commits a trespass unless the entry or presence on the premises is authorized or excused by law . . . . Statutory authority to engage in what otherwise would be tortious conduct must be clearly expressed in unmistakable and unambiguous language. Indeed, it has been said that the presumption is that, in the absence of express provision to the contrary, the legislature did not intend to authorize what would otherwise have been tortious conduct . . . .

In Western Australia the fact is that illegally obtained evidence may or may not be admissible; it is a discretionary matter. However, clearly entries which led to the installation of listening devices have laid open the possibility, perhaps the probability in many instances, that evidence so obtained may have been inadmissible. In any event, the result of the Coco case has been, at least in public, that law enforcement authorities in Western Australia have taken the view that their operations are significantly stymied. That matter has been recognised by the Government, in particular the present Government. Notwithstanding that, it has taken a considerable time for the matter to be dealt with. That is typical of this Government's treatment of the so-called law and order matters. It is strong on rhetoric and weak on performance. Mr President, you will forgive me for referring to the *Hansard* of 16 December 1994, when the then Leader of the House made reference to this point. I will refer to the *Hansard* at page 10003.

Hon Peter Foss: Is this wise?

The PRESIDENT: I trust it is a statement of wisdom.

Hon N.D. GRIFFITHS: Mr President, I will quote the then Leader of the House with accuracy. I certainly hope that I do not misread it. I do not want to join Hon Simon O'Brien and leave here, albeit possibly for longer than 30 seconds.

Hon Peter Foss: I think 30 seconds is how long it took him to leave, not the length of time he was not here.

Hon N.D. GRIFFITHS: I think that is appropriate. The Leader of the House said -

> Following a recent decision, R v Coco (Queensland), the use of listening devices in Western Australia has been restricted which has had a detrimental effect in the fight against crime. The Listening Devices Act is currently being reviewed.

Of course, Acts are always being reviewed. Here is a then very senior minister in the Government of the day, which has to all intents and purposes continued in power since that time, making comment on the detrimental effect in the fight against crime. The 16 December 1994 was almost four years ago. It is not as though this matter has been left alone. In the years that followed it was raised by me in a discussion with the now Attorney General when a listening devices Bill was debated in September 1996; it was raised by the member for Midland in April 1997; in fact it has been raised on a number of other occasions. However, the result of that is a Bill being introduced over a year ago in the other place, and finally arriving here. Notwithstanding that, it is a very welcome measure in the sense that it is about time something was done with surveillance devices and with the problems that law enforcement authorities have found as a result of the judgment of the High Court of April 1994.

The Bill is concerned with surveillance devices. The nature of a surveillance device is set out in a reasonable way. It covers listening devices, optical surveillance devices and tracking devices. The Bill sets out how they are to be regulated. The basic point is that people are not to install, use or maintain or cause to be installed those devices unless those people come within certain categories; namely, for the most part, law enforcement authorities, and how they deal with it is set out in the Bill. The Bill deals with the restrictions on the publication or communication of private conversations and activities, which is appropriate in a matter of this kind. It deals with how the law enforcement authorities can access these devices. It sets out the criteria and safeguards. It deals with the issue of emergency authorisations. Whether the wording is appropriate in

each and every case is a matter of debate - but not when dealing with the second reading stage of this Bill - on how the law enforcement authorities go about getting authority. There are appropriate confidentiality provisions. A considerable part of the Bill deals with the use of surveillance devices in the public interest. Other provisions deal with offences and enforcement provisions and the role of the Commissioner of Police, the Anti-Corruption Commission, the National Crime Authority and the Attorney General. The Bill purports to cover the field by - as its proponents would see it - relatively sensible regulation of the area.

Having said that, noting the Listening Devices Act 1978, the 1987 committee and the 1994 High Court case, which is a very tortuous method of dealing with legislation on the part of the Government, and noting that the Bill was introduced in the previous session and therefore I think I can make reference to what took place, what was before the other place in the last session of the Parliament last year is different in many respects from the legislation before us this year. The Attorney General can say that the world changes because of consultation, but the world changed in this case because of the reaction to what was the fairly marked disquiet of those who brought their concerns before the Government.

I note that, notwithstanding the wording of the second reading speech, the concerns of private investigators have not been placated. I will refer to the issues they raise, and will seek the Attorney's response. If his response is inappropriate, the matter no doubt will proceed, other than I anticipated it would proceed this evening.

The second reading speech reads -

> Since the second reading speech in the other place, a new part has been inserted into the Bill. Part 5 regulates the circumstances in which surveillance devices may be used in the public interest. This part was inserted into the Bill after deliberations and discussions with various interest groups, including representatives of the media, private investigators and insurance agencies.

That is a reaction to the consultation. It continues -

> Although in most circumstances the work of the media and inquiry agents involves the surveillance of an activity that will not fall within the definition of private activity, there may be rare occasions where these groups or a member of the public may wish to record a private conversation or activity in order to protect the public interest. Part 5 ensures that the Bill will have only minimal impact on inquiry agents, the media, private investigators and the public if a covert surveillance is carried out in the public interest.

The Institute of Mercantile Agents Ltd has, through the agency of Meridian Services, provided me with a document entitled "Position Paper: Surveillance Devices Bill 1997". I understand this document has been provided to other members; Hon Norm Kelly has a copy. I do not know if the Attorney has been provided with a copy.

Hon Peter Foss: It is not in my papers.

Hon N.D. GRIFFITHS: I will refer to the document during debate and invite the Attorney to accept receipt of it, and he may then be in a position to comment on it. The Attorney should not be unaware of these matters, which require some comment. The Attorney has now received a copy of the document. Basically, the Institute of Mercantile Agents takes issue with the passage of the second reading speech which I read out. We are talking about an activity which is perfectly lawful and plays a significant role in many activities, particularly in the gathering of evidence and the like with respect to litigation. The substance of the institute's concern is that the Bill does not protect its interests.

I will go through the document and refer to some aspects of it very briefly. The introduction states that the institute is opposed to the Bill in its current form. It deals with the history of matter and refers to the consultation that took place and the differences that emerged between the institute and the Government, and states that what is taking place raises issues of uncertainty in the industry. It points out the institute's concerns about the notions of private activity and the interaction with public interests. The institute sets out its position, which reads -

> The Bill precludes inquiry agents from utilising surveillance devices in certain circumstances, however the definitions for 'private activity' and 'public interest' give rise to ambiguity and uncertainty. Inquiry agents are unable to ascertain whether in particular scenarios the Bill allows for or prohibits surveillance.

Reference is made to there being approximately 280 licensed inquiry agents and private investigators in Perth, to the institute's members behaving properly in terms of an absence of complaint and to providing a service to the insurance industry. Particular reference is made to the gathering of medical evidence in the form of video surveillance. The institute refers to some practical examples where it says difficulties may arise. One is a video of a person washing dishes when that person has said he or she was incapable of doing so. A more classic example may be someone hanging out washing, but there are many examples. The institute criticises the public interest clause as not doing the job. It points out its role in dealing with the public and expresses its disappointment with what has occurred. Reference is made to the impact of the Bill on mercantile agents. The institute says that the Bill will interfere with the common law right of inquiry agents and the like to undertake their lawful business activities without interference. It puts the proposition that -

> The Bill does not "unmistakable and ambiguously" displace that common law right and is therefore not valid in respect to consequent prohibitions on the otherwise lawful activities of inquiry agents and the like.

I will be interested in the Attorney's response to that proposition. The institute also raises its concern that an inquiry agent who is convicted under the Bill will suffer more than anyone else, because of the prospect of a loss of licence and livelihood. It makes the point -

> The Institute is concerned that as the Bill in its present form is ambiguous, a test case will be required to determine the interpretation scope of operation, yet the penalties are so severe that none of the Institute's members could be prepared to afford to risk such consequences, notwithstanding the preceding.

The institute asserts -

> Surely, any law that is ambiguous and wages such draconian penalties is bad law. Further, surely it is bad legislating that forces industry to seek a judicial determination in order that it may clarify whether or not their ordinarily lawful business activity falls foul of the new law.

The institute complains about uncertainty and ambiguity, and puts forward a number of proposed remedies to its members' plight. I invite a response with respect to those proposed remedies. Again, they raise several matters by way of conclusion and refer to persons whom it is said are of the view that the Bill in its current format will prejudice the community in general and inquiry agents in particular. I raise that matter because inquiry agents perform a role in society. It is an important activity. They are concerned about the impact of the Bill and they deserve a considered response from the Government.

Hon Peter Foss: I am not sure what sort of response they are looking for.

Hon N.D. GRIFFITHS: They have put forward their concerns, and I have addressed them, I trust, albeit in summary form and with the assistance of one of our colleagues who has provided the Attorney with a copy of the document, which is fairly readable. The first response that is required is that the Attorney should give his view of their concerns. Secondly, if he is of the view that they are matters of substance, he may think that it is appropriate that certain aspects of the Bill be given further consideration before we proceed to deal with it. I raise several hurdles. As far as I am concerned I am doing my duty in advancing them.

Hon Peter Foss: I wanted to check what you would regard as responding appropriately.

Hon N.D. GRIFFITHS: Firstly, I want the Attorney to state his view or the Government's view. These are weighty matters. A group in the community says that its livelihood is at stake.

Hon Peter Foss: I just wanted to see what would satisfy.

Hon N.D. GRIFFITHS: I am concerned that the matter is dealt with appropriately. It is not a matter of satisfying me. I raise the matter and it is my duty to do so. It is for the Government to state its position. If the Government's view is that those concerns are not substantive and that they lack merit, fine; that will be the end of the matter. If they are matters which require further consideration, further consideration must be given, and after further consideration the appropriate course might be for the Government to say, "We have given this matter further consideration, but we do not agree with you." Fine, in that case we proceed. Or the Government's response might be, "There is a point there; those aspects of the Bill need to be addressed and the clauses which give rise to addressing those concerns should give rise to appropriate amendments." That is the process. I state those concerns not in an obstructionist way; I am trying to be constructive.

The Australian Labor Party's view is that a surveillance Bill is overdue. When I make those observations I do not embrace each and every word. In dealing with a matter of this kind it is open to anyone - it is open to Oppositions, if they are so minded - to take up much time, but it seems that much time passed before the matter came before the House to be debated in any event. I reiterate that I look forward to what the Attorney proposes to do with respect to the mercantile agents case, as they have gone to the trouble of presenting the matter. I should think those matters would have been raised with the Government to a substantial extent, but, insofar as they have not, I look forward to the Attorney's response in due course.

HON GIZ WATSON (North Metropolitan) [8.44 pm]: Again, we are contemplating a Bill about balancing the rights of the individual against the public good. Surveillance devices fall into that category. The Bill rightly acknowledges that technological advances have meant that surveillance is much more sophisticated than in the past. Members of Parliament should consider how to balance that encroachment on the individual's right to privacy against the obvious useful information which can be gleaned in terms of resolving criminal matters. I do not support the philosophy that when one is in a public place one should expect to be monitored. I have always had a problem with video cameras in shopping centres, particularly in the light of the fact that shopping centres have now become public forums in the absence of more traditional areas in which to congregate. It is of concern that young people in particular often rightly feel that they are being monitored. I do not agree with the philosophy that private companies that own shopping centres have a right to observe members of the public to ascertain whether they are shoplifting, behaving themselves and so on. The customer should be assumed to be

innocent until proven guilty. The intrusion of video cameras in shopping centres should not be supported by the community. I realise that some members will disagree violently.

Hon Peter Foss: It is not a simple matter.

Hon GIZ WATSON: It is not a simple matter and there are public safety arguments to do with monitoring if people are being threatened, but on balance I feel strongly that society is moving towards the big-brother approach and that does not bode well for issues such as social cohesion and trust among community members. Unfortunately, it is an indictment of our fragmented community that we resort to electronic devices to keep an eye on everybody at every possible opportunity. There is inevitable pressure that once we have the gadgets and the technology to observe people in very secretive ways, those devices will be used either lawfully or unlawfully. I agree with the intent of the Bill to prevent the unlawful use of those devices, but again I reflect on the fact that it is very unfortunate that as a community we must consider devious ways of keeping an eye on each other. That is an indictment of our progress as a community.

As I have said, there is the problem of companies and private enterprise working on the assumption that people who use their facilities might be about to break the law - perhaps it is to identify shoplifting or a staff member who might be pilfering or not working properly, or whatever the justifications are for monitoring people. That is not the way to resolve issues. If members of staff are not doing the right thing, having surveillance will only make matters worse and make people more resentful. Organisations need to deal with the problem in a holistic way. In deciding whether a warrant for a surveillance device will be granted, the second reading speech states -

> The court must also consider a range of other matters, such as the nature of the offence, the extent to which the privacy of any person may be affected, the value of the information which may be obtained, and the public interest.

It is good that those matters must be weighed up. I have a specific question about that and I wonder whether the Attorney General will answer it when he responds. Is there a general definition of "public interest", or is it taken on a case by case basis on the information presented?

Hon Peter Foss: There is a definition in part 5.

Hon GIZ WATSON: I will read that before we get to the committee stage. The second reading speech states that law enforcement agencies will use these devices in the fight against organised and serious crime. I hope that is always the case. Inevitably there is concern that once there is legislation to deal with these listening devices, we can safeguard against their being used for what I would describe as politically motivated surveillance. I know we probably have very little of that in this country, and that is fortunate; however, it is important that if we are evolving laws to do with surveillance, we must ascertain how we safeguard against that being used for politically motivated information gathering. It does happen. We would be naive to assume that it would never happen here.

