WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE COUNCIL

Wednesday, 16 December 1998

Legislative Council

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

ADDRESS-IN-REPLY

Presentation to Governor - Acknowledgment

THE PRESIDENT (Hon George Cash): I desire to announce that, in company with several members, I today waited on His Excellency the Governor and presented the Address-in-Reply to His Excellency's speech and that His Excellency has been pleased to make the following reply -

> Mr President and members of the Legislative Council
>
> I thank you for your expressions of loyalty to Her Most Gracious Majesty the Queen and for your Address-in-Reply to my speech to Parliament on the occasion of the opening of the Second Session of the Thirty-fifth Parliament.
>
> Michael Jeffery
> Governor

GERALDTON-GREENOUGH CITY COUNCIL - PROPOSED BOUNDARIES

Petition

Hon Dexter Davies presented the following petition bearing the signatures of 148 persons -

> To the Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned residents of Western Australia, oppose the excision of that portion of the Shire of Chapman Valley recommended by the Local Government Advisory Board for inclusion within the proposed new boundaries of a greater Geraldton-Greenough City Council.
>
> Your petitioners, therefore humbly pray that the Legislative Council will support this request to enable the residents affected by this recommendation to remain residents of the Shire of Chapman Valley within the existing local government boundary.
>
> Your petitioners, as in duty bound, will ever pray.

[See paper No 643.]

SELECT COMMITTEE OF PRIVILEGE

Establishment - Dr Peter Murphy

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.05 pm]: I move -

> That -
>
> (1) A select committee of five members, a majority of whom constitute a quorum, is appointed to inquire into and report on the circumstances leading to the failure of Dr Peter Murphy of the Department of Resources Development to answer to a summons issued on 29 September 1998, and the appropriateness of the penalty recommended by a former Select Committee of Privilege to be imposed on Dr Murphy were he to be adjudged guilty of contempt.
>
> (2) The committee have power to send for persons, papers and records.
>
> (3) The committee report not later than Thursday, 22 April 1999.

Members will be aware that the Standing Committee on Estimates and Financial Operations was concerned that a particular document was not tabled as a result of a summons issued by that committee. As a result, the House formed a Select Committee of Privilege. That committee has reported to the House and made certain recommendations. Upon receiving that report the Attorney General expressed to me some concerns about its findings, and has obtained Crown Law advice in respect of those findings. It has created in my mind, and in the Attorney's mind, some concern that the findings may be in some way incorrect. It is my view that, because a number of legal views exist about this, it would be appropriate to re-establish the committee of privilege. If the House agrees to this motion I will move that the previous members be appointed to this select committee to take further evidence from those who would have a legal view on this matter, and for the committee to report back to the House.

A number of significant issues are at stake here, and before the House makes a decision on the recommendations of the Select Committee of Privilege I would prefer the committee to hear further evidence on a number of issues that have been raised by the Attorney General and by the Crown Law Department. I ask the House to support the motion.

HON NORM KELLY (East Metropolitan) [2.07 pm]: I support the motion. However, having been a member of the original Select Committee of Privilege, and being aware of the work of the committee and its knowledge of the ramifications that its recommendation might have, I think that the members of a newly constituted committee could do extensive work during the recess so that a further report could be tabled as soon as possible. We must realise that the decisions we make can have far-reaching consequences and the people who are involved should be able to expect a speedy resolution. The original committee report recommended a fine of $1 500. Not acting on the report and appointing another select committee will mean that Dr Murphy will be left in limbo for a few more months before he will be aware of the final resolution of the House. I have not seen a copy of the motion, although I understand the proposed Select Committee of Privilege will reconsider the recommendation of the original committee. That could result in a more substantial penalty or a less substantial penalty or, as has been mentioned, consideration of the legal basis of the recommendation. If a new select committee were formed, and if I were a member of that new select committee, it would be important that the committee work through the summer recess to ensure that this matter was brought to a conclusion as quickly as possible. That would be my intention if I were appointed as a member of the committee, and I expect that the other members of the committee would act likewise.

HON TOM HELM (Mining and Pastoral) [2.11 pm]: I had the privilege of serving on that committee. I congratulate the Government for coming to the House with this proposal. My service on that committee highlighted some of the problems that have been encountered by the Delegated Legislation Committee with regard to how public servants view members of Parliament. I do not want to reflect too much on the House, but the privilege committee discovered that its terms of reference were quite restrictive and left the committee with no alternative other than to make the recommendations that are before the House in the report. As a trade unionist, it sticks in my craw - I hope Dr Murphy is not insulted by this - that a worker is being punished in circumstances in which he was unaware of his responsibilities to this House. It is apparent from the report that members of the Public Service and ministers of not just this Government but also previous Governments have been under the illusion that we as members of Parliament and as participants in this Chamber are just rubber stamps and have no authority over the activities of the Executive or of the Executive's servants. The proposal that is before the House goes a long way towards looking at the relationship between the Executive and members of Parliament. Therefore, I congratulate the Government for putting this proposal before us, and I urge the House to support it.

HON J.A. SCOTT (South Metropolitan) [2.13 pm]: The Greens (WA) will support the motion, although, as expressed by the previous speakers, we do have some concerns. Those concerns are principally that in examining this issue, we are examining the authenticity of our committee system. However, I believe that provided the members of the committee keep that in mind as they make their recommendations, a just position will be reached. In this case, a public servant may have been under some duress to make the decision that he made. I believe that further examination will highlight the need for ministers and the executive arm of government to take the committee system a lot more seriously and to consider more closely an instruction to an employee to defy a direction from a committee. We support the motion.

Question put and passed.

Appointment of Members

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

> That Hon B.K Donaldson, Hon Kim Chance, Hon Tom Helm, Hon Norm Kelly and Hon Derrick Tomlinson be appointed to the select committee, and that Hon B.K. Donaldson be appointed chairman.

ORDERS OF THE DAY

Motion

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [2.16 pm]: I move -

> That Orders of the Day Nos 3 to 9 be taken ahead of Order of the Day No 1.

HON NORM KELLY (East Metropolitan) [2.16 pm]: I have not had any notice of this motion from the Leader of the House.

Hon N.F. Moore: I told your leader at the last management committee that is what I would be seeking to do. If she didn't tell you, I can't help it.

Hon NORM KELLY: If that is the case, that is fine.

Hon N.F. Moore: She did not say she agreed with it, by the way, but she knew of it.

The PRESIDENT: Order!

Hon NORM KELLY: I am sure she would not have agreed. Given that we still have five motions on the Notice Paper to deal with, some of which have been there for a number of months, it is important that we use this first hour to deal with these motions. The first Order of the Day that the Leader of the House wants to deal with is the Health Amendment Bill which I was expecting to be taken at 3.00 pm. It is unfortunate that he has moved to bring it on earlier than scheduled in light of last night's debate.

Hon B.M. Scott interjected.

Hon Peter Foss: It is only for consideration of the report.

Hon NORM KELLY: I realise that government backbenchers are not worried so much about proper debate in this place as about their Christmas dinner. For those reasons, the Australian Democrats will not be supporting this motion.

HON KIM CHANCE (Agricultural) [2.17 pm]: I understand the motion to be that the Bill be read a third time.

The PRESIDENT: No.

Hon KIM CHANCE: Adoption of the report?

The PRESIDENT: No. I will say this for the sake of the House: When there are interjections people forget where they are, including me. The motion that we are debating is that Orders of the Day Nos 3 to 9 be taken before Order of the Day No 1. The question is that that motion be agreed to.

HON HELEN HODGSON (North Metropolitan) [2.18 pm]: I was listening on the speaker in my office when I heard this motion being moved. I understand that the Leader of the House said this was raised at the business management committee meeting last week. It is true that it was raised and at that stage the Australian Democrats suggested that there were important matters in the motions that needed to be dealt with. We did not give our agreement at that time to bring on orders instead of motions and to forgo the formal business of the day. On that basis we do not support this motion.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [2.19 pm]: The Opposition is most anxious to accommodate the Government with the orderly handling of its legislative program. That strategy will not be advanced by this type of quick device. Members may remember that, if this motion is defeated, we are in the middle of a filibuster from the Minister for Finance.

Hon Max Evans: Come on! I was just giving you the facts.

Hon Ken Travers: How long did you talk about Burswood then?

Hon Max Evans: I am clear.

The PRESIDENT: Order, members! When the Leader of the Opposition said that we are in the middle of a filibuster, that reflects on the Chair. I am sure that was not his intention. If we can move the debate along, we might be able to put the question.

Hon TOM STEPHENS: Thank you, Mr President, for helping me with my appreciation of the requirements of the standing orders and my respect, deep as it is, for the Chair.

Point of Order

Hon PETER FOSS: I do not think this is a debatable motion.

The PRESIDENT: It is.

Hon PETER FOSS: Standing Order No 128 -

The PRESIDENT: The Attorney should look at Standing Order No 129.

Hon PETER FOSS: That also is not debatable.

The PRESIDENT: Standing Order No 129 states -

Motion in reference to business of Council

1. Any motion connected with the conduct of the business of the Council may be moved by a Minister at any time without notice.

That is what has happened. Normally we proceed to motions before orders of the day. Under Standing Order No 129, the Leader of the House has moved a motion that would see us move directly to orders of the day. It is a debatable motion and the Leader of the Opposition is in the middle of making some comments.

Debate Resumed

Hon TOM STEPHENS: If this motion is defeated, we will be in what I presume is the middle of a long speech from the Minister for Finance that has already gone on for two days and this would be the third.

Hon N.F. Moore interjected.

The PRESIDENT: Order! The Leader of the Opposition is trying to make his point to the Chair. The Leader of the House has had his opportunity. He should let the Leader of the Opposition make his point.

Hon TOM STEPHENS: Members of the Opposition are trying to help the Government get its legislation through this Parliament. The Leader of the House should simply speak with me directly about what he wants to do.

Hon N.F. Moore: This was your idea; you suggested it.

Hon TOM STEPHENS: The leader did not take it up.

Hon N.F. Moore: I said I would move it. With all due respect, that is what happened.

The PRESIDENT: Order! I have said previously that when the Leader of the Opposition and the Leader of the House have some dispute about the management of the House, the proper place to discuss it is in a business management committee meeting. If the members concerned want to argue, they should do it outside so that other members can get on with the business of the House.

Hon TOM STEPHENS: Members on this side are doing their darnedest to help the Government complete its legislative program. I urge the leader not to adopt this approach of putting forward proposals in a business management committee meeting and then assuming that, because he has put forward a proposal or heard another proposal, some agreement has been reached.

It is relevant for me to respond to an issue in respect of business management processes because this directly relates to that issue. Yesterday in a debate that also resulted from business management committee considerations, Hon Bruce Donaldson gave a version of the events that transpired at last Thursday's meeting. That version accords only with his recollection, not even that of his leader. The leader had the good grace subsequently to disown the accusations about me when he told the House that that question had not been resolved. Various proposals and propositions were put and no agreement was reached, as was made clear to the House by the Leader of the Government a few moments after he sat down, with his vile accusations in reference to me, trying to discredit me or cast aspersions on my honest recollections in reference to the way in which the matter was considered by the business management committee. I am doing my best to try to accommodate the Government's legislative program.

Hon N.F. Moore: You are wasting time now.

Hon TOM STEPHENS: All that Hon Norman Moore needs to do is to open his mouth and speak with me about what he has in mind.

Hon N.F. Moore: You speak to me and tell me what we are doing -

The PRESIDENT: Order! I call the Leader of the Opposition.

Hon TOM STEPHENS: I am endeavouring to be as accommodating of the Government as I possibly can.

Hon Peter Foss: Rubbish.

Hon N.F. Moore: That is the most outrageous thing I have ever heard from you. You tell me what I am going to -

The PRESIDENT: Order! I am trying to put the motion. Interjections are now delaying the business of the House.

Hon TOM STEPHENS: Because the operations of the business management committee have come up in the consideration of the motion, as they have in regard to previous motions, I no longer find it acceptable that the records of those meetings are allegedly kept only by Hon Bruce Donaldson. In future I will insist that the proceedings be recorded by the Clerk of the House.

Hon N.F. Moore: I wouldn't worry; there will not be too many meetings, because they are a waste of time.

The PRESIDENT: Order!

Hon TOM STEPHENS: I urge the Leader of the House, if he has any prospect of being able to manage the House through that process, to try to mend his ways. He should not treat the House with the contempt that he constantly heaps out in the process.

Hon Derrick Tomlinson: We will treat you with the contempt you deserve.

The PRESIDENT: Order! I ask the Leader of the Opposition to speak to the Chair.

Hon TOM STEPHENS: It is accurate that I put forward a proposal to the Government, and there was no indication about whether the Leader of the House would accept any of our proposals in reference to the sitting times this week.

Hon N.F. Moore: Hon Jim Scott opposed it -

The PRESIDENT: Order! I do not want interjections. I am trying to put the motion. One way to resolve the matter is to vote on it. It is 2.25 pm and we have not even decided what business we are to consider this afternoon.

Hon TOM STEPHENS: I will take a few more moments with the motion because I can see coiled and ready to speak at least one government member - I do not know whether the Leader of the Government will have another chance -

Hon N.F. Moore: I do not have the right to reply. I did not expect to debate the matter.

Hon TOM STEPHENS: All right. I can see Hon Bruce Donaldson coiled and, presumably, ready to repeat the same accusations that were made yesterday, scurrilous and untrue as they were -

Several members interjected.

The PRESIDENT: Order!

Hon TOM STEPHENS: It is accurate that I put forward a proposal. It is accurate also that the Government brought the issue nowhere near to resolution. It expressed its own view. I expressed some alternative propositions, but no resolution was either sought or gained from business management.

Hon N.F. Moore: Nobody said that.

Hon Peter Foss: There does not have to be.

Hon TOM STEPHENS: Nobody said that. It was not brought to resolution.

Hon N.F. Moore: That is right. I told you what I would be doing and you could make your own judgment. It was based on a suggestion.

Hon TOM STEPHENS: All right. It was based on a suggestion. Indeed, it was my suggestion in terms of the overall parameters of what we are trying to consider this week.

Hon N.F. Moore: You are not giving anything else back, so what's wrong with that?

Hon Ken Travers: You don't have to put up a package.

Hon N.F. Moore: There is no package at all.

The PRESIDENT: Order!

Hon TOM STEPHENS: I am grateful for Hon Ken Travers' interjection. There was on the table an effort on our part to consider a package. The Leader of the Government works on the basis that, somehow or other, as soon as he has said what he wants, unless we go along with it we are breaching the conventions of the place. All that I ask of the Leader of the Government is that he show capacity to negotiate in reference to the handling of the legislative program that we want to assist him to get through the Parliament this year. I hope that once I resume my seat I will not be subjected yet again to the untruthful and unfair attacks that Hon Bruce Donaldson trotted out yesterday.

Several members interjected.

The PRESIDENT: Order! It is rather obvious that no-one is keen to press on with the business of the House. For the time being, I want to quietly decide who has the call. Hon Bruce Donaldson has beaten Hon Jim Scott.