Hon Peter Foss: Are you suggesting it is a private or a public activity?

Hon GIZ WATSON: It could be either. I know surveillance is frequently used against lawful protesters. On many occasions I have been photographed by people who have been standing behind columns. That is outrageous, too, and it has no justification in a democracy.

Hon N.D. Griffiths: You should photograph them back.

Hon GIZ WATSON: I have tried that, too. There is a problem with the proliferation of the means to report practically everything these days. There is also a problem with whether the information is used. It is a very tricky area to manage and to legislate for.

Hon Peter Foss: It should be dealt with under a general privacy provision.

Hon GIZ WATSON: Perhaps that it is the appropriate way to deal with it. I do not wish to raise any further comments at this point, but I will certainly be following with interest the proposed amendments to this Bill. I simply wished to raise some philosophical questions which we need to take into consideration when dealing with this Bill. By and large, the Greens (WA) support this Bill, but we will consider the amendments when presented in Committee.

HON NORM KELLY (East Metropolitan) [8.54 pm]: The Australian Democrats will support this Bill. On a number of occasions very senior police officers have expressed to me that they are very keen to see this legislation passed and enacted. They feel quite bound by the current Listening Devices Act and are looking forward to the increased powers they will have once this Bill is enacted.

Hon N.D. Griffiths: After the Coco case the number of listening devices being installed has increased, compared with the previous few years.

Hon NORM KELLY: This Bill is wider and provides for tracking and optical devices. It is a good reflection of the ability to monitor in a number of ways. It does not appear to cover computer surveillance, which I understand mostly can be done

through the laws relating to telephone interception. This Bill reflects the need to modernise the Listening Devices Act. It also deals with the Coco decision of April 1994. This Bill seeks to provide powers of entry so that that action is not considered to be a trespass which subsequently produces evidence that is inadmissible in court. That is the basis on which Coco case was brought. The broadening of these provisions goes beyond increasing the powers for the Western Australia Police Service; it goes to officers of the Anti-Corruption Commission and the National Crime Authority.

There is also a need to ensure that personal privacy and civil liberties are not unduly compromised or undermined in the meantime. The Australian Democrats have approached the Bill with this in mind, and after due scrutiny will seek to put forward a few minor amendments which we believe are quite important. From the debate that has occurred in the other place, we can see that this legislation has already been through a very thorough process of scrutiny and review. We are glad to see the Government has seen some of the inadequacies in the original Bill and made amendments, such as those to part 5 which allow for those public interest matters.

Hon Peter Foss: It is not necessarily an inadequacy; it is a different philosophy. Hon Giz Watson would see it as an alternative way of thinking.

Hon NORM KELLY: That is right. Because of the concerns that were raised with the Government - it is a complex piece of legislation - only time will tell whether it will be a good piece of legislation. We will not know that until we see how the judges and the courts interpret it and how easily the police use it. That will be the real test of how effective it is. It is impossible to give our full support to the legislation. It is more a case of our giving qualified support for it and keeping a close watching brief to see what happens following its implementation. It is understandable that concerns have been raised by various sectors of the community, such as the media - the fourth estate - and, as Hon Nick Griffiths has pointed out, the mercantile agents in this State. I am sure there are also concerns among the criminal elements in our community, who would see the enactment of this legislation as a way in which the police can more effectively crack down on their activities. As I said, the main concern of the Australian Democrats lies with the possible collateral damage which could come out of the implementation of the Bill, such as the possible loss of rights to privacy, infringement of civil liberties and also the restriction on people going about their lawful occupational pursuits.

Hon N.D. Griffiths: It is interesting that the mercantile agents' area of complaint is to the effect that other people's civil liberties are somewhat too enhanced.

Hon NORM KELLY: That is right.

Hon Peter Foss: It does in fact do that. It imposes restrictions which are not concurrent with the law.

Hon NORM KELLY: That is right. That is where we must get the right balance. If we increase powers for some people, we impose restrictions and limitations on others. It is important to get that balance as equal as possible.

Hon Peter Foss: Legislation could not have been passed in the nineteenth century because they are talking about infringing people's rights that did not exist.

Hon NORM KELLY: That is right. It is a good example of how far we have progressed since those times. Part 5 of the Bill, which relates to the use of surveillance devices in the public interest, addresses those concerns from particularly the Media, Entertainment and Arts Alliance that the Bill in its original form would constitute an unfair infringement upon the media's legitimate work. That part of the Bill is complex. It requires reporting to a judge before information can be used and judges must make a decision on whether that is in the public interest. We will consider the definition of public interest more closely in the committee stage. It is important once again to get that right to give the clearest message to judges on how the definition should be interpreted. As I said, once the Bill is enacted, those judgments will need to be monitored. Concerns are still expressed to me by people in the media. If no concerns were being expressed by the media I would probably be even more worried. Therefore, it is probably reassuring that the media is still concerned about some aspects.

Hon Peter Foss: It sounds like they may get it right.

Hon NORM KELLY: Yes. If everyone is slightly offside about it, we probably have the right balance. We will address one of those aspects in the committee stage of the Bill. This Bill has been around for a long time and earlier this year I was provided with a list of scenarios by the media alliance on when it would be able to go about its work in conducting surveillance on people in the public interest. I will not go through all those scenarios. However, members who have read them will understand the complexity of situations which would need to be pre-empted in determining whether this legislation gives adequate coverage and does not impinge on the rights to privacy.

Hon N.D. Griffiths: Do you have a view on private activity?

Hon NORM KELLY: Yes.

Hon N.D. Griffiths: And how the Bill deals with private activity, without getting into the detail. Do you think it is too wide or too narrow?

Hon NORM KELLY: The definition of private activity is reasonably correct. However, it is difficult to say one way or the other without going into scenarios on how this legislation will work. There are some concerns and these concerns will be better addressed at the committee stage when we can go into how the clauses will work. As one reads the legislation, I find it difficult to get my head around how it will actually work which is why using scenarios is a good way of making that clearer.

As Hon Nick Griffiths said, the mercantile agents have expressed their concerns. I will not refer to that in detail. Hon Nick Griffiths has outlined the position paper which was circulated to the opposition parties. In that position paper the mercantile agents propose remedies which in their minds would suit their particular interests.

Hon N.D. Griffiths: They refer to amending particular clauses.

Hon NORM KELLY: That is one way of doing it, to give a clear exemption to mercantile agents. I would not be happy with that because there is a need for restrictions on all of the people. There is no sense in having the Police Service more heavily restricted than mercantile agents or the media.

In this position paper, the mercantile agents propose that clauses 24 and 27 be amended to reflect the legitimate and lawful activity of licence inquiry agents that is encompassed within the definition of public interest. They suggest that the definition of public interest in clause 24 be amended so that it would read " 'public interest' includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens " - which is as it reads now. However, after "freedoms of citizens" they would add the words "which includes the protection of a person's legitimate lawful interests." I am glad that the Attorney General has been able to have a brief look through this document. I will be interested to hear how he thinks mercantile agents will be affected by this legislation and how their legitimate lawful interests will be protected as mercantile agents do have a legitimate role to play.

Hon Peter Foss: Legitimate lawful interests as opposed to illegitimate or unlawful interests.

Hon NORM KELLY: True. As I say, I would like to hear the Attorney General's comments on how this legislation will affect this area of work. I will refer to one scenario on page 2 of the position paper. It gives an example of a person who is fraudulently claiming workers compensation and is found to be running a mechanical workshop from his home garage but considers his activity is private in order that his fraudulent activity remain undetected. The Bill prohibits the inquiry agent from using any surveillance devices to obtain evidence. I would disagree with the statement that it prohibits an inquiry agent from using surveillance devices. It is my understanding that before and after the implementation of this Bill those agents would be able to conduct surveillance from across a street in a public place.

Hon Peter Foss: What it means -

The PRESIDENT: Order! This is the second reading stage, not a tripartite discussion.

Hon NORM KELLY: I am sure we can get into more detail in the committee stage of the Bill. Another concern, which has been expressed already by Hon Giz Watson, is the notion of implied consent for surveillance. Any people entering a bank would have a reasonable expectation that a video recording of them would be made of their being present in that bank. That is something that is accepted in our society and is quite clear cut. These days people travelling across the Narrows Bridge would have a reasonable expectation of surveillance by a camera monitoring road traffic movement. However, if that road traffic camera had a lens which could zoom into a close-up of people in a car, that would be an entirely different matter.

Hon Peter Foss: What about a Multanova radar?

Hon NORM KELLY: That is just a snapshot, I suppose. Once again, it is surveillance of a legal kind. A few years ago there was a case in the Burswood Casino in which there was a reasonable expectation that people would be under surveillance in a casino, which is fair enough. However, as was reported extensively at the time, if that video surveillance is used for ends other than the security of the casino, such as zooming in on people who think that they are in a private corner of a room and who are in fact not, that is a clear abuse and misuse of that surveillance power.

Hon Peter Foss: There are certain parts of the anatomy that you would not want closely observed.

Hon NORM KELLY: In a sense, yes. It would be legitimate to use a video camera to prevent shoplifting by placing it in a grocery store. However, serious questions would be raised if a video camera were used to prevent shoplifting by being placed in the women's changing rooms of a clothing store. We need to continually monitor the implications of the various forms of surveillance.

I hope we will have a worthwhile committee stage in which we can investigate some of these scenarios and how this Bill will work. I foreshadow that the Democrats will move some amendments which we believe will refine the Bill beyond the extensive finetuning which the Government and Opposition have done in the Legislative Assembly. I look forward to the further stages of this Bill and indicate the Democrats' support.

HON PETER FOSS (East Metropolitan - Attorney General) [9.11 pm]: I am almost tempted to adopt the speeches that have been made by the respective members who have addressed the House and say, "There you are!", because they have between them clearly highlighted the issues, philosophies and problems that we have faced in deciding the policy of the Surveillance Devices Bill. Hon Nick Griffiths raised the concerns of private inquiry agents and their firm position that the policy behind this Bill should not apply to them. Hon Giz Watson raised the concern that private activities may become public activities. She said that it is a private right to move through public streets, and it is a private right to protest, and people are entitled not to be observed or recorded while doing those things that are public but to which people are nonetheless entitled to some privacy. That is the very essence of what this Bill is trying to reconcile. Hon Norm Kelly bounced along the middle very nicely - I do not say that in any way as a criticism - saying, "What about this and what about that?", and moving from one side of the argument to the other, and giving some examples of what is plainly a private activity caught by the Bill and what is not. A classic example is whether people should be allowed to be observed if they are likely to commit shoplifting. It is all very well to say that a person who is shoplifting should be able to be observed and recorded, and I do not think many people would complain in those circumstances, but should people who are going about their legitimate business and not stealing things also be recorded? The example of the women's changing rooms would be picked up in this Bill, unless a big sign were put up warning people that they were under surveillance, because it states that activities which a person can reasonably expect to be private cannot be recorded, and people could reasonably expect that it would be a private activity to take off their clothes.

Hon Norm Kelly: Another issue is what happens to that material afterwards.

Hon PETER FOSS: Exactly. What will prevent it from being shown at the Christmas party? This Bill does a number of things. Firstly, it deals with the question of listening devices and optical devices. We already have a Listening Devices Act, so the Bill is not new in that respect, but the Bill establishes the right of people to privacy from having their conversations and activities impinged upon by listening or optical recording devices.

Secondly, the Bill confers on the police the right of entry to make recordings, which because of the case of Coco and the common law, they cannot do without that right being conferred on them. That right is conferred by way of a warrant, in the same way that a search warrant confers the right to go onto a property and do things which would otherwise constitute a trespass. It has become clear that it is all very well to have these devices, but if the police do not have the right to go onto a property and thereby trespass in order to gain the opportunity to place a device, they may lose the right to produce the evidence because it has been obtained unlawfully.

Thirdly, the Bill provides some exceptions to the general statement of law, which is that we cannot impinge on people's privacy. Again, as Hon Nick Griffiths rightly pointed out, this Bill has taken a long time to appear and go through the Parliament. That is because it has had a pretty rocky road and some quite powerful interests have spoken against it - people who certainly do not agree with Hon Giz Watson's view of what the Bill should be. The mercantile agents are not as powerful an interest group as the media, but they have made a strong case as to why they believe certain of their certain activities may be impaired. However, were we to take Hon Giz Watson's attitude, we would say they do not have the right to do that; and that is certainly an attitude that can be maintained.

Most of these things could not have happened in the nineteenth century because the devices that are now used did not exist, so at the time the common law developed its concept of individual rights, these things were not made part of the common law because they did not exist. It is only because of the increasing capacity of these devices to intrude upon our private lives that they have become a matter of major interest and have had to be dealt with through legislation. There is no doubt that since we first started contemplating this Bill, these devices have become more sophisticated and capable of intruding upon our private lives. The whole question of privacy is, therefore, now of considerable interest.

I have mentioned, perhaps in a light-hearted manner, that the Standing Committee of Attorneys General is now looking at the law of privacy, partly because we have got nowhere under the law of defamation and we believe that the law of privacy is a better way of addressing this matter. Defamation is a sort of privacy issue, and privacy as a whole is now becoming a far more important and better way of philosophically balancing some of these points. I am sure that Hon Giz Watson would be quite supportive of my view that it is time that we looked at the whole question of privacy.

Hon N.D. Griffiths: I suspect that the media would dislike privacy laws more than they dislike defamation laws.

Hon PETER FOSS: I suspect they may, but members of the public have serious and growing concerns about the way in which their private lives are being intruded upon. That is another issue. The basic issue here is where do we draw the line between the right of the individual and the right of the public; and, having decided where that line is to be drawn, is this legislation adequate and proper to address that balance. I believe it is. I do not believe it meets the wishes of the mercantile agents, because it does not exempt them. However, I see no reason why they should be exempt. I certainly do not see why they should be exempt when the police are put under strictures. I believe the issue is the definition of a "private activity", which really is the key definition. They are not over happy with it, but they would like to see a greater specification of that. However, that is always a problem. The more these matters are specified, the more difficult it becomes to meet the occasion. The definition states -

> **"private activity"** means any activity carried on in circumstance that may reasonably be taken to indicate that any of the parties to the activity desires it to be observed only by themselves . . .

That definition contains the qualifying words "that may reasonably be taken to indicate". The person who is observing the activity must have some indicia which he reasonably should realise indicates that the parties desire it to be observed only by themselves. The exception to that is "but does not include an activity carried on in any circumstances in which the parties to the activity ought reasonably to expect that the activity may be observed". Let us take some extreme examples. If a couple are engaging in sex, enough is happening to indicate that people would like to have that activity observed only by themselves. However, if they were doing it on the roof of their house which faces the street, they are carrying out that activity in circumstances under which they should reasonably expect to be observed. That couple could hardly complain if they carry out the activity in such a way that indicates that the activity may be observed. A person who is doing the gardening may not want to be observed, but merely doing the gardening is hardly sufficient to indicate that the activity is one which that person desires to be observed only by himself. If that person is carrying out that activity in the front garden, it is hard to suggest that the exception does not apply. It is one of those definitions which, generally speaking, a person can work out. It could be tweaked a little to make a differentiation. It is reasonably capable of being understood. There may be some borderline cases, but, generally, when people provided these examples, they worked. I accept that it does not meet the requirements of Hon Giz Watson. However, it is not intended to meet her requirements. We have not gone so far that we are creating the right of privacy that Hon Giz Watson would desire. Private activity is the key to this matter. Do we think that is right? That is a reasonable test. It is a balance between the mercantile agents and Hon Giz Watson. We could argue either way with considerable fervour and with a degree of moral rectitude on the part of Hon Giz Watson. If we are trying to find a public benefit balance, that definition, which is the key to the whole Bill, meets that particular requirement.

Hon Nick Griffiths asked whether I accept the arguments made by the mercantile agents. I accept that they will be constrained in some of the areas they have raised. The test that has been set down in the Bill meets a proper balance between public and private interest. That is why this Bill is correct. The modification in part 5 is not enormous, but it is proper. The Government has tried to allow more public interest without going too far. I would not accept, even if I understood, the suggestion by the mercantile agents about how public interest should be extended. The definition of "public interest" in part 5 is a good definition; it is not extreme, one way or the other. It covers what is generally understood by the term "public interest", which includes the interests of national security, public safety, the economic wellbeing of Australia, and the protection of public health and morals and of the rights and freedoms of citizens. That is a good definition because it may be seen as narrowing. I do not have a problem with that either. That is the public interest and it may, in some ways, constrain the matter. Hon Giz Watson would say, "Good, I like that one." That is an important definition and must be taken into account. The rights and freedoms of citizens must be taken into account. The private rights of inquiry agents to inquire does not fit in as being in the public interest; it is a private interest. They must operate where they will not impinge on that right of privacy, where it is not a private activity and where they must recognise that if they want to go further and get the public interest, it is a two-edged sword. It will help them under some circumstances and hinder them under others. That is bringing up that balance to which we referred. It is quite well done.

Hon Giz Watson: What is the wellbeing of Australia?

The PRESIDENT: We should discuss that issue in committee.

Hon Giz Watson: I am sorry.

The PRESIDENT: The member does not have to be sorry. The Attorney General nearly took the bait - that is what I would be sorry for.

Hon PETER FOSS: The mercantile agents have raised some matters and I do not agree with all of them. In some areas in which they are looking for certainty, they would end up with unnecessary prescription. We would end up with uncertainty. Many people think that the more words that are put into a definition, the more certain it is. Usually, the more words that are put into a definition, the less certain it is because more questions are raised about what has been left out. These definitions are quite admirable in their ability for the common person to apply them. A person can take a scenario and give his opinion without needing a lawyer. I do not think that I, as the Attorney General and a lawyer, can better answer the question than anyone else who is not a lawyer. More of these types of definitions should be included in Bills so that a person without legal training can read the definition, apply it to a scenario and say, "I think it is X."

I thank all of the contributors to this debate. Even the usual criticism I received from Hon Nick Griffiths was an important criticism. The time that this Bill has taken to reach and pass through Parliament has indicated the difficulties that have arisen, the strong representations that have been made and the attempts by the Government to not just meet those objections, but address the points that have been raised in a fair manner, without necessarily giving way to particular interests. Normally I would say that the criticism from Hon Nick Griffiths is unfair. However, in this case I am glad he raised that point because it illustrates how Parliament moves slowly at times, but moves with a reason in that fashion. It has been a most useful debate, and listening to the contributions to the second reading debate by members almost provided a microcosm of the matters that

this legislation seeks to address. In itself it will provide a case study that is necessary to understand this legislation and why it ended up where it did. I thank members for their contributions. They were extremely useful. I commend the Bill to the House.

Question put and passed.

Bill read a second time.

Committee

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

Clause 1 put and passed.

Clause 2: Commencement -

Hon NORM KELLY: When does the Attorney General expect the legislation to be proclaimed and why is it necessary to have different proclamation days?

Hon PETER FOSS: The factor which will now cause delay is the drafting of the regulations to give effect to this Bill. Some matters have been overtaken by historical events. Originally it appeared that certain agencies of the Commonwealth would be exempted under clause 4 and it seemed as though that would be dealt with separately under clause 4. However, with the time that has elapsed, the Government now knows which commonwealth agencies are involved. There had been a possibility that the regulations relating to the rest of the Bill and that division would have been brought into effect separately. It will now all be done together, and there will be one proclamation.

Clause put and passed.

Clause 3: Interpretation -

Hon NORM KELLY: The definition of "principal party" in paragraph (a) is a person by or to whom words are spoken in the course of a private conversation. I assume that a business meeting in an office would be construed as a private activity.

Hon Peter Foss: Are you dealing with a private conversation or a private activity?

Hon NORM KELLY: I am referring to a private conversation in the definition of "principal party". I imagine that could be one person speaking to a number of people, and any one of those people being spoken to could be a principal party. I am thinking of someone speaking to 100 people. One of those people could be construed as a principal party.

Hon PETER FOSS: That is right. However, the member must not assume that all these things will be private. The basic rule must still be taken into account. Members are in this Chamber at the moment talking to one another, but there is no way it could be regarded as a private conversation.

Hon Norm Kelly: What about a cabinet meeting?

Hon PETER FOSS: That would definitely be one because the people there would expect it to be a private conversation. In fact, it is probably the archetypal private conversation and perhaps party meetings, similarly, are private conversations. The Liberal Party's meetings never seem to be. There seems to be a reasonable expectation that they will be reported in the newspaper the following day.

Hon N.D. Griffiths: Is that right?

Hon PETER FOSS: That used to be the case. I refer the member to the definition of "private conversation". If it involves 1 000 people, it is not a conversation but is more a lecture. The time comes when so many people are involved that it cannot be described as a conversation but is more of a declamation. All these things come back to the particular example. An example can be given by stretching it so far that it ceases to be caught by either "private conversation" or "principal party". It must be either a private conversation or a private activity before there can be a principal party. Once that stage is reached, people can work out who are the people involved.

Clause put and passed.

Clause 4 put and passed.

Clause 5: Regulation of use, installation and maintenance of listening devices -

Hon NORM KELLY: In clause 5(3)(c) reference is made to the principal party to the private conversation consenting expressly or impliedly to that installation, use or maintenance. I question the use of the word "impliedly". That is open to interpretation and I seek clarification from the Attorney General. Is there any possibility of implied consent to surveillance when a person takes out an insurance policy, if that consent is not expressly stated in the policy?

Hon PETER FOSS: Most surveillance relating to insurance claims is not by a person insured under the policy but by a person being sued whom the insurers are indemnifying. The situation referred to would be possible if someone made a fraudulent claim under an injury policy, but most cases do not involve that. I do not think for one moment that it would be seen as implied consent; it must be expressed consent.

I will give an example of implied consent. The member attends meetings in the committee rooms of the Legislative Council. When the committee is not in public session and it is meeting with witnesses, Hansard reporters are present, microphones are sticking up out of the desk, and it is fairly reasonable to say that the member has given implied consent to his conversation being recorded. He has not said, "By the way, before we go any further, I expressly consent to you recording what I am about to say." The fact that the member enters a room in which is situated a Hansard reporter and a microphone means that one can reasonably infer that he is consenting to his comments being recorded. That is a clear example. Another example is a person going to an automatic teller machine above which is a sign which reads "People using this ATM may be recorded." That is almost borderline between being expressed consent and implied consent, because it might be said that the person, after having seen that sign and using the ATM, has expressly consented to it, but even if he has not, he has impliedly consented to it because he has gone ahead in full knowledge that he could be recorded and has not stopped his action.

Clause put and passed.

Clause 6: Regulation of use, installation and maintenance of optical surveillance devices -

Hon NORM KELLY: It was put to me in my briefings on this Bill that implied consent may merely mean the acknowledgment of being observed. If a person had a private investigator snooping over a backyard fence trying to catch what he believes is a workers compensation cheat, and the person in the backyard acknowledges that person standing on a ladder with a video camera by waving to him and carries on about his own work, that would be implied consent. A slightly different situation could arise in which a person is up a telegraph pole observing, and the person in the backyard, thinking he is only an electricity worker, waves to him, unaware that he is being videoed at the same time. I will not enter into some of the scenarios that the minister referred to in the second reading speech about when a person can and cannot have sex. However, in these first two cases there is a danger that implied consent, simply by the acknowledgment of being viewed, goes a number of ways. Consider the case of a one-way mirror in which it may seem as though the person is acknowledging the presence of the camera, but may not be aware that that camera is trained on him. That is where this problem of implied consent arises.

Hon PETER FOSS: In all these activities, one must go back to the definition of "private activity". For some of the examples given by the member, it may not even be a private activity. Given that it is a private activity, it is very much a matter of fact. Consent cannot be implied if a person does not know what another is doing. In the example of somebody up a telephone pole, it could probably not be said that it is a private activity because if a bloke is up a telephone pole, he may observe what the person is doing anyway. It is not necessary to obtain the consent to film; it is a matter of the person realising that what he is doing may be observed and it does not even rate as a private activity. It may not be applied if the person knows he is being observed, and if he does not object to being observed, he probably comes under the second part of it. It is not a private activity so it does not matter whether the person consents to it. It is only when he does not know he is being observed and cannot reasonably expect to be observed that the question of implied consent arises, and there must be something that states he will be filmed or recorded. Therefore, not taking objection to it amounts to implied consent. The member's examples of somebody at the back fence or up a telephone pole does not come under the Bill because it is not a private activity.

Clause put and passed.

Clauses 7 to 10 put and passed.

Clause 11: Presumption as to evidence obtained under warrant or emergency authorization -

Hon NORM KELLY: The Democrats will be opposing the inclusion of this clause in the Bill. I read the clause to mean that evidence which is obtained under that warrant is be presumed to be lawfully obtained. My understanding is that this runs counter to the test of admissibility of evidence, whereby evidence is admissible only if it is lawfully obtained. The way this clause is worded, it appears that simply by gathering evidence under a warrant is sufficient proof for using that evidence in court. I believe the real test should be in the court, otherwise we could have scenarios in which a warrant is issued but a police officer did not conform to what was required under that warrant to obtain the evidence. Under those circumstances I believe that evidence should not be admissible in a court because it has not been legally obtained.

Hon PETER FOSS: It is a misapprehension of what this clause does. It does not do what the member says. It is a rebuttal of presumption and it saves much time in courts whereby unless somebody was seriously about to raise the question that it was not obtained in bad faith or not in accordance with the warrant, the person does not have to go through the formalities of going through all of the things that were done in proving it and proving that positively. It is assumed it is there, but if somebody wants to raise the point and say, "No, you did not do this", it is a rebuttal of presumption and the onus of proof is still on the prosecution or the person wanting to use that warrant evidence to show that the allegation is incorrect and to

show that the evidence was properly obtained. The rebuttal of presumption merely means that a lot of time is not spent in proving things which will never seriously be challenged. If they are to be seriously challenged, the evidence is raised and the onus is on the people asserting that evidence to prove that it was legitimately obtained; but until that question arises and some evidence is raised to show that it has not been properly done, it will go through. The member has a misapprehension. It is a rebuttal of presumption and it is a resumption of fact, not of law.