HON B.K. DONALDSON (Agricultural) [2.31 pm]: I was not going to speak on this motion -

Hon Tom Stephens: Until Hon Norman Moore told you to speak!

Hon N.F. Moore: I asked him to confirm my understanding of the matter.

Hon B.K. DONALDSON: I could have raised a point of order earlier when the Leader of the Opposition called me a liar - that is exactly what he did.

Hon Tom Stephens: That is what you did the day before!

The PRESIDENT: Order!

Hon B.K. DONALDSON: I can easily hit a nerve with the Leader of the Opposition, who has a selective memory. I make excuses for that condition: It is some problem with his make-up as he has short-term memory lapses. It is possible to seek medical attention for that problem.

Hon Ken Travers: You're degrading yourself now.

Hon B.K. DONALDSON: He has a selective memory and is very schizophrenic. I am pleased that he had a vision and indicated that at the business of the House meeting he said that he was prepared to scrap motions in the first hour on Wednesdays and Thursdays to enable government business to proceed. That is correct.

Hon Tom Stephens: It was a proposal.

Hon B.K. DONALDSON: Yes, a proposal. The Leader of the House said at the time to the Leader of the Opposition, "We will discuss it later or I will move that motion anyway - it is up to you to decide whether to support it." Hon Jim Scott said then that the proposal did not suit the Greens (WA), and, if I remember rightly, the Australian Democrats said it also did not suit them.

Hon Tom Stephens should be very careful when he says that I make untrue statements in this House. I probably have a better reputation than he does for being honest. I make that point clearly. This Leader of the Opposition makes profound declarations day in, day out of his great religious principles, ethics, and standards -

Hon Ken Travers: You've dropped the ball now, haven't you?

Hon B.K. DONALDSON: No, I am speaking the truth. When Hon Tom Stephens conducts himself in a more orderly manner, and reflects what an opposition leader is about, I will respect his actions. At the moment, I have great difficulty respecting a Leader of the Opposition who does not set standards and -

Hon Ken Travers: He caught you out!

Hon B.K. DONALDSON: He has not caught me out at all!

The PRESIDENT: Order! We are dealing with a motion to decide whether to proceed to certain orders of the day before Order of the Day No 1.

Hon B.K. DONALDSON: I have watched the Leader of the House during these business of the House meetings try to reach some resolution, and at times Hon Tom Stephens has tried to accommodate that ambition. The meetings have been quite good over time. However, I was disappointed the other night about one thing above all others: When the Leader of the House asked for a little special cooperation this week, so we could terminate Parliament -

Hon Tom Stephens: You wanted to have drink tomorrow - damn it, you're not going to!

The PRESIDENT: Order!

Hon N.F. Moore: We cancelled that.

Hon B.K. DONALDSON: Indeed.

Hon Peter Foss: We would like to get some work done.

Hon B.K. DONALDSON: I thought some cooperation would have been forthcoming from not only the Labor Party, but also the Greens and the Democrats. I am sure all members want to get away from Parliament to join their families prior to the Christmas break.

Several members interjected.

The PRESIDENT: Order! Hon Ken Travers will have his opportunity shortly if standing orders are not applied to prevent his speaking. Let us have one member speak at a time, as 30-odd more members will have a chance to speak on this matter.

Hon B.K. DONALDSON: I had to stand, Mr President, to defend accusations levelled at me in this House by the Leader of the Opposition, which were untrue, malicious and scurrilous, to say the least. I thought he was made of better stuff. I am glad that his selective memory got it right for once.

HON J.A. SCOTT (South Metropolitan) [2.35 pm]: I clearly stated in the business of the House meeting that I was opposed to dropping motions because I was waiting for Hon Max Evans to finish his detailed and intricate examination of motion No 1 so I could move a motion standing in my name. For that reason, and because I want to proceed with the motion I have on the Notice Paper, I oppose the motion.

HON PETER FOSS (East Metropolitan - Attorney General) [2.34 pm]: I support the motion moved by the Leader of the House. I appeal to members opposite to realise what is happening here. For 108 years this House has worked on the basis -

Hon Tom Helm: That you won.

Hon PETER FOSS: No. The business of the House has always been set by the Government. That is a fairly important principle. Hon Norman Moore is the Leader of the House, and I use that term advisedly, because he is not just the Leader of the Government in this place. It is unfortunate that the Leader of the Opposition has started to refer to him as the Leader of the Government. There is a difference. A place like this needs somebody to be a leader.

Opposition members: Hear, hear!

Hon PETER FOSS: The management committee is a useful way of formally providing for consultation; however, it has always been accepted that if agreement cannot be reached, the Leader of the House leads the way and says what the business of this place should be. We accepted that during all the time we dominated this House, irrespective of whether we had a Labor or a Liberal Government. We always did that. If we do not accept that, we end up with this nonsense. Those opposite must accept that somebody has been appointed as Leader of the House and that position carries with it some rights. Some people might not agree with this point: I draw attention to the abortion debate, which had the capacity to be an extremely unpleasant debate. Having seen the way the debate went in the other House, we can say that in this House we had a quite different experience. Even though Hon Norman Moore was in the minority - in other words, he did not have the numbers - and even though he opposed what the House was passing, he showed the leadership to bring forward -

Hon Cheryl Davenport: He should be showing it now.

Hon PETER FOSS: He is trying to. In the whole time Labor was in government, if Hon Joe Berinson said that he wanted the business of the House to run in a certain way, we always complied. We did not like it. We had more numbers in our own right, yet we accepted that if the House was to function, it had to be acknowledged that one person - the Leader of the House - had the capacity to say what business the House would do.

Hon Tom Helm: We never moved a motion like this one.

Hon PETER FOSS: Those opposite did. They used to suspend all the standing orders. Had the previous Labor Government still been in power, Hon Joe Berinson would have moved to suspend practically every standing order to place some limitation on the capacity to deal with legislation. In those days legislation would come in and be dealt with on the same day, through all three readings. He would regularly move to suspend -

Hon Tom Helm: You have done that.

Hon PETER FOSS: No; we have not. We always allow a week between those stages. We have not yet done that.

Hon Tom Helm: Native title.

The PRESIDENT: Order! Hon Tom Helm can have 45 minutes shortly in which to speak. Every member will have an opportunity to speak. I do not want to curtail the debate. It is obvious that members want to speak; however, at the moment, the Attorney General has the floor.

Hon PETER FOSS: I am urging members to consider whether today we are achieving very much. So far, we are not. We had the capacity to achieve something today. If Hon Joe Berinson had moved this motion, we would have passed it. It was not a matter of having to get agreement. We recognised, especially at this time of the year, that we needed the Leader of the House to say how things would be done. Those opposite cannot keep saying that we do not agree to it in the management committee. That committee was set up not on the basis that matters had to be agreed to, but rather on the basis of consultation. It was specifically recommended that the management committee was not to take away from the Leader of the House the capacity to set the business of the House. That recommendation is specifically set out in the committee's report, unless members opposite have forgotten. Yet they are ignoring that. We are quarrelling about process, instead of getting on with the business of the House.

We will continue to quarrel about the process by members opposite insisting on taking the business of the House from the Leader of the House. That is his job. Members opposite are saying that the Leader of the House cannot exercise his powers unless they give their consent. Nobody for one moment is doubting their capacity to stop the business of this House, in the same way that this House can refuse supply. All that we are saying is that there are times when it is appropriate to use those powers and times when it is appropriate to withhold from using those powers.

I address these remarks to the Australian Democrats, because I hope they are not involved in some sort of power struggle, which I believe the Leader of the Opposition is. If members of the Opposition really want to do something useful in this House, I urge them to accept these propositions: First - and this is in the committee report - the Leader of the House ultimately has the right to order the business of the House; second, we do need a leader; third, it is not absolutely necessary that the consent of members opposite be obtained, merely that they be consulted and their views be taken into account. In the end, the Leader of the House should make the decision.

The Leader of the House has indicated that he wishes to go ahead with this. I believe it is appropriate, especially at this time of year. The Leader of the House has moved responsibly and appropriately. I urge members opposite that when it comes

to the vote they support him in the same way they support the President, whether they agree with what he decides or not. He has the authority as President, and we accept that, because we know that if we did not accept his authority and challenged it all of the time, we would end up with pandemonium. We accept that because that is the way we have orderly business. Society requires an orderly approach to such business. For the sake of the proper order of this House, members opposite should allow the Leader of the House to be the Leader of the House and allow him in the end to make the decision about what is the appropriate way for us to get through our business. Members opposite should not insist on agreement on absolutely everything. What if the President had to get agreement on everything to make his rulings? He exists on the basis that we accept his rulings and do not challenge them. We might not agree with them but he has been given the job as President of the House. The Leader of the House has been given his job as Leader of the House. We should allow him to get on with it and not have these useless process arguments all of the time simply because we are challenging the fundamental, simple way in which this House operates.

Question put and a division taken with the following result -

Ayes (16)

Hon M.J. Criddle	Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith
Hon Dexter Davies	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*

Noes (17)

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

Question thus negatived.

The PRESIDENT: Order, members! Standing orders clearly state that when the President or the person in the Chair is speaking, other members must not move about the Chamber. I may not scream loudly enough or often enough to members, but the fact that it is Christmas does not mean that we are suspending all the standing orders. I will finish putting this motion so we can get on with it so that members can do what they clearly want to do; that is, leave the Chamber.

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

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

Resumed from 10 December 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 MAX EVANS (North Metropolitan - Minister for Finance) [2.46 pm]: When we last spoke on this motion other speakers wanted me to continue the debate, but as a result of the one-hour rule, leave was granted only for me to continue my remarks at a later stage. I appreciated their support at that time.

Had I thought about the matter more clearly, I would have pointed out that the member who raised this subject is a substitution member of the Standing Committee on Public Administration and therefore could have had the matter dealt with. In fact, the matter could have been considered by that committee some months ago and no doubt reported on by now.

Hon Ljiljanna Ravlich: I am a substitute on the committee only while it examines the School Education Bill.

Hon MAX EVANS: Someone else could have raised it. Motion No 2 proposed by Hon Jim Scott is to inquire into the management and sustainability of the western rock lobster fishery. Hon Jim Scott's colleague, Hon Christine Sharp, could have referred that to that committee a long time ago; yet it has been on the Notice Paper since 13 August. Motion No 3 to be moved by Hon Helen Hodgson proposes that the Standing Committee on Public Administration endorse the recommendations of the Public Administration Committee's reports on the dairy adjustment assistance scheme. That too could probably have been dealt with.

I refer to paragraph (10) of this motion. Contracts vary in size from the tunnel, railway lines, ports, etc to very small cleaning contracts. As I said a few days ago, the Water Corporation spends about $80m a year on infill sewerage. Like other organisations it has in place procedures to deal with breaches of contract. We acknowledge that some shortcomings occurred with the early infill sewerage programs, but the contractors were dealt with accordingly.

Contracting out projects is not new to this Government. At the turn of the century, all buildings were constructed by day labour working for the then Public Works Department. However, projects have since increased in size to works such as the Narrows Bridge. That could not be done by day labour; it was necessary to seek outside technical skills and contractors for that work. That has been done for many years and will continue to be done. Main Roads contracts out major projects. The contracting out process has given rise to new engineering skills required to vet and manage the work being done by outside persons.

I am confident about the contracting out processes. As I said, it was done on large contracts long before this Government came into office. Casuarina Maximum Security Prison is one example, although problems arose with that project. Problems will arise with contracts from time to time. From my experience as a liquidator, one of the worst things that can happen is a contractor going into liquidation before he completes a project. It can be very expensive for the owner of a property to patch up that sort of problem. I am not aware of any of our big contractors going into liquidation in this or the last Government but picking up the pieces can be a major headache.

Paragraph (11) states -

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

We discussed this issue in some detail the other day. We learned in dealing with the Western Australian Land Authority Bill - referred to as the Joondalup Bill - that certain things remain confidential. As we said the other day, the Government might be selling a business, property or some land and it would not want that information to be released in the middle of contract negotiations; it would jeopardise the deal. The issue of confidentiality has been used a lot. When the previous Government was in office, the Opposition often wanted information but was not given it because rates and prices must be kept confidential, particularly with a new contractor providing a new line of business. The contractor has the right to have his information protected. Confidentiality has been misused in some cases.

The Burt commission report commented that some things in the WA Inc days should not have remained confidential. They were held back because they involved limited liability companies such as the Western Australia Export Development Corporation Pty Ltd. Under the Corporations Law, the Government was not required to provide the information requested by the Opposition at the time.

Paragraph (12) states -

> 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.

Sometimes one must realise that there are cheaper and better ways of doing things. Rates of pay will be less under many enterprise bargaining or industrial agreements. This also comes back to the cost of labour. The Government has been awarding long service leave after seven years; some departments have now negotiated for 10 years and in the private sector it is 15 years. It is a cost for business which should be considered. For example, a local contractor might take on a job with 100 staff. State Print had 50 or 60 staff and Mercury Press might have had 500 staff when it took over State Print. It would be unreasonable to suggest that all those people must receive long service leave after seven years and be paid sick leave at government levels. It would mean Mercury Print would go out of business and be taken over. In the real world people have different ways of doing things. They have their own unions and workplace agreements; we cannot expect everybody to pay the same as the Government. Many companies in the private sector pay their employees monthly; we pay fortnightly.

It is public knowledge that the bus contractors are paying a lesser rate than MetroBus. The Government may have been paying above the award but people are prepared to work for MetroBus at that rate - I understand that they are quite comfortable in their jobs. That is the way of the world. The airline companies are now outsourcing their food preparation and cleaning work. They believe outside contractors can do a better job at contract rates paid by the hour than day labour on their own staff. Under the previous Labor Government, the Royal Australian Air Force outsourced the maintenance of its planes.

That seemed to be a good idea. The same contractors can also work on other planes. The Government is outsourcing the maintenance of railway engines to the private sector. This was previously done in the workshops but the Government has gone the way of the big companies up north which all have their engines maintained by private operators. I do not see why members are worried about that and the rates of pay. We must defend what the Government is doing. If we had spent all these years in Government carrying on like the previous Government, the question would be to direct and inquire into why the Government has not gone into what it has done in selling off BankWest, the pipeline, State Print and the hospital linen services. There would be an inquiry into why the Government had not done those things, why it was wasting the public's money, and why it had not become more efficient. That is what Hon Ljiljanna Ravlich would have wanted, because she is an honourable person. She would have been quite right to say that there should be an inquiry into these things. The Standing Committee on Public Administration should have been saying, "Why aren't you doing this, because this is the real world?" However, the Government has avoided that problem. The Government has done it, it is doing it, and it is proud of what it has done.

Hon Ljiljanna Ravlich: Why does the Government resist the inquiry?

The PRESIDENT: Order!