Hon NORM KELLY: Is the Attorney General saying that in such a case, somebody wanting to use that evidence would not be able to refer to this clause as justifying the fact that the evidence was obtained legitimately, and that the person would have to ignore this clause to use the evidence?

Hon PETER FOSS: The clause states -

> . . . it shall be presumed in that proceeding unless the contrary is proved that -
>
> (a) the application upon which that warrant or emergency authorization was issued was made in good faith;

Because of the nature of proceedings, everything must be proved beyond reasonable doubt as a preliminary to obtaining a conviction. One would have to go through all the process of how the warrant was obtained, how the thing was issued, but it may never be a matter in contention. This clause provides for assumption until somebody says certain things happened. He must then prove beyond reasonable doubt that they did happen. However, that does not have to be done until some evidence is raised that proves that was not the case. It is rebuttal. If the facts show evidence was not properly obtained, then it was not properly obtained and that is the way the court will find.

Clause put and passed.

Clauses 12 to 23 put and passed.

Clause 24: Interpretation -

Hon NORM KELLY: I move -

> Page 37, line 13 - To delete "and morals".

The public interest definition is wide ranging and includes the interests of national security, public safety, the economic well-being of Australia, the protection of public health and morals and the protection of the rights and freedoms of citizens. As this will be decided by an individual there is no real need to include "and morals" in this definition. All the other provisions are sufficient to cover perceivable uses of this definition. If the Attorney General does not agree with my amendment I would like to hear the extra ways in which the words "and morals" would need to be used in other areas.

Hon PETER FOSS: This is an inclusive not an exclusive definition. Deleting the words "and morals" would not remove the capacity to take them into account. However, it was settled on because it copies Article 17 of the International Covenant on Civil and Political Rights. I do not think deleting it will serve any purpose other than to cause curiosity about why it was taken out. It is appropriate that the words be included.

Hon NORM KELLY: I appreciate the origins of this definition. However, as I said, the use of this definition in the international covenant is different from its purpose in this Bill. It is potentially dangerous that information can be published based purely on the public interest of morals when a single judge is determining that moralistic position. I cannot envisage that this Bill would not be as effective without having "and morals" included.

Amendment put and a division taken with the following result -

Ayes (4)

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

Noes (24)

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

Amendment thus negatived.

Clause put and passed.

Progress reported, pursuant to standing orders.

HEALTH AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Max Evans (Minister for Finance), read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [10.01 pm]: I move -

That the Bill be now read a second time.

I am pleased to introduce a Bill for amendments to be made to the Health Act 1911 to provide power to make regulations to control the general public's exposure to environmental tobacco smoke, or ETS as it is known, in enclosed public places. The primary object of the amendment Bill is to promote public health by reducing the general public's exposure to ETS in enclosed public places. The Bill will authorise the making of regulations for the regulation or prohibition of smoking in enclosed public places. The exposure of non smokers to ETS has emerged as an issue of increasing priority as the evidence of the harm caused by passive smoking accumulates. Although the detrimental health effects of active smoking have been known for decades, it was not until the mid-1980s that a number of major reviews concluded that passive smoking was harmful to non smokers. Currently, over 600 international peer reviewed reports and research studies provide evidence on the health effects of ETS which show that it can cause illness and disease in non-smokers. It is clear from this evidence that some groups in the community, particularly asthmatics, those with heart disease and children, are more vulnerable to the effects of ETS than the general community.

We are now at the same point with passive smoking as we were with active smoking in the 1970s when the evidence on the health effects of active smoking was vigorously disputed by the tobacco industry and other interest groups. Now there is absolutely no doubt that active smoking is a major cause of illness and death in the Western Australian community. A similar pattern of disease is emerging in relation to ETS. The Government has a responsibility to protect all Western Australians from undue exposure to this public health hazard. The Western Australian Government has long been regarded as a leader nationally and internationally in responding to the epidemic of disease due to smoking. The Quit campaign was established in 1983. This campaign was followed in 1990 by legislation to ban outdoor advertising and promotion of tobacco products in this State.

In addition to the scientific evidence about the health effects of ETS, there is now overwhelming public support for smoke-free enclosed public places in Western Australia. A random sample of nearly 3 000 Western Australians in a 1994 survey by the Australian Bureau of Statistics found that 96 per cent of adults - both smokers and non-smokers - believed that smoking should be banned or restricted in restaurants. In addition, this survey found that 66 per cent supported some form of restriction in bars and hotels. These results demonstrate overwhelming support for smoking restrictions in enclosed public places.

The Bill and proposed regulations are the result of over two years of background research, debate and public consultation about this important health issue. In 1996 my predecessor, the current Minister for Police, established a task force on passive smoking in public places. The task force examined both regulatory and non-regulatory strategies designed to minimise the community's exposure to passive smoking in public places. The membership of the task force comprised representatives from peak industry groups including the Australian Hotels Association WA Branch, the Catering Institute of Australia, the Restaurant and Catering Industry Association of Western Australia, health and medical organisations including the Australian Medical Association, the National Heart Foundation of Australia and the Australian Council on Smoking and Health, as well as representatives from WorkSafe and the Health Department. The task force undertook extensive public and industry consultation in developing its final report.

The task force released its report in October 1997 but did not reach a consensus on strategies for minimising the exposure of the community to environmental tobacco smoke. Separate recommendations were made by the health and hospitality industry representatives. The chairman, Hon Ian Taylor, proposed an additional set of recommendations which sought to combine the needs of both groups to bring about change with the support of the community.

Cabinet considered the report of the task force in June this year and agreed to introduce regulations to give effect to the chairman's recommendations. This Bill is the first step in implementing that Cabinet decision and provides a head of power in the Health Act 1911 to enable regulations to be made to control the exposure of the public to ETS in enclosed public places. Cabinet is united in its view that the harm caused by exposure to ETS in public areas of Western Australia must be eliminated. In the same way that public pressure has brought about significant changes in attitudes to smoking previously, it is inevitable that all enclosed public places throughout Western Australia will eventually become non-smoking. However, it was recognised that the immediate introduction of bans on smoking in all enclosed public places would cause difficulty

for some operators. Therefore, there was a need for a practical approach to be taken to the implementation of restrictions on smoking in enclosed public places which allows for changes to be phased in over time so that the public and occupiers of enclosed public places have an opportunity to adjust.

The proposed regulations are intended to take effect on Monday, 29 March 1999 and will adopt a sensible, realistic and balanced approach to the issue of ETS in enclosed public places throughout Western Australia. The main clause of the Bill, clause 5, seeks to amend the Health Act 1911 by inserting a new part IXB, entitled "Smoking in enclosed public places". Proposed section 289F of the new part allows the making of regulations for the regulation or prohibition of smoking in enclosed public places. The definition of "enclosed public place" in proposed section 289E of the new part is intended to capture all enclosed places to which the public or a section of the public has access. It will not capture private homes, hotel guestrooms and private "by invitation" functions. Proposed section 289G of the new part provides that any proceedings for an offence against the regulations must not be taken without the written consent of the executive director, public health. This section will allow a prosecution policy to be adopted which recognises education as the key objective of the proposed regulations, with prosecution as the last resort. Section 289H of the new part specifies that the regulations do not confer a right on any person to smoke in any enclosed public place. Hence, persons in control of enclosed public places retain their capacity to prohibit smoking in their establishments regardless of eligibility for exemption. Proposed section 289I of the new part requires the minister to carry out a review and prepare a report on the operation and effectiveness of the new part and the proposed regulations as soon as practicable after the expiry of three years from the commencement of the amending legislation.

A national competition policy review in accordance with the Competition Policy Agreement has been completed with respect to the Bill and no anti-competitive concerns were identified. The proposed regulations will prohibit smoking in all enclosed public places throughout Western Australia subject to a limited number of exemptions. These exemptions specify areas in which smoking may occur subject to conditions. Some exemptions will be permitted only for a limited time. The regulations will provide that smoking be permitted in bar or lounge areas of hotels, bars, taverns, licensed clubs or other licensed premises other than restaurants or cafes. All other enclosed areas of these premises, for example lobbies, corridors, foyers and toilets, will be required to be non-smoking. Smoking will not be permitted in dining areas - that is, areas where the predominant activity is the serving and consumption of food. However, the regulations will allow meals to be served and consumed at the bar counter in bar or lounge areas.

The regulations are flexible enough to cater for areas of licensed premises where the activity of the area may alter during the day. The regulations allow for the smoking status of an area to alter with changes in activity. Therefore, the smoking and non-smoking status of a multipurpose room in a licensed facility can vary when the main activity undertaken in the room varies over the day. When meals are being served other than those being served at the bar or counter - for example, at lunch and dinner times - the room will be non-smoking. When the predominant activity of the area is the consumption of alcohol, smoking will be permitted.

A number of hospitality venues will be provided with time limited exemptions for specific areas within these venues. In hotels and taverns smoking will only be permitted in bar or lounge areas located in the same physical space as a dining area until 31 December 1999. After 1 January 2000, these areas will become non-smoking except for licensed premises which have only one bar or lounge area that adjoins a dining area. In these premises, smoking will be permitted to continue in the bar or lounge area after 1 January 2000. This exemption caters for small licensed premises such as country hotels and taverns. Only those restaurants that hold an extended trading permit issued under liquor licensing laws which allows for the consumption of alcohol without the purchase of a meal will be permitted to allow smoking in those areas set aside primarily for the consumption of alcohol. However, after 1 January 2000, smoking will not be permitted in an enclosed area of a restaurant on the basis that the restaurant holds such an extended trading permit. Smoking will be permitted in all enclosed public areas of nightclubs and cabarets other than corridors, stairways, lifts, toilets, lobbies or waiting areas. However, from 1 January 2000, 50 per cent of the previously exempt areas of nightclubs and cabarets will be required to be non-smoking. Similarly, the Burswood Resort Casino will be permitted to allow smoking in bar and lounge areas as well as the main gaming floor. However, from 1 January 2001, 50 per cent of the main gaming area - not including the International Room - will be required to be non-smoking.

An exemption is also provided for covered "al fresco" and outdoor areas of premises which will allow smoking in these areas when they are not substantially enclosed. For example, when a covered verandah or outdoor area of a premises has moveable and openable walls - whether they are wooden shutter arrangements or plastic sheeting - and these structures are closed, this area will be non-smoking if there is not access to another exemption. However, when one or more of these structures is open so that the area is not substantially enclosed, no restrictions will apply. In addition, a transitional period will be provided to the Royal Western Australian Institute for the Blind to permit smoking in its enclosed Bingo Centre in Bayswater for a limited time. The institute's Bingo Centre is the largest in the southern hemisphere and has a gross turnover of $4m each year. The institute raised concerns about the potential impact of the new regulations on the revenue raised through the Bingo Centre, the surplus of which is used for its charitable activities, and sought parity with the casino as a gaming facility. The transitional exemption will apply to the Bingo Centre gaming area only and will be for a period of three

years. The gaming area will be required to be at least 50 per cent non-smoking by 29 March 1999 and completely non-smoking by 1 January 2002. Areas within licensed premises which are eligible for an exemption, the main gaming floor of the casino and the Bingo Centre gaming area are exempt only if adequate ventilation is provided.

In the proposed regulations, the "adequate ventilation" standard which will be adopted as a interim standard is that which is set out in the current Australian Building Standard Code. The code outlines acceptable mechanical and/or natural ventilation requirements. There will be some concern that this standard will not ensure that all the harmful chemicals and particulates in environmental tobacco smoke are removed. Unfortunately, there is no reputable Australian or international body which has developed a practical mechanical ventilation standard which protects the community from exposure to all the detrimental effects of ETS. If this Government took on the task of developing such a standard, the introduction of this Bill and the associated regulations would be delayed.

Experience from our New South Wales counterparts illustrates the difficulty of developing a suitable standard in relation to ETS. The implementation of equivalent smoking prohibition legislation in New South Wales is dependent on the development of such a standard. Twelve months of deliberations have passed and the New South Wales Government is still no closer to implementation. This Government will monitor developments in New South Wales and internationally. Thus, it is the intention of the Government that the standard incorporated in the current regulations will act as an interim standard until a more suitable standard is available. The proposed regulations will be amended to reflect any new ventilation standard that becomes available and is more effective in dealing with the ETS issue.

The regulations will also include a provision that will place an obligation on the occupier of premises to ensure that people do not smoke in areas which are required by the legislation to be non-smoking. Occupiers will be provided with a defence if they did not supply anything to facilitate smoking, such as ashtrays, lighters, etc, and they were not or could not have reasonably been aware that a contravention of the regulations was occurring, or informed the person concerned that they were committing an offence and requested the person to stop smoking. The regulations will place occupiers under a duty to take reasonable steps to prevent smoke penetrating non-smoking areas of an enclosed public place, unless the non-smoking area is provided with adequate ventilation. The regulations will also require occupiers of enclosed public places where smoking is prohibited to display signs indicating that smoking is prohibited. The regulations will also require a person contravening the regulations to obey a direction of an environmental health officer to cease smoking in a smoking prohibited area. The regulations provide for a maximum penalty of $500 where the offence is committed by an individual and a maximum penalty of $5 000 where the offence is committed by a body corporate. To assist in compliance with the regulations, the Minister for Health has agreed to a six-month moratorium on prosecutions from the date of implementation of the regulations.

As mentioned previously, there is wide community support for smoking restrictions in public places. This public support, combined with an education campaign to inform all those affected by the regulations of their responsibilities under the law, will facilitate compliance with the regulations. Section 26 of the Health Act 1911 confers responsibility for monitoring compliance with, and the enforcement of, the regulations on local government. The Health Department, however, will be taking a lead role by providing training, resources and support to local government environmental health officers to enable them to effectively monitor compliance with the regulations with minimal disruption to their other duties. It is anticipated, however, that other mechanisms such as public and industry education, appropriate signage and community support will assist in ensuring widespread compliance with the proposed regulations. The experience of the Australian Capital Territory, which has had legislation restricting smoking in enclosed public places since 1994, suggests that compliance with its legislation has been good. To date, the ACT Government has not had to take any legal action for breaches of its legislation.

The Health Department of Western Australia is planning to conduct a comprehensive education campaign beginning in mid-February 1999 to support the legislation. The campaign will include media advertising and the development and distribution of information resources to all relevant groups affected by the legislation. In addition, resources will be available for the general public. Additional educational resources will be developed as required. This educational campaign is an important part of ensuring overall compliance with the legislation. As I have already mentioned, the Government has a high level of public support for this Bill and proposed regulations. It is supported by the scientific evidence about the health effects of exposure to ETS. Western Australia has built on the experience from its eastern states counterparts and from experience overseas to ensure that this legislation is both practical and effective in dealing with this important issue.

I therefore commend this Bill to the House, and I table the associated draft regulations for the information of members.

[See paper No 537.]

Debate adjourned, on motion by Hon E.R.J. Dermer.

TRANSFER OF LAND AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Max Evans (Minister for Finance), read a first time.

Second Reading

HON MAX EVANS (North Metropolitan - Minister for Finance) [10.15 pm]: I move -

That the Bill be now read a second time.

There are some problems with the existing methods by which a restrictive covenant is extinguished, discharged or modified by order made by the Supreme Court of Western Australia. These amendments change the process by which a single-dwelling restrictive covenant which affects more than 10 lots may be changed by such an order under section 129C of the Transfer of Land Act 1893. In addition, unless the provisions of the relevant town planning scheme expressly authorise the removal of the single-dwelling restrictive covenant, while the land is subject to that covenant, it should not be subdivided and multiple dwellings should not be built on the land, despite planning legislation and town planning schemes that may allow otherwise. Some of the problems with the current process include that -

only one person in an entire estate scheme needs to apply to the court for the removal of a covenant, without consultation or agreement from those who enjoy the benefit of the covenant;

on every occasion when an individual landowner in the estate scheme brings an application to the Supreme Court, any other landowners in the same estate scheme who wish to oppose the proposed change are required to participate in what may be expensive and time-consuming litigation to defend the matter in the Supreme Court, and this may happen repeatedly every time one owner applies to the court;

owners of land located within a different but adjoining estate scheme, in practice, due to physical proximity, may be adversely affected by the removal of a single-dwelling restrictive covenant, but at law, because they do not belong to the same estate scheme, have no legal entitlement to object to the removal of that covenant;

if an order is made by the Supreme Court for the removal of the restrictive covenant, the effect of the single dwelling estate covenant scheme may be adversely affected and watered down. This may reduce the value and amenity of the neighbourhood which was originally supported by the single-dwelling restrictive covenant to the point where it may even be lost, either partially or totally.

Therefore, under the existing methods, residents who oppose a change and who wish to maintain the existing single-dwelling status may be required to incur great expense and spend considerable time in the Supreme Court defending the integrity and character of their neighbourhood. These amendments aim to address some of these problems by allocating an increased weight to the views of those residents who own nearby land with the benefit of a single-dwelling restrictive covenant and, therefore, are most likely to be affected by the removal of the single-dwelling restrictive covenant. In effect, the onus is placed upon the resident who wishes to change the covenant to satisfy the court that he or she has obtained support to do so from those most likely to be affected by the change. Under the amendments, the Supreme Court cannot decide to make an order to remove the single-dwelling restrictive covenant unless the resident who wishes to change the covenant has already obtained written consent to the removal from 51 per cent of other landowners. Approval also is needed from other relevant encumbrance holders of land with the benefit of a single-dwelling restrictive covenant, who are located in close proximity.

The proposed regulations set out a method to identify those from whom consent should be requested and obtained. Those persons are identified by reference to their interest in land located inside the prescribed area. The prescribed area is defined on the basis of the proprietorship of lots with the benefit of a single-dwelling restrictive covenant which are located within a certain distance from the lot sought to be removed from the covenant. The primary method used to determine the prescribed area is by applying a circle formula. It is expected that consent should be requested from about 200 or more benefited lots located inside the prescribed area. These lots are identified by drawing a circle with a radius of 250 metres from the centre of the lot which is the subject of the application to court to change the covenant. If 200 or more benefited lots do not fall inside the circle, the size of the circle may be increased. However, the formula recognises that, irrespective of the size of the circles, there may never be 200 benefited lots inside the circle. Therefore, the regulations also stipulate a maximum circle size to define the prescribed area.

In summary, the amendments will make it more difficult for landowners within a neighbourhood of single-dwelling restrictive covenants to obtain a Supreme Court order to remove that covenant without the support of the majority of those most likely to be affected by a change to that covenant. The effect of these amendments may be a decreased number of applications made to the Supreme Court to remove a single-dwelling restrictive covenant under section 129C of the Transfer of Land Act. Consequently, the burden imposed upon landowners, often repeatedly, to oppose the removal of a single-dwelling restrictive covenant through expensive and time-consuming litigation is likely to be reduced. I commend the Bill to the House.

Debate adjourned, on motion by Hon E.R.J. Dermer.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Assembly Membership

Message from the Assembly received and read acquainting the Council that consequent upon the resignation of the member for Girrawheen from the committee, the member for Cockburn had been appointed in his place.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [10.22 pm]: I move-

That the House do now adjourn.

Bandyup Women's Prison - Adjournment Debate

HON N.D. GRIFFITHS (East Metropolitan) [10.23 pm]: I bring a matter to the House's attention. I rarely speak in adjournment debates and I do not propose to speak at length. The matter concerns conditions at Bandyup Women's Prison. This morning I was in receipt of a letter. I have handed the Minister for Justice a copy of the document to which I refer, so that he will be in a position to respond to matters raised in the letter. Before I make reference to it, I point out that the issue of prison overcrowding has been raised on a number of occasions in this House, particularly in question time in recent weeks. The issue of overcrowding at Bandyup has been raised on several occasions, not only with respect to the specific issue of an alternative prison site. Questions asked of the minister have recently solicited a response to the effect, as I understand it, that the minister would be visiting the prison shortly. I trust that he has done so. If he has not done so, I trust that he will be doing so very promptly indeed, so he can inspect at first hand the conditions and report to the House on the matter.

I propose to refer to this document. I should point out that in response to the person who caused the document to come into being, I have removed the identification of the person, who chose not to be identified for reasons which are in part contained in the correspondence. I will not read the document in full because it contains some inappropriate language. It reads -

> Background
>
> I have a close friend who is in Bandyup for a white collar, non violent, crime.
>
> She has a serious drug problem and has had a troubled upbringing. She has never been taught ethics, morals or the differences between right and wrong.
>
> Despite counselling, she continued to use drugs and committed fraud to support her habit. Although banks have been her main victims, my family and I have also been victims of her drug addiction. . . .
>
> Due to overcrowding at Bandyup Womens' Prison, conditions as described to me compromise moral and physical safety.
>
> Some prisoners are forced to sleep on threadbare mattresses which have been burned by previous prisoners and some have to sleep with no pillows, their heads under the cell sinks. A prisoner told me that she had to dry herself for over a week with her prison issue trackpants, and when issued underwear found it unwashed and showing bodily waste from a previous wearer.

Certainly these seem to be matters of hearsay, but they are very serious and necessitate a considered response on the part of the minster. If he does not know firsthand, it is his duty to find out what is going on. It continues -

> Threats of violence and actual violence are common, as are lesbian advances from some prisoners.
>
> My friend claims that she is safe only when the cells are locked at 7.00pm, otherwise she is in constant fear. There have been more than three attempted suicides.

I choose not to read out the next paragraph because of the language. The second page of the letter also outlines its hearsay nature, but all the same the allegations are serious. It reads -

> I have been informed that hygiene in the cells and ablutions is poor and that some prisoners miss out on showering, and even food, due to overcrowding.
>
> The atmosphere of violence and tension, combined with brutal physical and mental treatment is taking its toll on my friend. I fear that, should she survive Bandyup, she will be so mentally scarred that she will return to drug use with increased passion to wipe away the cruel treatment that masquerades as measurements of correction under the banner of the Ministry of Justice.

Criticism is made of the minister. The question is posed -

> How can the Hon. Mr Foss excuse this abhorrent treatment of non violent prisoners?

The conclusion is in these terms -

> I cannot understand how the Ministry of Justice condones such practices in this country which prides itself as fair and progressive, in this year of 1998.
>
> The conditions at Bandyup Womens' Prison, as told to me, are comparable to those of some third world countries. As an Australian, I feel ashamed.

These are essentially matters of hearsay, but they are very serious. They are not inconsistent with a number of matters raised in questions in this House in recent weeks, nor are they inconsistent to a degree with matters raised in the media. I look forward to the Minister for Justice's response and particularly to his being able to report to the House either that he has visited Bandyup or that he will shortly be visiting Bandyup to inspect it firsthand and satisfying himself as to the conditions there and to give a statement of what he proposes to do, rather than wait for some event which may or may not occur in the middle of next year.

HON PETER FOSS (East Metropolitan - Minister for Justice) [10.29 pm]: I thank Hon Nick Griffiths for having provided me with this document prior to raising the matter in the adjournment debate. The document is a mixture of things. He has asked a number of questions of late and I have asked that they be put on notice. Although they have not gone on notice, I have investigated them and written to Hon Nick Griffiths with some answers. Some of the complaints that he has raised I have found to be not exactly confirmed but I can see the basis for the complaint and some I have found to be unfounded. There is no doubt that conditions at Bandyup are not acceptable. That is why we have made the move to have emergency accommodation at Nyandi, which in absolute terms I would not regard as ideal, but on the other hand is better because at least it relieves the overcrowding at Bandyup. Nyandi is certainly preferable to an overcrowded Bandyup.

Some of the remarks made in the letter are interesting. Some of them I must have investigated. It does not say why she had to dry herself for over a week with prison-issued track pants as opposed to using some other method. I must find out why that would be and why she would get underwear which was unwashed. Obviously there is a process of laundering. That complaint will be a little hard to investigate.

She makes the statement that threats of violence and actual violence are common. Whether they are common or not I do not know. However, there is no doubt that one of the hard parts about a prison which people do not appreciate is that it is not necessarily the prison regime or the officers who pose a difficult regime in prisons. Prisons, even women's prisons, are full of extremely unpleasant people. It is well known around the world that some of the incidents which are particularly undesirable come from other prisoners. One of the problems we face when we lock up a large number of unpleasant people together, is the difficulty in preventing those undesirable people taking measures against other people in the prison. Some of our prisons have a large degree of separation. It is unfortunate that we are now getting to the stage where the degree of separation that is necessary, particularly in male prisons, is becoming almost impossible to achieve. That is because those prisoners who are seen as vulnerable and in need of protection are often people who are prepared to take action against others. I visited a prison in Queensland in which there were drug rivalries. Some people who had given information in drug cases were liable to be killed by somebody else, but there were maybe five different groups of people within that vulnerable group who, given half a chance, would kill somebody else in that group. We are now reaching the stage where protecting vulnerable prisoners from other prisoners in the same group is becoming increasingly difficult, and we almost need to have six or seven prisons within a prison. Admittedly that situation is not as serious in women's prisons as it is becoming in men's prisons, but protecting the different categories of vulnerable prisoners who may take action against other vulnerable prisoners is a management problem within male prisons. It is a longstanding and problematical matter. Women's prisons are becoming more like men's prisons in the nature of the more violent crimes committed by women.

Hon Cheryl Davenport: This is caused by the large muster.

Hon PETER FOSS: I did start off by saying that the most important way to address this is to reduce the numbers and the level of tension. I will put a small plug in here. I hope that the people who are opposed to the development of Pyrton recognise that it is not time for a nimby attitude. I believe there has been some nimby over Pyrton. We need a suitable women's facility and it is not acceptable for people to say, "We do not want it here." I have made it clear that I will accept that if people can point out where there are better places, and I will look at them.

Hon Ken Travers: Why was the Cyrenian site not acceptable?

Hon PETER FOSS: Hon Ken Travers can look at it. One of main reasons was that it had the wrong numbers. It was unsuitable accommodation that would require major alterations and it still would not be suitable. The only thing one can say about Cyrenian was that it is there. Beyond that it had no program areas and no proper accommodation. If we were to accommodate any significant numbers we would instantly have to provide multiple bunking in rooms which were never designed for prison accommodation. There was a scattering of houses which were not suitable for women, and which instantly would require an inappropriate adaptation to fit the numbers in. It had very little going for it in terms of its applicability to what we wanted to use it for. Pyrton on the other hand is perfect. Pyrton has all the areas for programs and

the appropriate accommodation, and it needs hardly any money spent on it to use it for the purpose for which we want to use it. My concern is that the reaction to Pyrton has been the nimby reaction.