Hon MAX EVANS: I did not say it was resisting it. I just said that, to back up the inquiry, I was giving all the information

to measure what has been done. Paragraph (15) of the motion refers to any other matters relating to privatisation and contracting out of government services as the committee deems necessary. Government services go back to the last Government. I am giving the member many things to consider. I know she is not wearing blinkers; she is a fair person. She will not just look at the last six years; she will look widely at all the things that have happened to ascertain what the Government has done.

Paragraph (13) of the motion says -

> 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.

I am not sure about the use of the word "prejudiced" in that paragraph. I assume it means that contracts are going to outside services because the costs are less. Apart from the bus drivers working for a lower rate of pay, I doubt whether any other workers are. When the hospital linen service was contracted out, most people remained; they were part of the deal. They probably received more pay because they were running it themselves, or less pay because they wanted to make a profit at the end of the day. Dealing with the printing industry, the unions probably would have ensured that the workers received the same pay. However, that did not last very long because they were not making any money and they had to sell out. I do not think the government departments and agencies are prejudiced. The Government is being responsible with taxpayers' money in the way business is handled. That is what I would expect to happen, and the member should expect that.

Treasury has a formula on overheads. There is an add-on of 131 per cent for labour costs. That is a high add-on for all the overheads of running a department. I am certain that no private sector company that is competing with the Government will run a business with overheads of that magnitude. Therefore, with cheaper rent, cheaper buildings, cheaper vehicles and so on, a business should become more efficient. On many occasions businesses will invest more money into capital equipment to make the job more efficient. That could mean fewer people and a different quality staff.

Some years ago the Government had many restrictions on how things could be done to maximise employment rather than maximise cost efficiency. I refer to the Building Management Authority. Some new members would not remember this story. The BMA used to cut the lawns at all the high schools, as well as the public lawns in Western Australia. In those early days, when the lawnmower broke down, somebody from the Perth office would be required to go to Armadale to fix the machine. Spark plugs could not be changed, and no adjustments could be made to the machine; someone was brought out to do it. It was then discovered that the lawnmowers were too narrow, and that the bigger, wider lawnmowers would do a more efficient job. Then these people realised that they would be much more popular if the lawns were cut the day before the school sports rather than during the school sports, which had been going on for years. There was no planning.

These people decided that they enjoyed the job they were doing. I give them full marks. The employees went to the BMA, and they signed one of the early workplace agreements. They wanted to invest in bigger machines, bigger and better equipment; they wanted to adjust their own machines so that they could do the job properly. They planned properly for the week so that they could cut the lawns when the schools wanted them cut. This was a good thing. This was all part of trying to work in with what the community wanted. Those people worked very hard. They enjoyed their work, and they did not want it outsourced.

The WA Government charges the Federal Government 131 per cent overhead on its employees at Christmas Island. It includes long service leave, sick leave and superannuation. Those costs would probably be quite a bit higher than what the private sector is paying.

Paragraph (14) states -

> 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;

This has been repeated about three times. That is not the real world between one company and another. What they are doing must be realised, particularly now that workplace agreements, enterprise bargaining agreements and industrial agreements have been established. Many different rates of pay will apply in trying to achieve this.

Debate adjourned, pursuant to standing orders.

WORKERS' COMPENSATION AND REHABILITATION AMENDMENT BILL

Assembly's Message

Message from the Assembly notifying that it had disagreed to the Council's amendments Nos 1 and 2, and disagreed to amendment No 3 and substituted a new amendment, further considered from 15 December.

Committee

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

Progress was reported after the Attorney General had moved that the Council not insist on its amendment No 3, and that the following new clause be substituted for the Assembly's new clause -

" Clause 32, page 19, line 19 to page 20 line 10 — To delete the clause and substitute the following clause —

" **Amendments to Part IV, Division 2, and saving provision**

32. (1) Section 93A of the principal Act is amended —

(a) by inserting after the definition of "Amount B" the following definition —

" **"Amount C"** means —

(a) for the financial year ending on 30 June 1999, the amount of $225 000; and

(b) for any subsequent financial year, the nearest multiple of $1 000 to the amount obtained by varying Amount C for the preceding financial year by the percentage by which the minimum award rate varies between the second-last 1 April before the financial year commences and the last 31 March before the financial year commences, or if the relevant minimum award rates are not published, the amount obtained by varying Amount C for the preceding financial year in accordance with the regulations (with an amount that is $500 more than a multiple of $1 000 being rounded off to the next highest multiple of $1 000); "; and

(b) by deleting the definition of "future pecuniary loss".

(2) After section 93B of the principal Act the following section is inserted —

" **Certificate required before court proceedings can be commenced**

93BA. (1) Proceedings in which damages are sought, other than in respect of a disability that has resulted in the death of the worker, are not to be commenced unless —

(a) the Director or a person authorized in writing by the Director has given a certificate in accordance with the regulations to the effect that —

(i) the degree of the worker's disability is stable; and

(ii) either the worker has successfully undergone rehabilitation or it would be inappropriate for the worker to undergo, or to continue to undergo, rehabilitation; or

(b) less than 6 months remains of the time limited by law for the bringing of the proceedings.

(2) Before a certificate is given under subsection (1) the person who is considering the certificate is required, in accordance with regulations made for the purposes of this subsection, to give the employer an opportunity to make submissions to the person on the question of whether the degree of the worker's disability is stable.

(3) The Director may refer the question to a medical assessment panel for determination. ".

(3) Section 93D of the principal Act is amended —

(a) by deleting subsection (2) (b) and substituting the following paragraph —

" (b) it seriously reduces the worker's capacity for gainful employment. ";

(b) by repealing subsections (4) and (5) and substituting the following subsections —

" (4) For the purposes of subsection (2)(b), the disability seriously reduces the worker's capacity for gainful employment if, and only if, the worker's loss of future earnings is of an amount that is at least 7 times the worker's former average annual earnings.

(5) In subsection (4) —

"former average annual earnings" means the total amount of the worker's weekly earnings during the period of one year ending on the day before the disability occurs in the employment that the worker is in when the disability occurs or, if the worker is then in more than one employment, in each employment, except that, for an employment that the worker has been in for less than the period of one year, the total amount is to be taken as being the total amount of the worker's weekly earnings during the period of employment divided by the fraction of the year for which the worker has been in that employment;

"loss of future earnings" means the undiscounted loss of earnings, up to a maximum amount in any period of one year equal to the worker's former average annual earnings, that is expected to be incurred by the worker as a result of the disability during the period commencing on the day on which the writ was issued and ending 10 years later or on the day when the worker reaches the age of 70 years, whichever is sooner. ".

(5a) If the worker had reached the age of 55 years when the writ was issued, subsection (4) applies as if —

(a) the reference in that subsection to 7 times the worker's former average annual earnings were a reference to 3.5 times the worker's former average annual earnings; and

(b) "loss of future earnings" had the meaning that would be given by the definition of that term in subsection (5) if the reference to 10 years were a reference to 5 years.

(4) After section 93D of the principal Act the following sections are inserted —

" **General restrictions on damages for negligence**

93DA. (1) Damages resulting from negligence are not to be awarded in respect of a disability that is wholly or to a significant degree attributable to —

(a) the worker's failure to take reasonable care to ensure his or her own safety and health at work;

(b) an act or omission of the worker that the worker knew or should have known, because of his or her qualifications, experience or training, would be hazardous;

(c) the worker's failure to comply, so far as he or she was reasonably able to do so, with instructions given by the employer for the worker's safety;

(d) the worker's failure to properly use any protective clothing or equipment provided, in a manner in which he or she has been instructed to use it; or

(e) the worker's having wilfully damaged, modified, or misused safety equipment.

(2) In awarding damages resulting from negligence no account is to be taken of a failure by the employer to provide a safe system of work if the worker established the system of work and was, because of his or her qualifications, experience, and training, capable of establishing a safe system of work.

(3) In awarding damages resulting from negligence no account is to be taken of a failure by the employer to maintain a safe system of work if —

(a) a safe system of work was established, other than by the worker;

(b) the worker failed to maintain the safe system of work; and

(c) the worker was, because of his or her qualifications, experience, and training, capable of maintaining it.

(4) Subsection (1) (c), (d), and (e), and subsections (2) and (3) do not apply if the employer —

(a) knew of the relevant matter and permitted it; or

(b) did not know of the relevant matter but should have known of it considering —

(i) the gravity of the risk of the disability;

(ii) the level of supervision and instruction required to avoid the risk; and

(iii) the level of the worker's qualifications, experience, training, and competence.

(5) In subsection (4) —

"relevant matter" means —

(a) in relation to paragraph (c), (d), or (e) of subsection (1), the matter described in that paragraph;

(b) in relation to subsection (2), the fact that the system of work established was not a safe system of work; and

(c) in relation to subsection (3), the failure to maintain a safe system of work.

Restrictions on damages in claims relying on loss of future earnings

93DB. (1) This section does not apply if the disability is a serious disability under section 93D(2)(a).

(2) The total amount of damages awarded under all heads of damages for the disability is not to exceed Amount C as in effect on the day on which the amount is awarded.

(3) Subsection (2) applies regardless of whether the damages are awarded against one or several employers. "

(5) Section 93E (3) of the principal Act is amended by deleting "section 93D" and substituting the following —

" sections 93D, 93DA and 93DB ".

(6) The amendments made by this section have no operation in relation to damages sought in proceedings for the commencement of which the District Court gave leave before the day on which this Act receives the Royal Assent. ".

Hon LJILJANNA RAVLICH: Yesterday I made some comments about the quality of this legislation and my concerns about what is motivating the Government to go down the line of bringing into this place legislation which has clearly been cobbled together. It does not indicate that it is well thought out legislation but rather that it has been made on the run. I and the people with whom I have been in communication are concerned that the problem which has now emerged is largely of the Government's own making. Clearly, some important questions must be answered about the position in which the State Government Insurance Office finds itself in comparison with other insurers who do not face the same problems. One must ask what part the former minister, Mr Graham Kierath, has played in this issue. Not long ago the managing director of the SGIO was reported in *The Australian Financial Review* as saying that, notwithstanding any changes to the workers compensation system, he expected that the SGIO would return to full profitability within 12 months. If that is the case, it raises the serious question of what is motivating the Government's move down this path. I also have some grave concerns about the Government's inaction in taking a more appropriate and even-handed approach to this issue. I note that one of the recommendations of the standing committee was that the operation of the Workers' Compensation and Rehabilitation Act be subject to a full review into, among other things, the role of common law and work related injury, distinguishing between statutory and common law insurance, the ability of injured workers to rehabilitation, preventing double dipping, timely and consistent referral to rehabilitation, and controlling medical costs. This is a much more complex problem than the Government would have us believe. I do not support the way in which the Government has attempted to address the issue, because it is using injured Western Australian workers as scapegoats to achieve its political ends.

I am disappointed that when I sought clarification from the Attorney General on clause 32(1)(b), which Hon Jim Scott had given as an example of gobbledegook and which was so poorly drafted it was impossible to interpret, he duck-dived and failed to provide an explanation. That indicates that the Government does not have a handle on the legislation, as it should have. I am sure there will be many opportunities during this debate to raise my concerns. However, I put on record that this is bad legislation and bad law, which does no more than provide a scapegoat for the Government in its maladministration of workers compensation. It is too little, too late and provides no solution whatever for an outcome which can be sustainable in the long run.

Hon J.A. COWDELL: In a press release on 18 November, the Minister for Labour Relations stated that her proposals were in response to the report of the Legislative Council Standing Committee on Legislation. It may have been a response, but it is not necessarily in line with the views of the committee. In evaluating the Government's first attempt to deal with the restriction of common law access, the committee considered the requirement of fairness to the individual worker and tried to take account of the sustainability of the system. In this regard the committee came to the conclusion that the measures proposed initially by the former minister - that is, in terms of severely restricting the first gateway and virtually closing the second gateway - were unfair. The committee's report indicates that the problem would not necessarily be solved by the proposed remedies, certainly for the claims that were already in the system, and would in all likelihood push claims to other sectors of the system which would in turn blow out as had payments under common law. Members may be aware if they followed the saga of the Supplementary Notice Papers that mark I proposed a set of alternative amendments. Soon after the publication of those proposed reforms, the minister was forced to acknowledge that this model was grossly unfair in a number of respects. I will not go into that matter, because we will highlight the difference when we get to the clauses. A mark III has now come forward, and that is the third model that we have had before us. We believe that some aspects of this third model are unfair and that is why we have proposed certain amendments, which are listed on the Supplementary Notice Paper.

The Opposition supports the inclusion of new clause 32(1). It specifies an "Amount C", and it provides for a cap of $225 000 on second gateway payouts. Later in the debate we will address what we consider is an inequity; namely, that if we were to take out statutory payments that had been made previously, plus even modest legal expenses, the cap of $225 000 would not provide effective compensation for an injured worker. We will seek to address that matter by excluding those deductions, rather than by abolishing the proposed cap. We will not oppose new clause 32(1). Therefore, we are allowing for the introduction of a form of capping.

Hon J.A. SCOTT: In looking at amount C, we are talking about a figure of $225 000 plus other variables. However, the Bill does not specify whether medical expenses, the 6 per cent reductions, and so on, will be taken into account. Can the Attorney General specify what will come out of this $225 000 at the end of the day, so that we will know what the amount of $225 000 really means?

Hon PETER FOSS: All this amendment does is change the figure in amount C and index that figure for each year after 30 June 1999, based on any changes in the award; and if there is no award, based on the regulation, which states that it may be wound up, or down, by $500. We could go back into all the other things. However, the change we propose is to make the figure of $225 000 indexed.

Hon HELEN HODGSON: I have not yet spoken on this clause; therefore, I will address some of the issues raised in the debate so far based on notes I took last night. I understand that the basis of the message before us today purports to be an agreement reached between the Chamber of Commerce and Industry of Western Australia, the Trades and Labor Council and the minister. I recognise that in the course of negotiations, this position was reached and people have had some of their concerns addressed. However, the message before us is not what at least one of those parties signed off on as the agreement. There are a couple points of significant difference. Some are simply drafting issues where the conversion of a concept into drafting has resulted in something different from the understanding reached by the parties in the first place. One of these differences involves the retrospective application of the legislation which is effected by this clause.

To digress for a moment, the issue of retrospectivity was raised in the second reading speech -

Point of Order

Hon PETER FOSS: The member is not aware that we have split new clause 32 and are taking its component parts. She is referring to a part which we are not debating currently but will come to later.

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): I thought the member was aware that we were dealing with new clause 32(1), because the member has an amendment to new clause 32(2) and she was moving that way. However, she is addressing the part as a whole.

Committee Resumed

Hon HELEN HODGSON: I am responding to the statement that the Attorney General read at the commencement of debate on this clause. He indicated there was an agreement between the CCI, the TLC and the minister. In that context, there are a couple of issues that I wish to draw out in the event that we do not reach this part of the legislation. The issue of the date of application of the legislation was debated in this House on 1 July when the matter was referred to the Standing Committee on Legislation. I expressed concerns about the issue of retrospectivity. In addressing the question of whether it should go to a committee, the Attorney General, at page 5038 of *Hansard* of 1 July, said -

> You must accept the fact of retrospectivity if the committee were to come up with some solution.

My response to that was -

> Retrospective laws are inappropriate, particularly in the case of injury where we must determine what is retrospective. Do we make it retrospective to the date of the injury or the date the claim is lodged?

In other words, in July I put on the record my concerns about potential retrospective application of amendments to the workers compensation laws in that they may affect workers who had a pre-existing condition at the date the laws are changed. That issue was not addressed in the agreement between the CCI, the TLC and the minister. The correspondence that I have here, which was signed off on by a party to that discussion, does not address the issue of retrospectivity. That is one of the important differences between that which is in the legislation before us and the purported agreement between the parties.

There are other issues; for example, the $225 000 cap which is a matter that we will be coming to. The definition that we are dealing with currently relates to the method of defining that cap. The letter I have here does not specify whether that will be a net or gross cap. That is one of the issues that is subject to potential amendment further on in the Supplementary Notice Paper. An agreement in principle was reached but the fine detail as it is presented to this House is not what the parties have, in fact, signed off on. For those reasons it is a furphy to say that we must agree to this because it is something that the parties have already agreed to.

I also understand that throughout this process the Trades and Labor Council, as a party to the negotiations, told the minister that it had no control over the parliamentary process and, in particular, that if the matter were moved with undue haste, the opposition parties in the Legislative Council would probably look at it to determine whether that case was warranted. That is exactly what we are doing. A review is due to commence in a couple of months. Why are we putting legislation in place now that deals with something that will be reviewed in a couple of months?

I have an additional concern. In my experience in this place, which is limited, I have found that once we lower a hurdle, no review will raise it again within three or four months. We are setting up a framework that will reduce people's rights and then we are saying that there will be a review. Will that review reduce their rights even further? We are setting a very low level of expectation. If we do that now, we are setting ourselves up to face even more draconian measures in the not too distant future.

Hon Ljiljanna Ravlich mentioned the history of this legislation. I am aware of its history because when I was first elected one of my former colleagues at Curtin University who lectures in workers compensation law asked me to find out what was happening with this Bill, which had been floating around since about 1995. This Bill has been on the books for a long time. It appears that whenever a critical matter must be resolved, it is resolved in the stress, haste and emotive atmosphere of the

last week of sitting. That is what happened the last time it was debated. The message returned to the Legislative Assembly from this Chamber was dealt with on the last sitting night. That meant members of that place were required to resolve very quickly what they would do with this legislation. I hasten to add that although it was dealt with on the last sitting night, it had been on the Notice Paper for months.

A new measure was introduced that had not been considered previously. I raised a point of order when it reached this place that I believed it was outside the scope of the original Bill and, therefore, was something that we should not be debating in this place, but I was ruled out of order on that point. The new material was introduced in layman's terms, and it was not contrary to the standing orders. That measure was accepted in the Legislative Assembly and the assumption was that the Council would be able to deal with it within a couple of days. That happened, in that members of this place said that they could not resolve the matter in haste and sent it to a committee. We now have that committee's report. I acknowledge the members of that committee, including Hon Derrick Tomlinson, who is currently in the Chair.

The DEPUTY CHAIRMAN: The member's acknowledgment is noted.

Hon HELEN HODGSON: The committee did its job: It heard evidence and considered the issues raised in the message and produced some recommendations. How many of them have been adopted in the message before us now?

Hon N.D. Griffiths: Do not misinterpret these fingers.

Hon HELEN HODGSON: I will not. I indicated yesterday that comments were made about the first two clauses and it was hoped that the minister would address them in bringing the message back to this House. Those comments have not been addressed or turned into any legislative proposal. They could be treated as obiter; that is, they were something the committee said but did not bind the minister in any way, as nothing suggested in committees is binding on a minister.

Recommendation 4.2 states -

> **that the House request that the Government give serious consideration to Recommendations 5 and 6, concerning liberalisation of the redemptions system and other options for changes to the gateways.**

My time is about to expire, so I will probably reconsider whether the minister has addressed those issues. However, at this stage the proposal does not pick up the committee's recommendations. Further, there is another inquiry, so it will be appropriate to look more closely at the issues. At this stage we should not put in place legislation that would pre-empt what that inquiry might find.

Hon B.K. DONALDSON: I spent some time on the committee, so I should say a few words. It is important to understand the committee's recommendations. It preferred the full redemption system to be reinstated. Somebody used the terminology that it was like putting one's foot on a hose. The partial redemption was left in place because it would have required the suspension of standing orders to facilitate other changes. The review has already commenced. In fact, there was a continual review by the minister and major stakeholders while committee members were deliberating on the report, as Hon Helen Hodgson probably realises.

Hon Helen Hodgson: I believe that it is a different review.

Hon B.K. DONALDSON: Yes. The committee felt strongly that a review should take place and that it should pick up some of the important issues that Hon Helen Hodgson has raised. The committee determined that until a review took place it was important to arrest the de facto redemptions that were going through the second gateway, sometimes encouraged by insurance companies to try to settle claims. There has been a significant increase in weekly claims payments and consumer price index-adjusted claims payments. That was expected in 1993; the common law had not moved quite as dramatically as people would have liked. Redemptions in 1993-94 were $29m, compared with $4.5m in 1997-98.

After studying some statistics, the committee considered that whatever happened there would be some haemorrhaging from another sector. There has been a massive increase in vocational rehabilitation and work is being done in conjunction with the Australian Medical Association. I know firsthand that a workers compensation consultation fee is $64 or $66 compared with the normal consultation fee - it takes the same time - of about $28, or about $21 when bulk-billed. I have proof of that happening and it is an indictment of the whole system.

It is important to remember that we have a good system. Many people gave oral or written evidence to the committee and it was clear that they had given great thought to it. We should pride ourselves on our system. Unfortunately, the downside was the removal of redemptions. Some may disagree, but -

The DEPUTY CHAIRMAN (Hon Derrick Tomlinson): Order! I allowed considerable latitude to Hon Helen Hodgson on her plea that it was the first time that she had spoken on the matter. The Attorney General raised a point of order and I ruled in favour of Hon Helen Hodgson. However, we are dealing with proposed section 32(1), which substitutes an "Amount B" with an "Amount C". I ask honourable members, including Hon Bruce Donaldson, to focus on the matter before the Chair.

Hon B.K. DONALDSON: I thank you, Mr Deputy Chairman, for bringing me back on track. I referred to a linkage across

the system or the foot on the hose, to use that famous terminology. I seek leave to table 237 letters sent to me by employers across the community regarding the complete closure of the second gateway.

Leave granted. [See paper No 644.]

Hon B.K. DONALDSON: One letter hit my heart strings: It stated, "Keep it up and you can pay my wages", and was signed by "Not on the Dole Yet". It was a concern. It seemed to indicate that I was laying the cane across employers throughout Western Australia; therefore, I thought that I must get this matter right.

It is important to remember when looking at capping that most claims of which I am aware were for less than $200 000. I ask members to look carefully at the committee's recommendations, which have not all been accepted. I know that a review is already under way, and that all the relevant points are very much on the table. A willingness to cooperate was evident. I acknowledge the work of Mr Tony Cooke of the Trades and Labor Council on this issue. He realised that no-one ultimately will benefit if the system is financially unsustainable for employers. Some of the 237 letters spelt out that point.

Hon J.A. SCOTT: Hon Bruce Donaldson hit the nail on the head in one comment. This clause, returning to basics, is a compromise position; that is, the Government and insurers realised that it is unlikely that common law will be cut off from injured workers. This was for a number of reasons, including the numbers in this place. The committee, which considered the rise in cost of, and access to, common law, indicated that the Government had been, once again, barking up the wrong tree to a great extent; namely, the principal cost rises were not related to common law, but were in response to the taking away of redemptions. We must recognise that point from the outset.

The capping proposal is fair. The Government's proposal is not all wrong, but it needs some finetuning. The amount proposed for the cap will be regarded as too much by some people and not enough by others. It has ignored the opening up of redemptions in a much wider way than has already happened, which is the most significant of all the recommendations put forward by the committee. For some reason, there seems to be no hurry by the Government to do that, and to use these other measures. This proposal, which has been put forward by the self-insurers, that a cap be placed on some of the more exorbitant claims, is reasonable. At the end of the day it is probably unfair on some people, but it enables lower paid workers to have access to the common law. We all recognise that it is no good having a system that does not work and that, in this instance, the common law rights of nobody else are affected. As I have said in this place in a previous debate, article 7 of the Universal Declaration of Human Rights states that we should all have access to the law, and this is a restriction. It is an imposition on injured workers. Although some people with claims in the high range will not be quite fairly dealt with, this compromise can be justified in the interests of ensuring that those on lower incomes are not put in a position in which they simply cannot afford to live or to send their kids to school. It is a reasonable compromise in those terms. The figure of $225 000 may be wrong, but I am more concerned about what comes out of that amount.

I refer to an article by Kevin Purse, entitled "Workers Compensation Policy in Australia: Best Practice or Lowest Common Denominator?". This article follows the release of the interim and final reports of the heads of the workers compensation authorities in May 1996 and June 1997, respectively, relating to workers compensation policy nationwide. In part, it states -

> In making these recommendations the commission was especially scathing of what it described as 'invidious competition' between the various state and territory compensation schemes. The most widespread example of invidious competition described is where governments keep average workers compensation premium levels at artificially low levels for employers by 'competing' to reduce compensation entitlements available to injured workers. This practice is invariably justified on the questionable supposition that unless compensation premiums are kept lower than those prevailing interstate -

We have all heard that -

> - there will be an exodus of business and jobs from the state or territory in question.
>
> In rejecting this 'low-benefit, low cost' approach to workers compensation arrangements the commission highlighted the fact that not only was much of the cost for workplace injuries being inappropriately borne by injured workers and taxpayers but that these types of arrangements were blunting the financial incentive for employers to create and maintain safe working conditions.

One of my principal concerns is in regard to preventing artificially any person having full access to common law rights. I recognise that the insurers, in line with what Brendan McCarthy on behalf of the Chamber of Commerce and Industry of Western Australia has said, have basically mismanaged the cases they have been handling and are largely to blame for the malaise they are in. Once again, as pointed out by Kevin Purse, the injured workers will be the ones who pay for this. In accepting this clause, I hope that any inquiry or review that the Government carries out will look closely at the manipulation of the data by the insurance companies which enables them to push the premium rates up and down because the people making the decisions have been provided with false information. If Mr McCarthy is correct in his claims that the actions of insurance companies virtually amount to fraudulent behaviour, that must be examined very carefully to make sure that we have a system in place to prevent it.

Hon HELEN HODGSON: Will the Attorney General place on record how the figure of $225 000 was reached; whether there is a statistical basis for it or whether the figure was plucked out of the air in the course of negotiations? When the Attorney General answers that, I will explore the issue of the $225 000 in a little more detail.

Hon PETER FOSS: Apparently the claims as determined by the court were looked at by the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia. Those that were plainly redemptions were excluded. They amounted to 30 per cent and that figure was used to arrive at $225 000. The agreement between the TLC and the CCI was based on the actual drafting sent to the House and was not an in-principle agreement. Recommendation 6 of the Standing Committee on Legislation deals with this area. Parts 2 and 3 of recommendation 6 were adopted. Nobody suggested that part 1 was to be dealt with immediately, but it was one of the things to be reviewed. However, the Government has adopted the higher threshold for the second gateway; second gateway threshold as a multiple of earnings; capping damages claimable through the second gateway; a more rigorous common law test for negligence; and alteration to procedure.

Hon HELEN HODGSON: The Attorney General said that in relation to the $225 000, redemptions were excluded. Given that redemptions have no legal recognition at the moment, how were redemptions identified?

Hon PETER FOSS: Claims that were less than $50 000 are redemptions and therefore excluded.

Hon HELEN HODGSON: We are dealing with the second gateway-type claims rather than the 30 per cent disability gateway claims. Was there any exclusion of the 30 per cent disability claims, and if so, how was the decision reached?

Hon PETER FOSS: The position was examined by an actuary who looked at the cases. By looking at them, where he was able to determine that they were plainly related to the 30 per cent, they were also excluded.

Hon HELEN HODGSON: Did the actuary have medical records on which to make the judgment that there was a 30 per cent disability?

Hon PETER FOSS: He had the case file and access to that.

Hon HELEN HODGSON: I understand that where there is contributory negligence in a common law case the amount of the damages awarded can be reduced. Was any such reduction taken into account when determining the figure of $225 000?

Hon Peter Foss: No.

Hon HELEN HODGSON: Is the $225 000 that is proposed in this message before us intended to be prior to any reduction or would it be after any reduction for contributory negligence?

Hon Peter Foss: On the wording of the Act, after.

Sitting suspended from 3.45 to 4.00 pm

Hon HELEN HODGSON: Although I appreciate the Attorney General's response on how the cap was calculated, I wonder whether it is realistic. I am also concerned about the way in which it will operate pursuant to the other provisions of the legislation, specifically section 92(b), which provides that following a common law judgment the judgment amount must be reduced by any payments that have been made for weekly or lump sum compensation, medical and other expenses paid pursuant to the Act. Once a $225 000 maximum cap is established the first consideration would be medical expenses. My recollection is that that is up to $32 000, plus an additional $50 000 if significant medical expenses are incurred, totalling $82 000. Added to that is about $7 000 for rehabilitation. That roughly amounts to $90 000. If a person were paid out all these amounts because he was injured, that amount would be reduced to $135 000 based on the $225 000 ceiling.

We must also consider weekly payments. If the worker were being paid weekly payments for two years while his condition was being stabilised, at that stage he would receive very little in the way of a lump sum as compensation for the loss of future earnings, future difficulties and pain and suffering and the other issues that common law damages are supposed to address.

Even though the Attorney General can say these figures are statistically selected, the problem with applying a uniform cap is that in some cases a person could be left with very little in terms of what common law damages are supposed to cover. That is because the Act requires that all those other payments must be deducted. That is why the $225 000 cap is inadequate. It is too rigid. If we are to have a cap, it would be fairer to have a net cap. Let us say it is net of medical expenses. If a person had an injury that was sufficient for him to make a common law claim, but had not incurred a significant amount of medical expenses, say, $10 000 or $15 000, obviously he would be able to get more under this system than a person who used the maximum entitlement. A person who was more severely injured - assuming his injuries were below the 30 per cent threshold - would receive less for pain and suffering than a person who was less severely injured. The medical expenses are taken out of a flat cap. My fundamental problem is the medical, rehabilitation and other payments being deducted. For those reasons, $225 000 is inadequate unless medical expenses are not included. If we reach that point on the Supplementary Notice Paper, I will move a further amendment standing in my name.

New clause 32(1) put and passed.

New clause 32(2) -

Hon HELEN HODGSON: I move -

To insert new subsection (2) as follows -

(2) A worker who is refused a certificate under subsection (1)(a) may seek a review of that decision and Part IIIA Division 3 applies as if it were a review under that Division with any necessary modifications or adaptations.