Hon Cheryl Davenport: A lot of Aboriginal women who attended a Women's Electoral Lobby meeting on Thursday night did not have that view. They were very vocal.

Hon PETER FOSS: I heard about that, and about the sort of vocalisation that occurred. I also know that a vote was taken in which the number of people who did not want to take a vote exceeded the number of people who voted in favour of it. Unfortunately, from the very beginning, the reaction of a number of people has been plain straight out nimby. We accept that it is a nimby reaction

Hon Cheryl Davenport: I was in this place during debate on the Rangeview remand centre, and I remember the nimbys who were on this side at that time.

Hon PETER FOSS: That came up at the same WEL meeting and the same Aboriginal women objected to Sunset on the same basis as they objected to Pyrton. Sunset was not even suitable for old men. I closed Sunset because the accommodation was quite unsuitable for the people there.

I am going to Bandyup to open an important facility, which is the women's meeting place. It has taken a while, but it addresses those issues and we are addressing some of the other issues. I got caned in the newspaper because Bandyup has women's choirs. However, getting together and singing and playing instruments has proved to be effective in addressing some of the tensions that are out there. Some people underplay the opportunity to use such things to address some of the spiritual and cultural issues.

Hon Ken Travers: We will not attack you on that issue, but for two years you have done nothing.

Hon PETER FOSS: I am trying hard to do something at Pyrton, but there has been far too much of a nimby attitude displayed by people, including, by the look of it, Hon Ken Travers. I take the matter seriously. Unfortunately, we have been diverted away from this.

One of things that was said about the bad language was that most warders are supportive. It is important that the staff are doing as much as they can to address the problem.

Hon N.D. Griffiths: When are you going to Bandyup?

Hon PETER FOSS: Some time next week; it might even be this week.

Hon N.D. Griffiths: Will you report to the House and say what you will be doing over the next couple of weeks? I do not think what you are doing is sufficient.

Hon PETER FOSS: I have already told the member that we have been trying to reduce the number of people by moving some of them out. We are trying to get Pyrton going because it is an important move. Unfortunately, a lot of the obstructionism that has occurred has not taken into account the needs of those women and the suitability of Pyrton. In this instance the nimby attitude is unfair.

Optimum Resources' Tailings Dam - Adjournment Debate

HON TOM HELM (Mining and Pastoral) [10.38 pm]: Members will recall that on 19 November I raised a matter in the House and I accused the Department of Minerals and Energy of acting in collusion with Kalgoorlie Consolidated Gold Mines Pty Ltd in Kalgoorlie. The accusation arose from documents that had been obtained through a freedom of information application. I raised the matter because I thought there was clear evidence of collusion, and to highlight matters of concern to do with the Department of Minerals and Energy and the way it operates. I also wanted to highlight some of the matters I raised in this House at question time. I tried to avoid attacking the Minister for Mines, who is also the Leader of the House. The House will recall that the minister chose to use the occasion of my raising those concerns to have a go at me and the people I was trying to help who feel slighted because they feel the department has treated them wrongly since 1993. I drew no conclusions about the issue except to highlight the matter to the House. The minister chose to personalise the matter. He will be able to confirm that I have tried to resolve these matters behind the Chair and to look for answers rather than engage in political point scoring. However, if members look at the *Hansard*, they will see that the Leader of the House chose the opportunity to attack me, the party, and Ray and Steve Kean, whose concerns I brought to the attention of the House.

Last weekend I travelled to Southern Cross to view a number of matters that were brought to my attention. I went to a place called Hopes Hill Mine, which is about five kilometres from Southern Cross, a town I had never stayed at before. It is a nice town and it is located in my electorate. However, I was concerned when I arrived at a mine which has not been in use for about eight years. It is an open-cut mine that was almost down to the water table level. I took a video camera with me because people told me that I should record what I saw. As a layman, I am not one who can make any comment about the things that I might find, but some experts might. I found three or four containers of what looked like lime at the edge of the pit to the water. I found empty drums on the way down to where the water was. I found two drums that had suspended from

them a pump and a pipe that led from the water table out over the top of the rim of the disused mine to a tailings dam that was across from where the mine was. Into the pipe was a smaller pipe that led to a square plastic drum contained in a metal cage that had in faded writing "Warning. Corrosive liquid." I was advised that this drum contained a liquid that stopped the water from scaling into the plastic pipe that was leading into the pump, which was in the flood water at the bottom of the disused pit. That alarmed me and I videoed that. I was shown that the pipe from the pump led to the tailings dam, but before it got to the tailings dam, there were eight retorts that were filled with carbon. I understand this is a method of recovering gold from liquids. I was also advised that in the process of taking this water from the bottom of the disused pit and putting it into the tailings dam, 25 ounces of gold were recovered a day. All these things made me a bit on edge - not forgetting this is five kilometres from the town of Southern Cross.

I drove around the edge of the tailings dam and went to the southern end of it where I could see a mining company. I understand that this area is owned by Resolute Limited. I could see that some recent attempts had been made to rehabilitate the side of the tailings dam. The tailings dam would be full of heavy metals and different sorts of things that are part of the processes of mining, and nothing is unusual about that. The only thing that was brought to my attention was a breach in the wall of the tailings dam and a brown liquid that I filmed which was seeping from the dam and was crystallising at the side of it. For about half a kilometre in a semi-circle around from where the tailings dam wall was breached were dead trees, some of which had been knocked over and some were still standing and dead, but I could see that many were in distress. I am not making any conclusions, and perhaps I am making some assumptions, but the crunch is this: I saw this with my own eyes and people who work in the area told me not to walk in that stuff that comes into the tailings dam because it is not healthy to do so. I filmed a bloke who worked in the area who had scabs on his arms and he said it was because he worked in the area. He had not been to the doctor because he is a miner. He had worked there for some time.

In the time I spent there I noticed about half a dozen shafts that had no caps on them; shafts that were open shafts - I do not know if they were disused or not, but they were simply there. That concerned me. There are no warning signs or fences around this area, yet this is only five kilometres from Southern Cross. I must stress, and it is something that I cannot get a handle on, that the rehabilitation program was being overseen by the Department of Minerals and Energy, or I understand it was. It makes a bit of sense to me that perhaps it is; that it is looking at the rehabilitation being done in line with things that the Department of Conservation and Land Management or the Environmental Protection Authority would want; however, there is an environmental section attached to the Department of Minerals and Energy that has these requirements. Although I was trying to tell the minister that there may be problems within his department and he may need to have a look at them, a mines inspector is frequently on site and these sorts of things are happening, and it is not far from where children might go. There are no fences, no warning signs, no nothing.

It was the first time I had been to Southern Cross. I am not a goldminer, but it appears that it is something which would cause concern, and it is something that we would see the minister about in most instances. I would have done so except for his reaction last week. I do not think I have a need to now because the department should be aware that this is happening because a departmental officer is going to the area quite frequently. This is happening in front of us. It is my duty to bring it to the attention of this House so that people are aware of dangers that surround the people in Southern Cross. Some of those problems need to be highlighted to the department, and this minister must understand that protecting the department is not good enough. He should make some inquiries into his own department and see that it is doing the job that it is supposed to do.

Question put and passed.

House adjourned at 10.46 pm

QUESTIONS ON NOTICE

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

TOURISM COMMISSION - CHIEF EXECUTIVE OFFICER'S REMUNERATION

509. Hon KEN TRAVERS to the Minister for Tourism:

In relation to the Minister's answer to my question on the remuneration received by the CEO of The West Australian Tourism Commission from 1994 through to 1997, for each of the periods 1994 to 1997, can the Minister advise -

(1) What was the actual salary paid to the CEO for each year?

(2) What other benefits and/or entitlements did the CEO receive in each year?

(3) What was the total remuneration package for each year?

(4) Was the CEO authorised to use a corporate credit card?

(5) If yes to (4) above, what was the total credit provided for each year?

Hon N.F. MOORE replied:

(1)

YEAR	PERIOD	SALARY PAID
1993/94	Complete	$ 93 915
1994/95	Complete	$122 223
1995/96 (note 1)	1/7/95 - 23/2/96	$ 56 286
	23/2/96 - 30/6/96	$ 48 847
1996/97 (note 2)	Complete	$141 568

Note 1. There was a change in Chief Executive Officer on 23 February 1996.

Note 2. In 1996/97 the Chief Executive Officer's salary includes a sum of $35 278 for the pay out of three months accrued Long Service Leave

(2)

YEAR	PERIOD	BENEFITS AND/OR ENTITLEMENTS
1993/94	Complete	Annual Leave Loading (approx) - $620 Superannuation (approx) - $13 125 Motor Vehicle - Notional value - $12 754 Telephone Allowance - $250 per annum
1994/95	Complete	Annual Leave Loading (approx) - $620 Superannuation (approx) - $13 125 Motor Vehicle - Notional value - $12 754 Telephone Allowance - $250 per annum
1995/96 (notes 1 & 2)	1/7/95-23/2/96	Annual Leave Loading (approx) - $409
(note 2)		Superannuation (approx) - $8 662
(note 2)		Motor Vehicle - Notional value - $8 417
(note 2)		Telephone Allowance - $165
(note 2)	23/2/96 - 30/6/96	Annual Leave Loading (approx) - $209
(note 2)		Superannuation (approx) - $5 775
(note 2)		Motor Vehicle - Notional value(approx)- $5 003
(note 2)		Telephone Allowance (approx) - $85
1996/97	Complete	Annual Leave Loading (approx) - $615
(note 3)		Superannuation (approx) - $16 988 Motor Vehicle - Notional value - $14 717 Telephone Allowance - $250 per annum

Note 1. There was a change in Chief Executive Officer on 23 February 1996.

Note 2. The figures have been calculated on a pro-rata basis to reflect employment for part of the year.

Note 3. The current Chief Executive Officer is a member of Gold State Super and is currently contributing 6% and, hence, the above superannuation payment.

(3)	YEAR	PERIOD	TOTAL REMUNERATION PACKAGE
	1993/94	Complete	$120 664
	1994/95	Complete	$148 972
	1995/96 (note 1)	1/7/95 - 23/2/96 23/2/96 - 30/6/96	$ 73 940 $ 59 920
	1996/97	Complete	$174 138

Note 1. There was a change in Chief Executive Officer on 23 February 1996. Total package has been calculated on a pro-rata basis for each CEO in the 1995/96 financial year

(4)	YEAR	PERIOD	AUTHORISED TO USE CORPORATE CREDIT CARD
	1993/94	Complete	Yes - only for work related expenses
	1994/95	Complete	Yes - only for work related expenses
	1995/96 (note 1)	1/7/95 - 23/2/96 23/2/96 - 30/6/96	Yes - only for work related expenses Corporate credit card not allocated
	1996/97	Complete	Corporate credit card not allocated

Note 1. There was a change in Chief Executive Officer on 23 February 1996

(5)	YEAR	PERIOD	TOTAL CREDIT PROVIDED FOR EACH YEAR.
	1993/94	Complete	Work related travel expenses charged $3 190.59
	1994/95	Complete	Work related travel expenses charged $10 674.78
	1995/96 (note 1)	1/7/95 - 23/2/96	Work related travel expenses charged $4 008.01
	(note 2)	23/2/96 - 30/6/96	Nil
	1996/97 (note 2)	Complete	Nil

Note 1. There was a change in Chief executive Officer on 23 February 1996.

Note 2. The current Chief Executive Officer has chosen to meet costs personally, then claims reimbursement of costs.

DEPARTMENT OF LAND ADMINISTRATION, PHOTOGRAPHIC SERVICES CONTRACT

652. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

In regard to the Minister for Lands' answer to question 398 of October 15, 1998 -

(1) Can the Minister for Lands explain how the contract referred to in his answer (b) (xxii) for the supply of photographic services to DOLA blew out from $1 060 000 to $1 447 689?

(2) Which company provided the services for this contract?

Hon MAX EVANS replied:

(1) The contract referred to is a period contract for the provision of services at a fixed cost for the period of the contract. The potential cost is an estimate which gives the contractor an indication of the volume of services. In this instance, client demand for these services exceeded the estimate. DOLA recouped the additional costs from its clients.

(2) The contract was awarded to 4 companies. They are -

Bruno Zimmermann Photography
Irvin Datacolor
Kevron Aerial Surveys
Projection Graphics

GOVERNMENT DEPARTMENTS AND AGENCIES, CONTRACTS

657. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Housing:

(1) Have any agencies or departments under the Minister for Housing's control awarded any contracts to the following companies since July 1, 1996 -

(a) Triad Constructions, Triad Contractors or Achron Pty Ltd;
(b) R J Vincent & Co Pty Ltd;
(c) Highway Constructions;
(d) Henry Walker Contracting Pty Ltd;
(e) Ertech Pty Ltd;
(f) Moltoni Corporation;
(g) Brierty Contractors;
(h) Barclay Mowlem Construction Pty Ltd;
(i) Jonor Construction;
(j) Jaxon Construction;
(k) Doric Construction; and
(l) Entact Clough or Clough Engineering?

(2) If yes, can the Minister provide the following details of those contracts-

(a) the name of the contractor;
(b) the contract number;
(c) the date it was awarded;
(d) the project the contract was awarded for;
(e) the cost of the contract;
(f) if the contract has been completed, the final cost of the contract; and
(g) the names of any other companies who tendered for the contract?