This proposed clause is intended to deal with the issue of a gatekeeper. In this case, the gatekeeper is the director of WorkSafe or a person authorised by the director. I acknowledge that the committee's report suggested that this sort of proposal could be required. Recommendation 6(1) suggests a gateway tribunal and that alternative gateway models be explored. My fundamental problem is that the gateway tribunal is a system completely different from the certificate system proposed by the minister. Essentially we are saying that the director has the right to decide, by way of certificate, whether a person is able to proceed with his common law claim. According to the report, the Self Insurers Association was looking at a gateway tribunal which would be required to consider the single gateway test. This would involve consideration of specified matters relevant to common law such as nature of the workplace, adequacy of measures in place to reduce risks in the workplace, nature and extent of the injury, quantum of actual and anticipated losses, possibility of punitive damages being awarded, and adequacy of statutory compensation payable in the particular case.

That is nothing to do with what is proposed in this clause. This clause requires a person to have a certificate before proceeding to common law action. It has been explained to me that the certificate is designed to ensure that a person's condition has stabilised sufficiently to allow the common law action to proceed. I do not deny that the committee's report addresses that issue. It states -

The gateway tribunal would serve to determine at first instance whether an injured worker is adequately catered for under the statutory system or should be allowed to proceed to seek damages at common law.

I acknowledge that statement. However, the tribunal has a far wider function than the director being given the sole authority to determine whether a person's action can proceed as proposed here. I have moved this amendment because I find it repugnant to have a matter this important vested in the hands of one person. Regardless of how competent that person is, difficulties will arise and a way is needed to address those difficulties. At one stage, I raised the question of what would happen if the issuing of a certificate by the director was disputed. I was told, firstly, that it is a purely administrative function so there should never be any disputes; and, secondly, that if there were any disputes, the person could always apply for a writ of certiorari. It would be outrageous to tell an injured person that he must go through another Supreme Court action to obtain a certificate to commence his legal action in order to proceed with his common law claim. For those reasons, it is important that a mechanism be incorporated which involves a review process.

Rather than suggest that a totally new tribunal be set up, the method which I chose to adopt in this process was to ask whether there was a mechanism in the legislation. On that basis, I have suggested that review of these decisions should be allowed under part IIIA, division 3, of the Workers' Compensation and Rehabilitation Act 1981. This is the dispute resolution part. Division 3 is the review section of the Act. Part IIIA provides that when there is a dispute, a review officer becomes involved. The review officer reviews the case and determines whether or not the decision has been properly made. The review officer is to act fairly, economically, informally and quickly in resolving the dispute. He is to act according to the substantial merits of the case, without regard to technicalities or legal forms or precedent.

In the event that a problem still existed, section 84ZM, in division 3 of part IIIA of the Act, would come into play. It states -

Where a question of law arises in the proceedings or the review officer believes that it is appropriate to do so because of the complexity of issues, the officer may elect not to make an order and, in accordance with the -

I believe it currently stands as "rules of court". I have here an annotation. However, I think that is the part of the Bill that we did not disagree to at the time when it first went through this place. I continue -

- rules of court, refer the matter to a compensation magistrate's court for determination.

Therefore, it is a review process involving a review officer. The review officer has the ability to go to a compensation magistrate, and an administrative method is set up for dealing with what is supposedly an administrative procedure in the event of there being any dispute.

I understand that this method is not perfect. I could have tried to draft provisions which set up a gateway tribunal. However, in view of some of the difficulties in this place with matters that may involve the allocation of money, I decided that it was better to use a mechanism that was already in the legislation. On that basis, I referred back to this part.

To sum up, I understand what the minister is trying to do. In understanding what the minister is trying to do, I also acknowledge that there is a lot of disagreement, particularly among the legal community, as to the need for this gatekeeper

provision. I say "particularly among the legal community" because they are the people who deal with injured workers in most of these cases. There is a strong argument for saying that the issue of common law damages is a matter for the courts, and it is for the courts to determine whether a person's injury has stabilised. If a person chooses to go ahead with action, even though he has been advised that his injury has not sufficiently stabilised to give him the best opportunity for his claim, that is the choice the injured person makes. The Government should not be nannying injured persons to the extent that it provides for them to be given a certificate because it is not sure that they are capable of determining whether they are ready to proceed.

That argument has been put to me by legal practitioners, most of whom not only oppose the original clause but also oppose my amendment. My amendment states that if we are to establish this gatekeeper, we should at least ensure that it is fair procedurally and that the injured worker has the opportunity to dispute and deal with any problems when there is a dispute between the worker and the director and the certificate is not forthcoming. This mechanism was chosen as the way to use the existing mechanism to do that job.

Hon N.D. GRIFFITHS: The Australian Labor Party supports the amendment moved by Hon Helen Hodgson, but with a great degree of reluctance. What has been proposed in this part of the Government's package - if "package" is the right word - is inappropriate. However, some review, if this part of the measure is to pass, is better than no review. A number of aspects concern us, some of which have been dealt with by Hon Helen Hodgson. Therefore, I will not go over them in any detail, but perhaps I will briefly touch on them. No criteria or principles are in place on how this will operate. I have noted the sections of the Act which were referred to by the member, but they do not give great comfort. The amendment is uncertain on how it will operate. It lends itself to the potential for further litigation to the detriment of injured workers who may be affected by the more substantive measure which Hon Helen Hodgson quite properly seeks to ameliorate. It also lends itself to greater costs to those who find themselves at a loss and potentially greater costs to the system as a whole. It is not appropriate that a review officer be involved in reviewing a decision of the director. In that regard, I refer to the wording of section 104A of the Act. Having put forward those reservations, on balance and with substantial reluctance, we support the amendment moved.

Hon PETER FOSS: It is not that there is a gateway tribunal or a new gateway keeper; the gateway keeper has been abolished. The gateway keeper would determine whether the person had the capacity to go through the gateway. This is purely a requirement that came out of the Trades and Labor Council that firstly, the person should have been obliged to mitigate the damage - that is, the rehabilitation part; and secondly, it would disadvantage the worker if the matter were to go to common law if his disability or condition was not stable. This person will not state whether a person can or cannot go through the gateway. The gateway keeper has been abolished. It is an administrative matter. The strange thing about the proposal by Hon Helen Hodgson is that she suggests that the person who checks this should be a review officer. Review officers are responsible to the director. That is a strange situation of the director being reviewed by someone who is responsible to him. The clause states that the director or a person authorised in writing by the director has given a certificate. There is a high possibility that instead of the director issuing a certificate, he will authorise someone else to do it and that person is likely to be a review officer. Instead of one review officer, we will have two review officers; I suppose two review officers are better than one.

Hon N.D. Griffiths: It sounds like the Government's review of the Act.

Hon PETER FOSS: Having pointed out the somewhat strange way in which this has been dealt with, it is not fundamental. It is a bit silly, and we are getting into the sort of detail and nitpicking that we do not need. Having removed a gateway altogether, I am amazed that we have now piled on an appeal process.

Hon J.A. SCOTT: I am not happy with the Government's clause, nor with the amendment moved by Hon Helen Hodgson. The member is not entirely satisfied with her amendment either. The clause deals with what a number of parties believe is the reason for the rise in premiums. Particularly the insurers, and to some degree the employers, were saying that it was too easy to obtain leave of the court, and that system was costing everybody a lot of money. The threshold for the gateway is $106 000, and people are beating up their stories in order to push up their claim to get through that gateway. However, some people have disputed whether that was occurring, and believe the system is appropriate. The claims data prior to 1993 shows that the system of open access was cheaper.

Costs started to increase in 1994 and 1995 as a result of the 1993 legislation. Prior to 1993 the total cost of workers compensation premiums was much lower. The premium costs have been exaggerated. However, I did not like the by-leave system, because it meant double handling; yet we will replace that with another system of double administration. That will mean a huge logjam of people getting claims into the court. I understand that a number of plaintiff lawyers have threatened, almost daily, to issue writs against the executive director of WorkSafe Western Australia in order to get their cases heard in a reasonable time. We could end up with a much more expensive system if that sort of thing occurs.

I wonder whether the Government has considered the Queensland system. I received a letter from Mr Barry Spinks. I am not sure of his background, but he outlined the situation in Queensland. He wrote -

> In my experience insurers run up extraordinary costs fighting and attempting to undermine legitimate claims. The Queensland system introduced compulsory pre-court procedures which required the claimant to lodge a notice of claim and then wait 6 months. In this time the insurer was required to investigate the claim and make a determination on liability. Both parties had 3 months to arrange settlement negotiations and make offers of settlement. If the matter did not settle there were penalties to the insurer if a court awarded damages in excess of the insurers offer.
>
> The effect of this procedure was that the parties were forced to negotiate, claims were resolved expeditiously and court resources were freed up. Importantly injured persons received the compensation they deserved.
>
> A similar system was initiated for Queensland motor vehicle insurance. The scheme was so successful that the CTP insurance premium was cut by $5.00 last year.

It seems to me that we are trying to place an artificial block on procedures in the hope that they will not go ahead and people will go away. The system in Queensland is superior to and much fairer than the system that has been proposed by the Government. It also encourages people to negotiate rather than get themselves into court in the first place. The Government's proposition will create a lot more work and will, therefore, increase the costs.

Hon J.A. COWDELL: Hon Helen Hodgson's right of appeal amendment may be better than the current clause proposed by the Government, although, as my colleague Hon Nick Griffiths has pointed out, there is the problem of an appeal from Caesar to Caesar's lieutenants -

Hon N.D. Griffiths: From Augustus to Caesar!

Hon J.A. COWDELL: The divine Augustus, no doubt. There is also the problem of review by a review officer who may have no legal or medical standing. The one advantage of this amendment is that it will preclude the need to go into the court system, which will be far more expensive. However, if the director gets it wrong the first time, a person can have another go, which will involve an extra process.

I am not at all sure that the director's involvement with regard to issuing certificates is essential to the cost savings that the Government hopes to achieve. I do not know how the director will establish when stability has been reached. I do not know whether the director will have discretion with regard to the amount of time that people can be held in the system. I suppose that if an Administration had the view that everyone should be concentrated in a statutory system rather than having recourse to common law, discretion would be exercised again and again, thereby delaying any progress from that statutory system. It appears that there will be considerable delays and it will be an administrative nightmare.

I suspect that this may apply also to the first gateway, and I wonder why it should apply to the first as well as the second gateway. The alternative to having an appeal mechanism is that writs may be issued without a preliminary test, and that may be workable. Given the costs involved in the system, there will still be constraints on the number of writs that may be issued. I am not at all sure that this new clause will add significantly to the cost savings for which the Government is looking. It may create a whole new area of administrative law and appeal that will add to the costs rather than achieve cost savings.

Hon LJILJANNA RAVLICH: I do not want to go over ground which has already been covered. I am aware of the Australian Labor Party's position regarding this amendment which has been proposed by Hon Helen Hodgson. I am concerned that, given the current situation in this State where only five review officers are employed, the future and the rights of injured workers will be placed largely in the hands of the director or these other five individuals. That is an unacceptable position. Obviously, if the Attorney General's substantive amendment is agreed to, there must be an increase in the number of review officers and that would constitute an appropriation. Has not the Government overstepped the mark in bringing to this place the substantive amendment?

Like other members in this place, I have grave concerns because there are many medical conditions which deteriorate over time. For example, it is highly unlikely that the condition of an asbestosis victim would improve over a period of time; in fact it would deteriorate. Under the current provisions that case would not be dealt with until at least five and a half years had expired. It could be resolved only under the provisions of proposed section 93BA(1)(b) where less than six months remains of the time limited by law for the bringing of proceedings. If the Government was interested in the economies of this whole exercise and in ensuring that balance is restored to the situation, it would not have brought such a Bill to this place which will drag out cases rather than look towards their quick resolution.

Although we will support this amendment proposed by Hon Helen Hodgson, clearly proposed section 93BA is not acceptable in its current form to the Australian Labor Party.

Hon PETER FOSS: The five and a half years relates to an alternative test and does not require a certificate. The old redemption required stability. All that has been added is a sensible attempt to mitigate damage. None of these things is a novel concept. I do not think any lawyer would seek to bring an action, and certainly not to settle an action, prior to their client's condition stabilising. The issue of what is stable and whether a person is more than 30 per cent disabled in the end

is very much a medical issue. Members will notice that the clause allows the director also to refer a question to a medical assessment panel and that panel, as members know, makes a final determination on disability.

Hon LJILJANNA RAVLICH: Is it true that the intent of this clause is to make it harder for injured workers to seek compensation rights? In calculating the savings of moving to this model, were any calculations done on the reduction in the number of injured workers who might be seeking an award for damages?

Hon PETER FOSS: No, that is not applicable. It is intended to reduce the costs of proceedings rather than any amount of compensation.

Hon HELEN HODGSON: Hon Nick Griffiths raised a couple of issues on whether this was an appropriate mechanism for redemption. The first issue he raised is that there are no criteria for the review. Basically, I would have thought that the criterion was that the injured worker was refused a certificate. When injured workers are refused a certificate they may seek a review under part III of division 3. That details the powers of the review officer, when and how, the rules of evidence, representation and so on. The review officer has a great deal of discretion about how the review is to be conducted. The only real qualification that should be met to achieve a review is the refusal of the certificate.

Hon Nick Griffiths suggested that this might lead to further litigation. That is true; any review or appeal process leads to further litigation. Where is it preferable to have the litigation? Is it better dealt with before an administrative panel, a review officer or a compensation magistrate, or in an administrative process in which the costs are limited to whether one chooses to have legal representation, or in a writ of certiorari before the Supreme Court? I indicated yesterday that injured workers are resorting to such writs when they are unhappy with the procedures of medical assessment panels and other statutory bodies. I agree, in an ideal world we would not need appeal and review mechanisms because all the decisions would be made properly in the first place. In looking at the merits of different avenues of appeal, it is better dealt with through an administrative process rather than a judicial process if one wants to save the injured worker expense, time and mental anguish and if it involves the review of a purely administrative procedure.

Hon Nick Griffiths and Hon John Cowdell raised the question of the relative status of the review officer and the director. The legislation provides that the director or a person authorised in writing by the director has the power to issue such a certificate. My assumption was that the director would not be signing off on all the certificates personally. Therefore, the fact that the director has authorised a person to issue them does not give that person any higher standing than a review officer, who is also authorised by the director to be a review officer. Section 104B of the Act provides that -

> (2) Neither a conciliation officer nor a review officer is subject to direction as to the decision to be given in a particular matter.

As Hon John Cowdell put it, we have the scenario of Caesar's lieutenant reviewing Caesar's decisions.

Hon N.D. Griffiths: It was Caesar reviewing the decisions of Augustus.

Hon HELEN HODGSON: Unfortunately my Roman history is probably not as complete on this point as that of Hon Nick Griffiths and Hon John Cowdell. I will stand corrected on the point.

Although technically we have the chain of command around the wrong way, section 104B(2) provides that the review officer cannot be directed how to make a decision. Given the way government departments are structured, ultimately all decisions are the responsibility of the director. Whenever a person makes a decision, he is making it subject to a delegation or an authorisation. If the CEO were always regarded as the person who made such a decision, it could never be reviewed. Any reviewer would be subordinate to the CEO.

Although I understand its source, in practice, if we are to have any form of administrative review, there are some fatal flaws in that argument. The only way to set up a review mechanism is to ensure that the person involved is a step removed from the person issuing the certificate and to look not only at the hierarchical ranking but also at the effective line of command. In this case, it is clear that the review officers and the conciliation officers are not subject to direction. I recognise Hon Ljiljanna Ravlich's argument on the need for the provision in the first place and the fact that there is a strong argument that the courts should be involved. I sympathise with those arguments, but if we proceed with a certificate provision there must at least be mechanisms for review.

Amendment put and a division taken with the following result -

Ayes (17)

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

Noes (16)

Hon M.J. Criddle	Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith
Hon Dexter Davies	Hon Ray Halligan	Hon M.D. Nixon	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Barry House	Hon Simon O'Brien	Hon Derrick Tomlinson
Hon Max Evans	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*

Amendment thus passed.

Hon N.D. GRIFFITHS: I move -

To delete new clause 32(2).

I note that the clause has now been amended and that there is a form of review provision in it. Notwithstanding that - I have already dealt with the review mechanism, so I will not go over it - the fact that there is a review mechanism of sorts, in the view of the Australian Labor Party, does not cure the substantial defect of what is proposed in what, if it is passed, will become section 93BA. The Australian Labor Party considers it to be inappropriate that in most cases under this provision a certificate must be obtained from the Director of WorkCover before legal proceedings can commence. Where no certificate is obtained, no proceedings can commence for five and a half years. This administrative procedure does not deal with the proper circumstances of employees injured at work, in many cases very badly. In the course of debate on the previous amendment, a number of matters were raised, particularly by my colleagues Hon John Cowdell and Hon Ljiljanna Ravlich, each of whom made reference, albeit in passing, to the substantive defect of proposed section 93BA. It is appropriate that some of those matters be reiterated, albeit briefly.

A difficulty arises in dealing with whether the worker's disability is stable, and whether - as the clause puts it - a worker has "successfully undergone rehabilitation". Also, I query the appropriateness of questioning whether a worker is to continue to undergo that rehabilitation. The proposal does not give rise to any savings. It is proposed as a measure to make life more difficult for people already in difficult circumstances. It does not add to the justice of the workers compensation and common law system in Western Australia, and nor does it add to any realistic economic efficiency, bearing in mind the economic constraints to which Hon John Cowdell referred. I note in that context that members of the legal profession who act for injured workers have a duty to advise their clients; if they fail to do so, they can find themselves subject to certain actions. Notwithstanding the amendment to which the Committee has just agreed, the ALP believes that the new clause should be defeated.

Hon HELEN HODGSON: We support the new clause in its amended form. I take on board the comments about whether this administrative function should be in the court process. The Attorney General referred earlier to the existence of a gatekeeper process through the process of seeking application for leave to proceed in the courts. It is clear that this process is not working. In fact, when I spoke on this matter in this Chamber previously, I suggested that one problem with the system is that as soon as the leave application has been granted, the appropriate accounting reserves must be created. Once that process begins, there must be sufficient funds to cover those reserves. That sets up a situation in which there are contingent liabilities, in an accounting context, on the books and the funds must be available in case they are called on; therefore, premiums must rise to deal with that situation. The process adopted by the courts previously contributed to the difficulties in keeping premiums under control. It was also an incentive for insurance companies to settle claims without contesting whether negligence had, in fact, occurred and whether there was a common law claim. For the contingent liabilities to be kept down, claims were settled, and for whatever proportion of the maximum claim the insurance companies thought they could get away with. It is clear anecdotally, and committee reports refer to this, that there are a number of de facto redemptions occurring through this process, where a person would seek leave to appeal and then settle for an amount considerably less than the gateway figure, so that the insurance companies could get the claims off the books. This is one reason restoring the redemptions facility is important in bringing balance back into the system.

The previous gatekeeper provision was not functioning in a way that was efficient and in the interests of the system as a whole. The alternative is to say that the courts should be making this determination, and that it can be made at the time the case is dealt with or in the preliminary proceedings to that case. If we start to deal with it in preliminary proceedings, we come back to the problem we had before. If it is dealt with during the case, the person must still go to the trouble of incurring legal expenses in preparing the case, even though there is not a reasonable prospect of success. That is not necessarily a bad thing. It would ensure lawyers advise clients appropriately of their chance of success and that would affect the payout the person would expect to receive. Ultimately, the person would make an informed decision on whether there was a reasonable prospect of success by using the common law rules of negligence. At the moment, the system seems to be for injured workers to put in a claim and if they can get through the leave provision, they will have a chance of success, instead of saying that they must contest whether negligence exists.

Those comments illustrate some of the problems with the way the system has developed. I am not in any way criticising the legal system for this. The system was put in place by the legislation, as it existed when last amended. This legislative process has allowed this practice to develop. It is as much a problem with the way in which the insurance companies settle

claims and are required to keep their books, as it is with the legal system. By those comments I in no way intend to reflect on the legal profession or the court system. We are looking at a system in which the issue will be handled by the director or a delegate of the director, and be part of an administrative review process. That will ensure there is some form of gatekeeper provision in place without its being sufficiently obtrusive as to interfere in the process. To leave it in the courts will contribute to their being clogged more than they are now. At the same time, I recognise the reservations of some of my colleagues that the gatekeeper provision can be used to control the flow of workers compensation claims. In that case the appeal and review process now being put in place should assist. With those comments, we will be supporting the Government on this matter.

Hon PETER FOSS: The Government will be opposing the amendment. I noticed in passing the reference to the Australian Plaintiff Lawyers Association. In view of the fact that the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia are in favour of this, we now have some idea of who is against it. We are getting an idea of where the Labor Party is getting its riding instructions from. It is obviously not the TLC because it supports it and it is obviously not the CCI because the Labor Party would not be following its instructions anyway. Obviously the only people are from the Plaintiff Lawyers Association. That is quite clearly why the Labor Party is adopting its attitude.

Hon N.D. Griffiths interjected.

The DEPUTY CHAIRMAN: Order!

Hon LJILJANNA RAVLICH: I want to put on record my disappointment with the position that the Australian Democrats have adopted. Quite clearly, this clause denies injured workers their civil rights. The clause is about eroding their rights to fair compensation by putting into the Act a cumbersome administrative structure, which will leave injured workers particularly disadvantaged by having to go through these cumbersome administrative structures. The amendment will ensure that workers do not get a fair go. One must look at the way the current administrative structures work to understand the disadvantages faced by many injured workers.

About three months ago a gentleman came to my office. He had worked in a timber mill where he was injured. Some question marks arose over the degree of his injury. One doctor claimed that Mr Zdrarko Dodig had 10 per cent injuries while another doctor claimed that he had 40 per cent injuries. Mr Dodig was paid workers compensation in full for two years. Following that two years he was advised that he could get a job as a car park attendant. There are no jobs for such car park attendants. Certainly as a non-English speaking member of our community and given his age, it was impossible for him to secure employment as a car park attendant. An administrative decision was made that his full compensation of $409 a week be reduced, and he was put on a sum of $79 a week. That is what he had to live on. He lived on that $79 a week for a further two years. Following that, another administrative decision was made to cut the benefits off completely. Mr Dodig has been injured for the past five years. His case is still not resolved. I cringe at what future that man and his family have in front of them.

I find it absolutely laughable that we will end up with legislation that will further discriminate against people such as Mr Dodig. There are no two ways about it: That is exactly what this clause will do; it will make it even harder. I am a bit surprised that the Australian Democrats are of the view that the administrative processes operate in a full and aboveboard manner within government agencies. Anyone who has had anything to do with government agencies would realise that ample opportunities exist for things to go wrong and for people to be influenced by their superiors. All sorts of opportunities can arise which will leave the injured worker at a great disadvantage. I want to put on record my disappointment with the position adopted by not only the Government but also the Australian Democrats. It will make it very difficult for injured workers to get a fair go for workers compensation in this State.

Hon J.A. SCOTT: I seek clarification from the Attorney General on the review process.

Hon Peter Foss: Helen Hodgson suggested it, not me.

Hon J.A. SCOTT: I am referring to the review that will be held into the whole Act. I understand that the Government and some other parties are concerned about the procedures in place for obtaining leave of the court

[Questions without notice taken.]

Hon J.A. SCOTT: I would like more information on this clause. As I said previously, this is a cumbersome system that may add to the expense. That worries me because I understood we were trying to reduce the expense, particularly if it involves litigation against the director by plaintiff lawyers who are feeling pressure to get their cases into the courts.

Now that the Committee has agreed to the review clause moved by Hon Helen Hodgson, when will the Act be reviewed and how certain is it? This clause will not be very successful. The Committee has been told that the whole Act will be reviewed, but members do not have much certainty that that review will take place. Is it likely that the Government will look at alternatives such as the Queensland system, which I have already proposed? Is the review likely to consider the Queensland system? It appears to work very well and is much better than this system. Before I make up my mind, I would like to know

whether this is a genuine review and whether it is a core promise rather than one of the "non-core" promises that sometimes float around in politics.

Hon PETER FOSS: There are reviews and reviews. The review of the decision has been added by Hon Helen Hodgson. That is nothing to do with the review of the Act. The review of the Act is not in the legislation; it has been agreed to as part of the package put forward in conjunction with the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia. It is a genuine review and it will consider all these matters. The member thinks the Queensland system is good, but I have heard other people say it is a disaster.

Hon N.D. Griffiths: Has the review started?

Hon PETER FOSS: The terms of reference are being developed.

Hon N.D. Griffiths: So it has not started.

Hon PETER FOSS: The first step is to consult people on the terms of reference. I am sure Hon Jim Scott will be pleased to know there is an opportunity to be heard on those terms of reference.

Hon N.D. Griffiths: Hon Bruce Donaldson suggested that the review had started.

Hon PETER FOSS: It has started because the first step is to work out the terms of reference. It is all dependent on the package being passed. I give no undertaking as to what will happen if the package is not passed. That would obviously be a different state of affairs and the minister would have to consider what she should do next. If what has been agreed does not occur, she will have reason to consider all the options.

Hon HELEN HODGSON: I take note of the comment made by Hon Peter Foss on behalf of the minister. I was assured last week by the minister personally that the fate of the review was in no way dependent on the outcome of this package. The minister's adviser was there the second time the assurance was given. I would like that repeated for the record.

Hon Peter Foss: What do you want repeated?

Hon HELEN HODGSON: The Attorney General has suggested that the review is part of the package, and that if the package fails the review may not proceed. I was assured by the minister last week that this review would proceed whether the package failed or succeeded. It is important that that commitment be placed on the record.

Hon PETER FOSS: I am not in a position to place that commitment on the record because I do not know. I am instructed that there will be a review because a review is part of the package. Therefore, Hon Helen Hodgson is guaranteed that there will be a review if the package goes through. If she has other information from the minister, she must be very reassured by it, because I am sure the minister tells her the truth. I can guarantee, though, that if the package goes through there will be a review. If Hon Helen Hodgson is saying that the minister says that there will be a review even if the package does not go through, I am sure that she is correct. It seems logical that the minister would carry out some sort of review, but a review is guaranteed under the package. It might also happen if there is no deal.

Hon N.D. GRIFFITHS: It seems to me that the minister whom the Attorney represents has both her feet either on that ubiquitous hose or in her mouth, or perhaps the Attorney has got it wrong. I happen to have a copy of the statement made by the Minister for Labour Relations on 18 November 1998. In that statement the review is not referred to as being part of a package - it is not "take the lot and leave the rest alone". The minister's statement reads -

> . . . while these amendments would stabilise premiums in the immediate future, she had requested an urgent review of the State's workers compensation system to begin next month.

That statement was released in November, so the review is to take place this month. The statement goes on -

> I have requested the review as a matter of urgency to examine Western Australia's workers' compensation system . . .
>
> The review will commence next month and is expected to be completed by February next year.
>
> A report will be provided to the Government by the end of March, with a view to having changes ready for the 1999 Spring session of Parliament.

Those words have nothing whatsoever to do with whatever is to pass through the House tonight or whatever may take place. The minister's review is not contingent on how the committee deals with the message. In about 20 minutes, the Attorney should seek further instructions, because if he is right and the minister is wrong I would like to know.

Hon PETER FOSS: Hon Nick Griffiths' comments are consistent with what I said. He is suffering from what in the traditional formal logic is called an undistributed middle. I can guarantee that the review will go ahead because it is part of the deal that it will go ahead. The minister can have any review that she likes. There is a difference between having a

review because she thinks she should have a review and having a review because she has given an undertaking as part of a deal to have a review. I am saying plainly that the minister can very well have a review, and from all accounts she firmly intends to have a review, but there is also an undertaking on her part to the people who have entered into the package that they will have that review. The difference between the two is one in which she has engaged to do it of her own motion and one in which she has undertaken to do it as part of a deal. Those two courses are perfectly consistent. There can be both types of understanding - they are not inconsistent with one another - but it is her decision to have the review, if she has it, without that understanding, and she certainly has given an undertaking that part of the deal is that there will be a review.

The important point is that as part of the deal the minister has engaged to have that review. She has said of her own motion that she intends to have a review. Those are two perfectly understandable, simple statements. To say that one excludes the other shows that one is suffering from an undistributed middle. I would not like to say that Hon Nick Griffiths has an undistributed middle because he does not appear to have an undistributed middle, but that would be the case in traditional formal logic.

Amendment put and a division taken with the following result -

Ayes (15)

Hon Kim Chance	Hon N.D. Griffiths	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon J.A. Cowdell	Hon John Halden	Hon J.A. Scott	Hon Giz Watson
Hon Cheryl Davenport	Hon Tom Helm	Hon Christine Sharp	Hon Bob Thomas *(Teller)*
Hon E.R.J. Dermer	Hon Mark Nevill	Hon Tom Stephens	

Noes (17)

Hon M.J. Criddle	Hon Ray Halligan	Hon Murray Montgomery	Hon B.M. Scott
Hon Dexter Davies	Hon Helen Hodgson	Hon N.F. Moore	Hon Greg Smith
Hon B.K. Donaldson	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
Hon Max Evans	Hon Norm Kelly	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*
Hon Peter Foss			

Amendment thus negatived.

New clause 32(2), as amended, put and passed.

New clause 32(3) -

Hon PETER FOSS: The Trades and Labor Council and the Chamber of Commerce and Industry of WA have both indicated that this legislative package is essential to provide a more stable environment in which to review the Act. Before proceeding to the point of a division which may terminate debate, I ask that the opposition parties state for the record exactly the stabilising impact of their proposed amendments; that is, how they will provide the required stable environment for the review. I ask this because examination of the proposed amendments to the package appears to indicate that every endeavour has been made - with perhaps the exception of one of Hon Helen Hodgson's proposals - to gut the impact of the Government's proposal and, in fact, to increase costs. The next subclause is critical: If it were to be defeated or amended, it would be the end of the Bill.