Hon MAX EVANS replied:

Homeswest has utilised the services of Ertech Pty Ltd, Moltoni Corporation, Brierty Contractors and Jaxon Constructions since 1 July 1996. However, the contracts awarded to these companies are numerous and I am not prepared to commit the resources to answer this question in its current form. If the member has a specific question on any of these contractors then I would be prepared to commit the resources to provide an answer.

LANDCORP, PROJECT MANAGEMENT SERVICES

661. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's invitation for registrations of interest for the provision of project management services -

(1) How many proposals did LandCorp receive?

(2) What companies or individuals registered their interest?

(3) When will a tender be called for the provision of these services, and on what date will contracts be awarded?

Hon MAX EVANS replied:

(1) 61.

(2) [See paper No 536.]

(3) The object of calling for expressions of interest from project managers was to create a panel of private sector project managers for future works. This is consistent with the approach used by LandCorp for other industry consultants. As projects are identified, a project specific brief will be prepared and a selection of consultants from the panel will be invited to provide submissions. The successful consultant will be selected through an assessment process having regard to the specific needs of each project.

LANDCORP, JOINT VENTURE WITH NORTH WHITFORDS ESTATES PTY LTD

663. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture in Port Kennedy with North Whitfords Estates Pty Ltd -

(1) Where and when was the call for expressions of interest advertised?

(2) Was a request for proposal or a request for tender called?

(3) If yes, which companies submitted proposals or applied for the tender?

(4) Where and when was the request for proposal or request for tender advertised?

(5) What has been the total return on the joint venture to date, and what has been LandCorp's share of this return?

Hon MAX EVANS replied:

(1) The West Australian, The Australian Financial Review and The Australian newspapers from 26 November 1994 for a period.

(2) A request for proposal was called.

(3) Peet & Company Ltd
Estates Development/Domain Project Development
Australian Housing & Land
Taylor Woodrow
North Whitfords Estates
Landrow
McCusker Holdings

(4) After evaluation of the initial submissions seven companies were selected and invited to submit tenders.

(5) The first stage of the joint venture is still under construction. There will be no return to the joint venture until these lots are developed and sold.

LANDCORP, JOINT VENTURE WITH RDC PROJECTS AND PENPAGE NOMINEES

664. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Lands:

With regards to LandCorp's joint venture in Thornlie with RDC Projects and Penpage Nominees -

(1) Who was in partnership in this development with RDC Projects and Penpage Nominees before LandCorp became involved?

(2) What is the share for each joint venture partner in each of the stages of the development?

(3) What has been the total return on the joint venture to date, and what has been LandCorp's share of this return?

Hon MAX EVANS replied:

(1) Bank of Western Australia Ltd.

(2) LandCorp's share in each joint venture stage varies between 100% and 50%.

(3) The total return on stages were historically dependent on contract prices and market conditions. The profits were shared in accordance with each partner's interest in the relevant stage.

CAMPAIGN ADVERTISING CONTRACT

665. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Works:

With regards to Department of Contract and Management Services contract No 175A1996 for the supply of Campaign Advertising, can the Minister for Works state -

(a) the name of the contractor;

(b) the date the contract expires;

(c) whether the contract has an option for renewal upon expiry;

(d) the names of any other companies that tendered for the contract;

(e) the annual value of the contract in-

(i) 1995/96;
(ii) 1996/97; and
(iii) 1997/98, and

(f) the estimated annual value for 1998/99?

Hon MAX EVANS replied:

This information was correct as at 1 December 1998:

(a) Media Decisions.

(b) 30 June 1999.

(c) There is no option for renewal upon expiry.

(d) None.

(e) (i) 1995/96: Outside the current contract
(ii) 1996/97: $25,677,116
(iii) 1997/98: $28,276,441

(ii) and (iii) include expenditure by Public Benevolent Institutions, Universities and some local government authorities.

(f) In the 1998/1999 financial year, government agency expenditure on advertising will be as required to meet their needs and will be controlled to ensure that it is met from existing resources of each agency.

NON-CAMPAIGN ADVERTISING CONTRACT

666. Hon KEN TRAVERS to the Minister for Finance representing the Minister for Works:

With regards to Department of Contract and Management Services contract No 235A1996 for the supply of Non-Campaign Advertising, can the Minister for Works state-

(a) the name of the contractor;

(b) the date the contract expires;

(c) whether the contract has an option for renewal upon expiry;

(d) the names of any other companies that tendered for the contract;

(e) the annual value of the contract in -

(i) 1995/96;
(ii) 1996/97; and
(iii) 1997/98, and

(f) the estimated annual value for 1998/99?

Hon MAX EVANS replied:

This information was correct as at 1 December 1998:

(a) Marketforce Productions.

(b) 30 June 1999.

(c) There is no option for renewal upon expiry.

(d) Adcorp Australia
Neville Jeffress Advertising
Workhouse Advertising

(e) (i) 1995/96: Outside the current contract
(ii) 1996/97: $9,958,878
(iii) 1997/98: $12,849,100

(ii) and (iii) include expenditure by Public Benevolent Institutions, Universities and some local government authorities, and production costs.

(f) In the 1998/1999 financial year, government agency expenditure on advertising will be as required to meet their needs and will be controlled to ensure that it is met from existing resources of each agency.

QUESTIONS WITHOUT NOTICE

MAIN ROADS WA, MR JOEL KURIAKOSE

650. Hon TOM STEPHENS to the Minister for Transport:

(1) In the light of the decision by a Perth magistrate to dismiss charges against Mr Joel Kuriakose on the grounds that Main Roads led him to believe that he was validly appointed under the Public Sector Management Act and therefore did not require a private investigator's licence, will Main Roads accept responsibility for Mr Kuriakose's legal expenses?

(2) Has Mr Kuriakose or International Investigations Agency sought recompense for these legal expenses?

(3) If yes to (2), what is the amount claimed?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) No.

(2) Yes.

(3) Main Roads received an invoice for $65 850 relating to legal and other costs incurred by International Investigation Agency. Main Roads has rejected the payment of $52 750 of this account. The remainder of the account was paid for costs in relation to the investigation.

RIPON HILLS ROAD PROJECT

651. Hon TOM STEPHENS to the Minister for Transport:

On 3 December 1996 the Minister for Transport claimed that Valiant Consolidated Ltd, Newcrest Mining Ltd and WMC Resources Ltd were contributing $15m towards the original $45m Ripon Hills Road project.

(1) Can the minister explain why none of those companies is now contributing to the basic project?

(2) Can the minister explain why the project is now costing taxpayers $54m rather than $32m as originally announced?

(3) Has CRA made any commitment to contribute to the road or to its extension to Kintyre?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The companies were to contribute to the sealing of the road. The road is now to be initially constructed to a gravel standard.

(2) $32m was a preliminary estimate for the project. This has now been revised following a detailed design and further assessment of the availability of suitable road building material in the area and the calling of tenders.

(3) As far as Main Roads is concerned, CRA has made no commitment to the road and there are no plans for an extension to Kintyre.

PRISONERS, TRANSFER FROM CASUARINA TO WOOROLOO

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

In relation to the movement of prisoners from Casuarina to the minimum security prison at Wooroloo, I ask -

(1) For the months of September, October and November, how many prisoners were transferred from Casuarina to Wooroloo?

(2) What criteria must be satisfied prior to the transfer of these prisoners?

(3) Have any prisoners been transferred who do not satisfy this criteria, and, if so, why?

(4) What is the current muster at Casuarina Prison?

(5) What is the current muster at Wooroloo?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) 70.

(2) All prisoners must be rated minimum security in accordance with the director general's rule 2B, which deals with the procedures for the assessment and placement of prisoners.

(3) No.

(4) 536.

(5) 201.

PORT KENNEDY, LAND CONSERVATION DISTRICT COMMITTEE AND SEA RESCUE GROUP

653. Hon J.A. SCOTT to the minister representing the Minister for Lands:

(1) Was the relocation of the Port Kennedy land conservation district committee and the Port Kennedy sea rescue group as a result of court action?

(2) What were the terms set down by the court in regard to the relocation?

(3) Has the Department of Land Administration carried out the terms of this settlement to the letter? If not, why not?

(4) What was the total cost of relocating the Port Kennedy land conservation district committee and the Port Kennedy sea rescue group, including court costs?

Hon MAX EVANS replied:

I thank the member for some notice of this question. Providing the information in the time required is not possible and I request that the member place the question on notice.

HARDWOOD SAWMILLS, SOUTH WEST

654. Hon NORM KELLY to the minister representing the Minister for the Environment:

In response to question on notice 563 answered yesterday, the minister provided a list of 78 hardwood sawmills. In the recently released Australian Bureau of Agricultural and Resource Economics report titled "WA hardwood sawmill industry survey", prepared as part of the Regional Forest Agreement process and also based on the Department of Conservation and Land Management's information, it is stated at page 7 that there are 113 hardwood mills receiving logs from the RFA region. Why is there a difference of 35 mills between the two figures provided by CALM?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The figures in the recently published ABARE report were derived from a survey of operators which obtained a hardwood log allocation. Under this definition, a sawmill included woodchip, charcoal and firewood operators. This is clearly defined on page 6 of the report, Australian Forest Products Statistics, June quarter, 1998. The sawmills listed in parliamentary question 317, not question 563, are those receiving a sawlog allocation, and therefore exclude the Diamond chip-mill and a number of firewood operations.

KIDSAFE WA, REGIONAL AREAS

655. Hon MURIEL PATTERSON to the Minister for Transport:

(1) Will the Kidsafe WA child restraint checking service be offered in regional areas?

(2) If so, when will Albany be covered; if not, why not?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The Department of Transport officers have spoken to Kidsafe WA officers who have indicated that such a service will be offered, provided appropriate funding is identified. I met with Kidsafe representatives and indicated that the issue will be considered in the context of the Road Safety Council's child car restraint strategy.

(2) Kidsafe indicates that Albany is on its list of centres to visit. No date has been provided by Kidsafe. The Royal Automobile Club of WA is also developing a regional service, and it hopes to expand its services to Albany early in 1999.

TAXI USER SUBSIDY SCHEME

656. Hon LJILJANNA RAVLICH to the Minister for Transport:

(1) When were the criteria changed for the taxi user subsidy scheme?

(2) How many users of this scheme will no longer be qualified because of the new criteria?

(3) Will the minister table a copy of the former and the revised criteria?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) 1 July 1997.

(2) As at 24 November 1998, 534 members have been found to be ineligible under the new TUSS criteria.

(3) I seek leave to table a copy of both the current and previous scheme application forms which provide details of the criteria.

Leave granted. [See paper No 533.]

"TIME ON OUR SIDE" POLICY

657. Hon CHERYL DAVENPORT to the minister representing the Minister for Seniors:

In the Government's recently announced policy paper "Time on Our Side", under the section health and wellbeing, mention is made of developing an active ageing framework for Western Australia. Will the minister indicate -

(1) Which department, agencies and community organisations will be involved in developing this strategy?

(2) When will the strategy be released publicly?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The Minister for Seniors has provided the following answer.

(1) The Ministry of Sport and Recreation, the Office of Seniors Interests and the Education Department will be involved in developing this strategy. Key community groups will be consulted as part of this process.

(2) It is envisaged that the active ageing framework will be announced late in 1999.

MINISTRY FOR CULTURE AND THE ARTS, LEGISLATION

658. Hon TOM HELM to the Minister for the Arts:

Will the minister indicate which arts organisations were consulted during the drafting of the legislation on the Ministry for Culture and the Arts?

Hon PETER FOSS replied:

The principal organisations consulted were the arts organisations affected by the legislation; that is, the Art Gallery of Western Australia, the Museum of Western Australia, the Library and Information Service of Western Australia and the Perth Theatre Trust. However, in the case of the Perth Theatre Trust, it was principally the chairman of the Perth Theatre Trust.

SUBIACO REDEVELOPMENT AUTHORITY AREA, PRIVATE DWELLINGS AND PUBLIC OPEN SPACE

659. Hon RAY HALLIGAN to the Attorney General representing the Minister for Planning:

(1) How many private dwellings are planned for the area under the control of the Subiaco Redevelopment Authority?

(2) How much open public space has been put aside by the authority?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) About 650 new homes will be built in a variety of forms, including single homes, group housing, walk-up apartments and shop-top housing.

(2) About 50 700 square metres.

MITCHELL FREEWAY, EXTENSION TO HODGES DRIVE

660. Hon KEN TRAVERS to the Minister for Transport:

(1) Has the contract for the extension of the Mitchell Freeway been awarded?

(2) If yes, who won the contract?

(3) When does the minister expect work will commence?

(4) When does the minister expect the work will be completed?

Hon M.J. CRIDDLE replied:

(1)-(2) Tenders are currently being called for the extension of Mitchell Freeway to Hodges Drive.

(3) Work is planned to commence in January 1999.

(4) The freeway extension to Hodges Drive is expected to be open to traffic in early 2000.

WOOROLOO PRISON SOUTH, FINES

661. Hon KIM CHANCE to the Minister for Justice:

I refer to the fact that the operator of the new Wooroloo jail must pay fines of $100 000 for each death in custody and escape.