Hon HELEN HODGSON: Some amendments to new clause 32(3) stand in my name on the Supplementary Notice Paper. I take on board the Attorney General's comments, although I am not totally sure what he wants non-government parties to say. I think he suggests that we are somehow sabotaging the inquiry we are anxious to ensure is established. The amendments I have proposed to clause 32(3) have been superseded to some extent by a further amendment placed on Supplementary Notice Paper No 11-5. I say "to some extent", as this amendment is not the same as my proposition. I will not move my amendments at this stage - I will wait to see how debate develops before making that decision.

The original proposal is to use the formula of seven years in 10, as a way of determining whether people are suffering from a reduction in capacity for gainful employment. The definition of loss of future earnings is based on seven times the worker's former average annual earnings in a 10-year period. The principle here is that in determining whether a person is suffering from a significant reduction in capacity for gainful employment, we look at a 10-year period and at whether that person has lost seven years' earnings based on that 10-year period. There are three flaws with that proposition: The first and the most critical flaw is the problem faced by a worker who will not have 10 years' working life from the date of his injury. Basically the definition refers to the 10-year period as commencing on the day on which the writ is issued and ending 10 years later. If a worker is in the twilight of his working life, the 10 years could mean that he would be expected to retire and the effect of the calculation will be distorted. It is a mathematical fact that when working with averages and periods of time, distortions will result once a person goes from a reasonable income to a very low income, as often happens upon retirement.

I notice the Government's latest proposal addresses that issue in respect of the worker reaching the age of 55 years. If that worker had reached that age when the writ was issued, a formula of three and a half over five is being used, as opposed to

seven over 10. It is purely a mathematical exercise of halving the time that must be taken into account in determining whether there has been a loss of earnings. In a sense this is creating a new threshold; that is, three and a half years over five, or seven over 10 for people under the age of 55 years.

I have not yet resolved the second flaw, and I will listen to the debate on this point. My proposal was also to lower the time, from seven in 10 or three and a half in five, to three years in five. That has an effect of lowering the threshold only marginally, but is sufficient to allow a number of workers to make these common law claims. Given that the Government has accommodated the original concern of the age issue, the next question is whether there is sufficient difference between three and a half years and three years for me to pursue my proposed amendment. That is why I am specifically not moving it at this stage and will listen to further debate on the issue.

The third point relates to the way in which the Government has constructed the new provision. It has specifically tailored the three-and-a-half-in-five formula to the worker who is approaching the end of his working life, by referring to a worker who is over 55 years of age at the date of the issue of the writ. I appreciate that was the situation in which the problem was raised of a person reaching the end of his working life. However, it also makes a significant difference in some circumstances to a worker who is under 55 years of age. A worker may be leaving the work force for some other reason or may be in a field of employment where he may be earning good money for a number of years and then must find another form of income. The mining industry is a classic example where people earn very good money for relatively short periods of time and then must find other forms of employment. The effect of limiting the three-and-a-half-in-five formula to workers over 55 years of age is that it is again creating a difficulty for people who are under 55 years of age. My amendment would eliminate any discrepancy and would deal with the age problem in a way that is fair to all workers. Although the Government's version is fair to people towards the end of their working life, I am not sure that it is fair across the board. I will be interested to hear the Government's reasons for adopting its approach on both those points. Based on that, I will decide whether to move my amendment.

Hon PETER FOSS: The examples given by Hon Helen Hodgson would not get in under the current gateway. To that extent this clause is dealing with something that was not dealt with under the previous legislation. It is part of a hard-negotiated entire package for which concessions were made by both sides. The final document has been seen by the parties as a fair trade of all sorts of things. I can understand that the member may still have some concerns but of course other people have concerns as well. For every concern that the member may raise on the part of the worker, concerns will be raised on the part of the employer. I cannot at this stage renegotiate that package. I believe that the member is pushing the position further than the current legislation would allow; in other words, if the legislation fails, the people to whom the member is referring will be worse off than if the legislation were to go through - or certainly no better off. The member will have destroyed the agreement and therefore the legislation. It is not appropriate at this stage to try to rework that agreement.

Hon J.A. SCOTT: I am pleased that the Minister for Labour Relations has taken on board people's concerns for workers who are 55 years of age plus. That weakness in the Act has been corrected. In the definition of the loss of future earnings, there is a possibility of a similar sort of thing happening, for example, to a highly skilled apprentice fabricator. He may be injured in the last year of his apprenticeship. His loss of future earnings would be predicated on an apprentice's wage whereas he could be earning a very large amount of money during the next decade or so because of his highly skilled job. I wonder whether we are not bringing in the reverse situation to that which the minister has corrected for people of 55 years of age. I will be interested to hear the Attorney General's comments on whether that issue had been thought about and how it could be overcome, or whether he felt that it would be fairly dealt with in this clause.

Hon N.D. GRIFFITHS: I too am listening to what members are saying. I note the Attorney General said that it is all or nothing. He has threatened to spit the dummy. That is interesting because we are dealing with part of his amendment which was in Supplementary Notice Paper No 11-3 of 7 December but distributed on 8 December. We are now dealing with SNP No 11-5. SNP No 11-3 was first seen by members of the committee on 8 December. That follows on from SNPs Nos 11 dated 18 November and 11-2 dated 26 November. It is some time down the track from the Minister for Labour Relations' media statement in which she announced the sacrosanct deal, the so-called package in which she said agreement had been reached. What is the agreement that constitutes all or nothing, or is this just an exercise in which the Attorney General, on behalf of the minister in the other place, threatens to spit the dummy? I look forward to what he has to say in due course.

Sitting suspended from 6.00 to 7.30 pm

Hon N.D. GRIFFITHS: While we were discussing the clause previously, I gave notice that I wanted to hear more from the Attorney because the Committee will recall that when discussion on this clause commenced he threatened to spit the dummy. Of course, that is what the Government is on about in dealing with this matter. It has been given a prescription by the Standing Committee on Legislation that it should have a realistic examination of the problems of workers compensation and common law in Western Australia. The Government has delayed doing that and it is still doing that. It talks about one review and then another and about packages. The Opposition suggests the Government may not want to have a review. It is threatening to stop something which it knows should be fixed up. It is not fixing it up properly. I suspect that unless we hear a rational explanation to the contrary, which we have not heard so far from the Attorney, the Government will spit the

dummy at the first opportunity because it knows it has failed to do the right thing in this area for several years and it is looking around as hard as it can for a scapegoat.

Hon PETER FOSS: I am very pleased Hon Nick Griffiths made the points he made because it gives me an opportunity to explain to the House the open and accountable process that has occurred. The minister first tried to reach agreement in principle with the principal protagonists; that is, the Trades and Labor Council and the Western Australian Chamber of Commerce and Industry.

Hon N.D. Griffiths: When?

Hon PETER FOSS: Hon Nick Griffiths should let me talk. If he remains quiet and listens, he will hear. She reached agreement in principle and announced it. She then drafted. Hon Helen Hodgson suggested those parties merely agreed in principle and did not do the drafting. However, to make the process accountable so that everybody knew what was involved, the minister placed the drafting on the Notice Paper. After that, various people, including the Labor Party, the Australian Democrats and the Greens (WA) raised various matters. The minister did her very best to address those concerns. She realised that it was not sufficient to have merely the agreement of the TLC and the CCI; she needed the agreement to the extent possible of the members of this House. Each amendment that comes into play is one more interest to be juggled that may affect the interests of others.

As Hon Helen Hodgson seeks to incorporate each new amendment in the draft, the minister must go back to the CCI and the TLC. It has not been possible to reconcile all that. We have reached the stage at which the Democrats still have concerns and the Opposition is opposing some clauses. We now have something that has attempted to accommodate, as much as possible, the requirements of each of those who have input. The minister has gained the acceptance of the bodies representing the two main interests, for which we must congratulate her.

I accept that other people have an interest. There is no doubt that the Australian Plaintiff Lawyers Association has an interest and that a lot of what is being put forward by the opposition parties has come from that association. Hon Nick Griffiths probably knows that Mr Kobelke was deep in confabulation with Mr Singh of the Plaintiff Lawyers Association but at one stage we all agreed that the real interests were those of the workers on one hand and the employers on the other. Their interests are interrelated. The Plaintiff Lawyers Association has an interest but its interest in getting money is not quite as critical and relevant to the intent of the Workers' Compensation and Rehabilitation Act as the interests of the employer and the employee. Sure the lawyers make money and sure they are stakeholders; no-one doubts they have a large stake in this.

I thought the Opposition, the Greens (WA), and the Australian Democrats shared the concern of the Government that we are losing sight of probably the most important thing. We are dealing with legislation in which we must strike the balance between employer and employee. The Government knows if it goes too far with the benefits, that will impact on premiums and employment. The Government also knows if it cuts the benefits back too far, that has a serious impact. I have never suggested that we should cut benefits back. Since the coalition has been in Government, there has been a significant increase in the statutory benefits available under this legislation. I support that. As a defendant lawyer I was always highly supportive of ample statutory benefits because, from the point of view of my far-thinking insurer client, I could see quicker and cheaper acquittals. If workers do not have to prove fault or all the things involved in litigation and spend that time, we can settle quickly on the statutory benefits. That happens to be in the interests of the workers. In this situation an adequate statutory benefit can be in the interests of the employees and the employers. They are not opposing interests but interlocked and compatible interests. However, I can see that they are not compatible with the interests of the Plaintiff Lawyers Association. A system which disposes of cases quickly and without litigation is not of great benefit to the Plaintiff Lawyers Association, whose members want to make a good living out of being plaintiff lawyers. I do not see the plaintiff lawyers as anything more than stakeholders; they are not in the balance between employer and employee.

The process raised by Hon Nick Griffiths is exactly what happened. The agreement in principle was announced and one had to work out the agreement, draft it, deal with the other people, incorporate the changes and then try to get the agreement of the principal people involved. That is what the minister managed to do. What she has not been able to do is persuade all the people in this House to go along with what the employer and employee groups would like to see happen. She is an extremely able minister but she cannot perform the impossible. If the employers and employees agree but the Labor Party representing the Plaintiff Lawyers Association, Hon Helen Hodgson with her concerns about the aged and the Greens (WA) with their concerns all wish to raise issues, it is not necessarily -

Several members interjected.

Hon PETER FOSS: I give the Australian Democrats and the Greens (WA) credit because they are struggling to get what they see as a satisfactory solution. I keep raising the agreement with members opposite because, in the end, the process must strike the appropriate balance between employer and employee. Who knows whether it is or is not right? However, arguing in good faith for the benefit of the people they represent, the Australian Democrats and the Greens (WA) have arrived at a solution which they accept. The problem is that if we start to pull little bits out of it, we will be in Supplementary Notice Paper No 11-6. What will happen is that we will have to go back to the Trades and Labor Council and the Chamber of

Commerce and Industry and ask whether there has been a major change in the balance of this agreement. Hon Nick Griffiths may be right, Hon Helen Hodgson may be right, Hon Jim Scott may be right, the TLC may be right, the CCI may be right, or we may all be wrong. A wonderful thing about being a legislator is that although one can act in the greatest of good faith, one will not know whether one is right until it is put to the test. We all hope that we are right. We all have considerable faith. One of the main things needed in this job is a certain degree of faith in one's judgment, and one hopes to get it right. However, we are dealing with human beings represented by lawyers. What more difficult connection could there be?

I am not saying that what has been agreed with the TLC, which has been adjusted to accommodate Hon Helen Hodgson and Hon Jim Scott, is perfect. I do not have the capacity to say it.

Hon N.D. Griffiths: You do have the capacity to say it, but you are wrong.

Hon PETER FOSS: What I am saying is that that is what the parties who are most affected by the Bill want. The Government has scrutinised this Bill. It does not know whether they are right or wrong. However, it knows that that is what they want. The Government has tried to accommodate the other interests. However, in the end, the time comes when a decision must be made. I want members to understand that this has been worked out with the minister, the TLC and the CCI. They would all like it to go forward.

Hon Ljiljanna Ravlich: Where is the evidence that workers will not be disadvantaged, and where is the evidence that it will deliver to insurance companies -

Hon PETER FOSS: I might as well talk to a brick wall. What I am trying to say is that this is what has been agreed to by the TLC and the CCI. In the end, we will all have to wait and see what the effect will be.

Hon N.D. Griffiths: You know it will not work. Have you not read the minister's press statement? It will not work.

Hon PETER FOSS: The Government knows that it is a measure that will require further review. The minister has never hidden that fact.

Hon N.D. Griffiths: Why has she not started the review?

Hon PETER FOSS: She has started the review.

Hon N.D. Griffiths: When?

Hon Ljiljanna Ravlich interjected.

The CHAIRMAN: Order!

Hon PETER FOSS: I will give two reasons. I have made it clear that the minister has already started the terms of reference. What will be reviewed? If this Bill is passed, the review situation will be totally different from that which will apply if the Bill is not passed. I think there is a rule of quantum mechanics. I do not like these extended metaphors. However, as soon as this legislation is passed, the thing to be reviewed will change, and we will hopefully have more information before us.

Hon N.D. Griffiths: This is a stopgap measure, and the minister knows that.

Hon PETER FOSS: Yes. What a remarkable statement by Hon Nick Griffiths. He has worked out that that is one reason that, as part of the agreement, there would be a review. Everybody understood that there was a need to move quickly. If this Chamber does not do something now, the Premium Rates Committee will decide the premium based on the law as it currently stands. Between now and March when the Parliament resumes, the Premium Rates Committee, headed by the Auditor General, will bring down its premium rates. The premium rates that it decides will allow the insurance companies to make charges. One reason that the State Government Insurance Office believes that it will return to profitability is that the Premium Rates Committee will give it a premium that should bring it back to profitability. That is the reason.

Hon Ljiljanna Ravlich: We do not trust the Government.

Several members interjected.

Hon PETER FOSS: What members do not understand is that there are two things; that is, the cost and what the clients are charged. They are two totally different things. The margin between those two can make a difference in profitability. The more the premium rate is increased - they are entitled to charge the premium rate that is set, plus 50 per cent - the more they can charge. Members must realise that if we do not take this interim measure, the rates will be set on the basis of the law as it currently stands, and it will stay that way for 12 months. The people who pay their premiums in the next 12 months will be paying them on the law as it stands now. Members have the capacity, irrespective of whether it is the ultimate or otherwise - I do not think anyone suggested that it was the ultimate - to pass a law that will affect the rate set by the Premium Rates Committee, and they have the capacity to make an absolute mess of it.

Hon Ljiljanna Ravlich: Why has it taken since 1995? You answer that question. I am asking you a question.

Hon PETER FOSS: When the member wants to talk, she can stand and talk; she should not interrupt me.