(1) What penalties does the Government pay for each death in custody and escape from state-run prisons?

(2) Will the Government be ensuring that state prisons are judged by the same standards as any new private prison; if so, how; if not, why not?

(3) In what circumstances is it anticipated that the Government may take over the running of a new private prison?

Hon PETER FOSS replied:

(1)-(2) The concept of owners of public jails being fined $100 000 only needs to be said to be shown to be rather silly. The effect would be to deprive the public jail of $100 000, which is quite evidently a silly thing to do.

Hon Kim Chance: It would be competitive neutrality.

Hon PETER FOSS: It would not. We would have to make it up. If we fine a private company, it must make it up. If we fine a public jail, we must make it up; in other words, we would be taking money out of one pocket and putting it in another.

Hon Kim Chance: Like the port authorities paying taxes to the State Government.

Hon PETER FOSS: No, it is quite different. I can see the ludicrousness of that. If the member cannot, I will leave it there. At the time I attended to the request for proposals, I announced that we intended that the same standard should apply. One of the advantages of the whole process has been that we have had to enunciate standards, whether they be for a public or a private operator. If we have a public jail, those are the standards that we expect to apply. If we have a private operator, those are the standards we expect to apply. We are already putting in place an inspectorate system for our public jails. We expect over a period of time to bring our public jails to the same standard as the standard we expect of any new operator, public or private, at Wooroloo. We have currently a person from the Home Office going through Casuarina Prison with the intent of seeing how we match up against the provisions and whether we can bring the jail to that standard. We intend to have an inspectorate, whether there is a public or private jail at Wooroloo or anywhere else, whereby we can check the operation to ensure that it applies to those standards.

(3) I will have a Bill introduced into the other place shortly, which will set this out in detail. Circumstances will be dictated by contract and by statute. Obviously if there is a substantial breach of the terms of the contract; for example, if the operator goes bankrupt or there is an unpermitted change in the management - I am trying to remember what they are.

Hon Kim Chance: There is a range of clauses?

Hon PETER FOSS: Yes; in fact, there is a catch-all whereby one can give notice and suspend. There is a pretty broad power for taking over and also for appointing an administrator. When the Bill comes in I think the member will get the full intended range.

ABORIGINAL HERITAGE ACT, SITE-CLEARANCE PROTOCOLS

662. Hon TOM STEPHENS to the minister representing the Minister for Aboriginal Affairs:

What steps is the minister taking to ensure ethical and workable site clearance procedures and protocols are being put in place in reference to statutory requirements of the Aboriginal Heritage Act?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. I refer the member to the draft document "Guidelines for Aboriginal Heritage Assessment in Western Australia, January 1994" developed by the Aboriginal Affairs Department. I have arranged for the department to forward a copy to the member's office.

GENETICALLY ENGINEERED FOODS, LABELLING

663. Hon CHRISTINE SHARP to the minister representing the Minister for Health:

(1) Is the minister aware that every public survey undertaken on the subject shows unequivocally that consumers want freedom of choice and overwhelmingly favour mandatory labelling of genetically engineered foods?

(2) Will the minister insist that the Australia New Zealand Food Authority food standard A18 be modified to require mandatory labelling of all such foods?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) I am not aware of the surveys to which the member refers. However, I have received representations on this issue seeking mandatory labelling of foods produced using gene technology.

(2) This is an important issue of consumer information and it also affects international trade. The international situation is not resolved. I will be taking all of these factors into consideration when this issue is discussed by the Australia New Zealand Food Standards Council.

WATER PIPED FROM ESPERANCE TO KALGOORLIE

664. Hon GREG SMITH to the minister representing the Minister for Water Resources:

Will the minister give an update on the proposals and progress to pipe water from Esperance to Kalgoorlie?

Hon MAX EVANS replied:

I thank the member for some notice of this question. Throughout this year the Water Corporation has been leading a process known as Waterlink to assess the future water needs and potential solutions for the goldfields. This process has identified, among other things, a potential water demand by industry that could possibly be satisfied by pumping water from Esperance. From the preliminary work undertaken, any future scheme from Esperance would be primarily based on supplying the needs of the mineral processing industry and therefore will need to be driven by this sector. One private consortium has been assessing a scheme to pump desalinated and/or seawater from Esperance to Kalgoorlie; however, at this stage it has made no firm announcement on the project. The Water Corporation has also undertaken preliminary studies into a seawater scheme from Esperance, and these indicate that it could be viable if an appropriate market were found.

LITERACY TEST RESULTS, PRIVATE SCHOOLS

665. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

In relation to the results of the statewide literacy test which received some publicity in *The West Australian* today, will the minister explain why data on the results of private school students were not available while those on the results of public school students were?

Hon N.F. MOORE replied:

The Minister for Education has no access to data relating to the results of non-government schools. The Association of Independent Schools and the Catholic Education Office separately contracted with the Australian Council for Educational Resources for analysis of their students' results. This information is the property of the Catholic Education Office and the private schools, not the State Government.

OMEX SITE REHABILITATION

666. Hon GIZ WATSON to the minister representing the Minister for the Environment:

With regard to the rehabilitation of the Omex site -

(1) Did the minister give the Bellevue community assurances that soil, air and noise monitoring results from the containment-wall project would be routinely tabled and accessible through the implementation consultative committee?

(2) Is the minister aware that the Bellevue community has been waiting up to six weeks for routine monitoring results from the site?

(3) Will the minister explain why the implementation consultative committee meetings have been up to six weeks apart?

(4) Will the minister ensure that the implementation consultative committee meetings are conducted at an interval that is acceptable to the community?

(5) Will the minister please table all soil monitoring results to date from excavated class 3 material at the Omex site?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) The Department of Environmental Protection has always made those monitoring results available to the community on request.

(2) A request for soil monitoring results was made to the DEP on 9 November. These results will be sent out with the minutes of the November meeting.

(3) The implementation consultative committee meetings were scheduled to occur on a monthly basis, with more frequent meetings during times of high activity and community interest. During the consultative environmental review for the construction of the containment wall, meetings were held fortnightly. At the last implementation

consultative committee meeting the committee was asked to think about how it would like to meet and discuss the matter, including the frequency of discussions.

(4) It is the responsibility of the committee to set its own meeting schedule.

(5) I will table all soil monitoring results to date from excavated class III material at the Omex site. In total 280 tonnes of class III waste have been excavated from the site and disposed of at the Red Hill waste disposal facility. The waste was delivered to the disposal facility on 25 and 29 September and 19 and 20 October. It is estimated that an additional 100 tonnes of class III waste will be disposed of during the completion of the construction of the retaining wall. The results show low levels of contamination with very little organic volatiles. To limit offsite contamination the stockpiles of class III waste are covered and margins wet down as required.

[See paper No 534.]

PRISON ESCAPES

667. Hon N.D. GRIFFITHS to the Minister for Justice:

(1) How many prisoners escaped from Western Australian prisons during the months of September, October and November?

(2) From which prisons did those escapes occur?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Twenty-six - six in each of September and October; and 14 in November.

(2) Eastern Goldfields Regional Prison, 9; Wooroloo Prison Farm, 8; Bandyup Women's Prison, 3; Karnet Prison Farm, 3; and Pardelup Prison Farm, 3. It is important to note that those people have not escaped from any medium or maximum security areas. Generally speaking they are walk-aways. Some escaped while in police custody, some while visiting doctors, and some did not come back from section 94 excursions, which are regarded as escapes.

UNANSWERED QUESTIONS

668. Hon NORM KELLY to the minister representing Minister for the Environment:

I refer to questions on notice 316, 500, 604 and 620 asked on 10 September, 26 October, 11 and 17 November.

(1) Can the minister detail when answers to these questions will be available?

(2) If answers are now available will the minister table those answers?

(3) If answers are not currently available, will the minister explain the reasons for each of the delays?

(4) Are the delays acceptable to the minister?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(4) These questions are presently being processed and will be tabled as soon as possible. I will find out what has happened; I do not know.

HOSPITALS FINANCIAL SYSTEM

669. Hon E.R.J. DERMER to the minister representing the Minister for Health:

I refer to the report in *The West Australian* of 3 November in which a Health Department spokeswomen said that the replacement of the Oracle Financials 10.5 system for Princess Margaret Hospital for Children and King Edward Memorial Hospital for Women would be at no charge to the taxpayer, because Oracle would foot the bill.

(1) Will the Minister for Health confirm that no part of the cost of the purchasing, customising and implementing of Oracle Financials 10.7 for Princess Margaret and King Edward hospitals was, or will be, met from government revenue?

(2) Will the Minister for Health confirm that Oracle will meet all of the costs?

(3) If yes to (2), will the minister table the details of the contractual obligations on Oracle to meet all of these costs, and if not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Oracle Corporation has funded the development of the Oracle Financials Version 10.7 system. There is no customisation. Implementation of the new system and new business processes are separately funded.

(2) The Oracle Corporation has funded the development of the Oracle Financials 10.7 system. This system has not been customised.

(3) There is no contract with Oracle Corporation and the Health Department for Oracle Financials.

ABORIGINAL PEOPLE WITH DISABILITIES

670. Hon CHERYL DAVENPORT to the minister representing Minister for Disability Services:

(1) Has the Disability Services Commission received any money from the Commonwealth that specifically targets policy development research or service provision for Aboriginal people with disabilities?

(2) If so, how have these grants been applied?

Hon MAX EVANS replied:

I have not received notice of this question.

MARITIME MUSEUM, FERRY TERMINALS

671. Hon LJILJANNA RAVLICH to the Minister for the Arts:

(1) Can the minister confirm that the report prepared by M.P. Rogers and Associates Pty Ltd for the architects of the new maritime museum site have reported that because of climate and wave action ferry terminals at the site will be accessible for only 50 per cent of the time?

(2) Will this affect the financial viability of the project; if not, why not?

Hon PETER FOSS replied:

(1)-(2) The member's question is wrongly directed. Those architects were responding to the whole maritime precinct project. Obviously the ferry terminal has nothing to do with me. The member should direct her question to the minister representing the Premier.

LEGAL AID COMMISSION, LEGISLATION

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

(1) What consultation is taking place on legislation to do with the Legal Aid Commission?

(2) When did the consultation commence?

(3) When is it due to cease?

(4) When is it anticipated that legislation will be brought before the Parliament.

(5) Is consultation taking place with the Federation of Community Legal Centres WA?

(6) If not, why not?

Hon PETER FOSS replied:

(1)-(6) There has been consultation on the general principle, and with regard to the specific wording of the legislation. There has been consultation with the Federation of Community Legal Centres. The principal consultation, where we are looking to resolve some matters, is with the Legal Aid Commission and the Law Society. There is a variance between the wishes of the Law Society and the Legal Aid Commission and I am currently seeking to resolve that. When I have had the opportunity to resolve that, if it is capable of resolution, I will bring the legislation before Parliament. My consultation has been mainly confined to the Legal Aid Commission and the Law Society. The group that is responsible for the instructions on legislation has consulted more widely.

PRISONS, SELF-SUFFICIENCY

673. Hon TOM STEPHENS to the Minister for Justice:

(1) I refer to the request for the proposal for the new Wooroloo jail. One of the aims for the jail is to become more

self-sufficient financially. What steps has the Government taken this year to achieve this aim in state-run prisons, and if none, why not?

(2) Does the Government have a strategy to achieve this aim as soon as possible; and if not, why not?

(3) When will the guidelines for the private prison generally extend to public prisons?

Hon PETER FOSS replied:

(1)-(3) The last part of the question is a slight repetition of a question asked by the member's colleague. I answered at that stage that we are already seeking to do that with regard to Casuarina. It is not the be all and end all that we want prisons to be self-sufficient. We would like them to be more self-sufficient, for obvious reasons, but that is certainly not the ultimate aim. For instance, we have had a survey of farming activities. As a result recommendations have been made as to how to improve the efficiency and economic basis of those activities, and they are currently being implemented. A similar inquiry is being conducted into industry, but there is a problem in that we do not wish to compete with local industry. Generally speaking, prisoners have been doing government work where the Government would spend money anyway and therefore it spends it in the prisons and gets value for that money, or import replacement.

There are difficulties. The report that I filed on my visit to North America states that problems arise if we try too strongly to become a commercial selling entity. The solution is to tender out services rather than to produce a particular product. A total review of prison industries has taken place, and a group is trying to find meaningful work for prisoners which is of economic value to the State of Western Australia. I should also point out the successful work that has been done by prisoners on projects such as the Bibbulmun track; local work at the Badgingarra and Walpole camps; and work out of various prisons such as Albany, Pardelup, Karnet and Bunbury. Fixtures on the Bibbulmun track were built within jails and then reassembled. Much of the work on the Bibbulmun track was done by prisoners. One way or another we are trying to return value for the taxpayers' dollars to the State and the people of Western Australia.

MARITIME MUSEUM SITE

674. Hon LJILJANNA RAVLICH to the Minister for Transport:

(1) Will the minister confirm that the report prepared by MP Rogers and Associates for the architects at the new maritime museum site have reported that because of climate and wave action, ferry terminals at the site will be accessible for only 50 per cent of the time?

(2) Will the minister advise whether that will affect the financial viability of the project; if not, why not?

Hon M.J. CRIDDLE replied:

I ask Hon Ljiljanna Ravlich to put that question on notice.