The CHAIRMAN: Hon Ljiljanna Ravlich does not have the call. She is to cease giving speeches the same length as the Attorney General is giving.

Hon PETER FOSS: I am not trying to do more than tell members that we should listen to the people who are primarily affected by this law - the workers' representatives. If we do not listen to them, the workers will be punished because the premium rates will increase and that will affect employment. Increasing the premium rates will affect employers' capacity to employ.

Hon Ken Travers: Why were you not prepared to listen to the employee representatives before 30 June?

Hon PETER FOSS: Do members of the Opposition want to deal with this legislation or do they want to haul out irrelevant matters? Let us deal with this legislation now. This is the legislation that has been put forward by the minister. Members must either accept it or throw it out, but they should get on and do what they are going to do and take responsibility for it. Members of the Opposition are taking their riding orders from the Australian Plaintiff Lawyers Association; they are not listening to the Trades and Labor Council or the Chamber of Commerce and Industry of Western Australia. For some strange reason members opposite have decided that they will follow the Australian Plaintiff Lawyers Association instead of listening to the representatives of the people who are vitally interested in this issue. Members of the Opposition, in their sanctimonious way, are planning to throw out this legislation. They should go ahead, but they should keep in mind that they must take responsibility for that. This legislation has been agreed to and a great deal of work has been done on it to obtain the acceptance of other parties. Enough has been done.

Hon N.D. Griffiths: I have just caught your dummy.

Hon PETER FOSS: No, it is not. If members wish to deal with this legislation instead of -

Hon N.D. Griffiths: You are filibustering again.

Hon PETER FOSS: No, I am not. The legislation has the support of the TLC and the CCI. They have been vitally considered. The Australian Plaintiff Lawyers Association is blocking it and members know what its interest is. I would like members to vote to support both the workers and the employers. However, if they will not vote to support the employers, they should at least vote to support the workers.

Hon HELEN HODGSON: The Attorney General made some comments earlier about finding the appropriate balance between employers and employees. I accept those comments and that is what we have tried to do in assessing the proposal before us. The fact that the CCI represents a sector of employers does not mean that its views are the only views which must be represented. In the process of deciding our position on the final set of amendments, almost a week ago when I was in discussion with the minister on this issue I had to decide at what point the rights of injured workers took precedence over other matters. There are question marks over the health of the workers compensation system as a whole, and we have been promised a review to analyse that and to determine what can be done in the long term to correct that. However, in the short term the rights of injured workers will be severely impacted upon, particularly by a couple of the provisions that we have not yet dealt with - the retrospective impact and the $225 000 cap. I am not denying the burden on employers as a consequence of workers compensation legislation. However, one must draw a line at some point. In that context, my response would be the same if legislation came before this place which might retrospectively impact on employers. If legislation came to this place that would enable prosecutions to commence retrospectively against employers, I would say that retrospective legislation which affects people's legal rights was inappropriate. For those reasons, when it comes to finding the balance between employers and employees, I found there was a bottom line beyond which I could not move. I indicated earlier this evening that before moving the amendment to proposed section 93D(b) standing in my name I would listen to debate. I asked the Attorney General for a response on a couple of issues; specifically, why "3.5 in 5" would be limited to people over the age of 55; and the difference between my amendment of "3 in 5" and what is currently on the Supplementary Notice Paper in respect of older employees; that is, "3.5 in 5". As I have not had a response from the Attorney General to those issues, I move -

In subsection (4) - To delete "7" and substitute "3".

The effect of the amendment is to alter the original proposition - whereby the formula for determining whether an injury has seriously reduced the worker's capacity for gainful employment is based on seven times the worker's former average annual earnings - to "3 times". The formula for loss of future earnings is based on a 10-year period; I will soon move to alter that to a five-year period.

My final point relates to the calculation of average annual earnings, which was touched on by Hon Jim Scott. What happens when people's earnings fluctuate, either because they are at the start of their earning life or at the end of it, or simply because their career has significant ups and downs? One of the ways in which this is addressed in other forms of legislation is to look at an average salary based on a genuine average of one's income over a certain period. For example, when determining someone's annual salary for the purpose of superannuation, we look at an average over three years. This proposal is looking at the earnings that are expected to be incurred over a 10-year period. That is not the same idea as a rolling average that is

used in other financial earning-type legislation. I raise that because it is an inadequacy that was pointed out to me during the lengthy discussions I have had on the Bill. It is not something I have addressed in my amendment or that I intend to address specifically, except to point out that even this formula is probably not the most efficient way to achieve what the Government wishes to achieve.

Hon J.A. SCOTT: I listened intently to the Attorney General's explanation of why it is important to look at this proposal as a package. There are clearly some problems with this amendment, which will make it more difficult for the minister to piece together the positions of the various parties and try to reach widespread agreement. I believe we will run into problems which will add to the cost of workers compensation, particularly because a number of clauses, including this clause, will remove some of the impetus for insurers to put pressure on insurers, and also on employers, to maintain a safe workplace. We should remember the high cost Australia-wide of workplace injuries and other work health problems. The document from which I quoted earlier, which is entitled "Workers Compensation Policy in Australia: Best Practice or Lowest Common Denominator?", states that the annual financial burden is estimated to be between $20b and $37b. That is a massive amount of money. The document states also that -

> The most important variable in bringing about reductions in workers compensation costs is improved occupational health and safety. A lower incidence and severity of workplace injury results in fewer compensation claims, reduced claims costs and subsequently lower average premium rates for employers. It also means safer and healthier workplaces for workers, a more productive economy and a reduced call on federal government social security and Medicare outlays.

This document then quotes from the interim report of the Heads of Workers' Compensation Authorities and states -

> The authorities' position on work-related injuries and their causes also stands in stark contrast with that of Worksafe Australia, the country's national occupational health and safety commission. Worksafe maintains that 97 per cent of workplace injuries can be prevented if safe systems of work are adopted by business. Integral to this are requirements such as a safe working environment; machinery, equipment and chemicals that are used and kept in a safe condition; access to information on workplace hazards; the training of workers; adequate supervision and compliance with safety procedures.

Unfortunately, we are lumped with having to make a decision on each clause on the basis that if one clause is knocked out or amended, none of those issues can be properly discussed in this place. I am concerned about that because of the path that some of these amendments are taking. Although I am in total agreement with the intention to move away from access to the court being based on the level of somebody's weekly wage or annual salary, there are many concerns that we will not be able to consider properly on the basis of Hon Helen Hodgson's minor amendment succeeding. That will be a great shame because there is an opportunity to make vast improvements to the system, which are being partly ignored. Certainly, on reading the Government's clause, it is obvious that there are people who will be disadvantaged by the clause as it is written but less disadvantaged if it were changed to the wording proposed by Hon Helen Hodgson. In the great scheme of things, at the end of the day it would not make a vast difference to premium rates, especially as we can implement amendments which would reduce the amount of workplace accidents and ensure safe workplaces. We will achieve a great deal more by passing this amendment than by fighting over minor amendments which attempt only to make the legislation fairer. I am disappointed if the Government is not open, and is completely closed off, to seriously putting amendments. Although the other place may not be operating currently, that is no reason that we should not have flexibility in making improvements to legislation.

Amendment (figure to be deleted) put and a division taken with the following result -

Ayes (15)

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

Noes (13)

Hon M.J. Criddle	Hon Peter Foss	Hon N.F. Moore	Hon Greg Smith
Hon Dexter Davies	Hon Barry House	Hon M.D. Nixon	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon Simon O'Brien	Hon Muriel Patterson *(Teller)*
Hon Max Evans			

Pairs

Hon John Halden	Hon Ray Halligan
Hon E.R.J. Dermer	Hon Derrick Tomlinson

Amendment thus passed.

Amendment (figure to be substituted) put and a division taken with the following result -

Ayes (15)

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

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon M.D. Nixon	Hon Greg Smith
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon John Halden	Hon Derrick Tomlinson
Hon Ken Travers	Hon Ray Halligan

Amendment thus passed.

Hon HELEN HODGSON: I move -

In subsection (5) - To delete the figure "10" and substitute "5".

Amendment put and passed.

The CHAIRMAN: The question is that clause 32(3), as amended, be agreed to.

Hon PETER FOSS: We are about to destroy completely the agreement that was reached between the Chamber of Commerce and Industry of WA and the Trades and Labor Council. I have instructions from the minister that if the amendment is passed there will be no point in proceeding further with the Bill. I will point out to some members what they are doing. This is a very important piece of legislation. Some members seem to have lost sight of some parts of it. It allows for redemption for permanently partially incapacitated workers. During the debate there has been some support for that.

Hon Bob Thomas: You took it out in 1993, against our advice.

Hon PETER FOSS: Yes, but opposition members are now removing it, because that is in the legislation.

Several members interjected.

Hon PETER FOSS: Opposition members should keep in mind that it is a total piece of legislation. They have decided -

Hon N.D. Griffiths: It is all or nothing. You are a dummy-spitter.

Hon PETER FOSS: It also has a provision which prevents the award of legal costs against a worker when there is an appeal by an insurer to the workers compensation magistrate. There is also a provision that would allow for the seven out of 10 years for older workers. That is what is in the Bill and that is what opposition members have decided to defeat. The legislation is now unacceptable because it departs from an agreement that was reached between the people who are most affected by it. I know what has motivated the Opposition. It was motivated by what was fed to it by the Plaintiff Lawyers Association. So be it. We know that Mr Singh has been putting nonsense in opposition members' ears. We know what has happened despite the fact that the TLC and the CCI have agreed to this measure. It would be fun to be at the next TLC meeting. Unfortunately, I will not be there, but I would not mind being a fly on the wall when opposition members must explain to the TLC what they did to the deal between the CCI and the TLC, why all the good things that the TLC and the CCI wanted out of the legislation have been lost, why we will not have the legislation, why the Premium Rates Committee will need to work on the current Act, and why premiums will increase. They have destroyed the legislation. Please let us now go to the vote and finally destroy the legislation.

Hon HELEN HODGSON: I cannot let the Attorney General's comments go without response. It is astonishing that the Attorney General is likely to withdraw the Bill because of an agreement that was reached by people outside the parliamentary process. I appreciate that there were extensive negotiations between the TLC, the CCI and the minister. All parties were aware that the matter had to be dealt with by the House. In fact, the minister acknowledged that by talking with us about some of our concerns. The Attorney General now says that the only reason for withdrawing the Bill is that the TLC and the CCI do not like it. I am yet to be told that the CCI and the TLC do not like it. I understand that the TLC's response at least is that it always knew that whatever was done between parties outside the Chamber was subject to the decision of the Chamber and to the political process. The Attorney General is withdrawing the Bill solely because of the unravelling of an agreement reached outside the parliamentary process. That is an amazing turn of events.

It is not a terribly significant change. I have asked the Attorney General what significance there is in the change from three and a half out of five to three out of five, but he has not responded. He has not said what the financial impact is. The Attorney General has not said what the financial and practical impacts will be. He said only that the Chamber of Commerce and Industry of Western Australia do not like it; therefore, the Government will not let it through.

Several members interjected.

The CHAIRMAN: Order! Members will come to order. One member has the call; namely, Hon Helen Hodgson.

Hon HELEN HODGSON: In this case, the Attorney General is responsible for withdrawing a Bill which contains some good bits of legislation. My response to the difficulties is as follows: Why not go ahead with what is good in the legislation and say that this aspect must be subject to the review? The legislation contains some good parts which need support. It is irresponsible of the Attorney General to withdraw the good parts because the Government does not like some of the changes to other parts of the Bill which will have a negligible impact. Also, the Attorney General has not been able to quantify the impact of those changes.

We must now let events take their course. If the minister withdraws the Bill, then the consequences will be on the heads of the Government and the minister.

Several members interjected.

The CHAIRMAN: Hon Nick Griffiths has the call.

Hon Peter Foss: We will now hear from the defence lawyers' association.

Hon N.D. GRIFFITHS: I just heard an absurd interjection from someone who did not leave his previous occupation behind him when he entered the Chamber as a member of Parliament, where he is meant to participate in the formulation of legislation on behalf of the people of the State. The Attorney General has a contrary point of view to mine on many matters; however, I do not accuse him of acting on behalf of the defending lawyers' association. I do not act on behalf of any association. My colleagues and I try to do our best on behalf of the people of Western Australia. The Australian Labor Party is beholden to no-one.

Hon N.F. Moore: Except the Trades and Labor Council.

Hon N.D. GRIFFITHS: We sometimes, not always, agree with the TLC, and on occasions we agree with the Chamber of Commerce and Industry of Western Australia, but we make up our own minds about what we want to do based on appropriate values, bearing in mind the proper interests of the people of Western Australia.

This Bill has been around since 1995. We are seeing the Government spit the dummy tonight, which is what it always intended to do. Members opposite talk about the good things in the Bill, with which we agree - we always have agreed. However, the Government never intended to bring them forward. It could have done so in 1995, 1996, 1997 or 1998, and we are almost into 1999. "The Progress of Bills Introduced in the Parliament of Western Australia" document indicates the Bill's lack of progress, and shows that this measure was set up for tonight's performance by the Attorney General; namely, spitting the dummy, as he almost always does. I hope that he does not lose his temper again.

Hon J.A. SCOTT: I am disappointed that the Attorney General is withdrawing the message at this point.

Hon N.F. Moore: Why are you disappointed? You were about to ruin it.

Hon J.A. SCOTT: We were not ruining the Bill at all; I hoped to improve it. The Attorney General says on one hand that he recognises that this is an interim arrangement, and that the legislation is not perfect; on the other hand, he says he will not accept any amendment to fix it. It is an illogical position to start with. Clearly, this Bill has problems as it is written. Those problems are not entirely insurmountable given some goodwill. We have heard the Attorney General outline what he says the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia want. However, the TLC and the CCI may not believe in exactly the positions to which they agreed as represented in the message; in fact, they have different positions and have attempted to achieve what they could through negotiations.

In a number of cases the Attorney General is wrong; for instance, the Trades and Labor Council was quite concerned about the seven-in-10 formula which was changed, and felt it still had some way to go before it was perfect. It was not its preferred position. The Government is now agreeing that this is imperfect, yet it does not want any changes that will improve it. It is suggesting that some sort of blame will be spread around on the basis that we destroyed some essential changes when we refused to acknowledge the minister's ability to put together legislation that will satisfy enough people. In fact, for the genesis of these changes, we need look no further than this Chamber sending the matter to a committee. In that process all the key stakeholders were brought in to give evidence. The report that came down very fairly described what was put forward by the people who appeared before the committee, including those from the Trades and Labor Council, the Chamber of Commerce and Industry of Western Australia, the plaintiff lawyers, the psychologists, and people who look at all sorts of areas in this field. A wide range of views were presented from people who came forward to say what they felt should go into workers compensation legislation in this State.

The overwhelming issue was that we should have a return to full redemptions. Everybody said that was an essential matter and would save the system the most money. It is not in the legislation. Why? It is because the minister did not sit back and take notice of what a committee of this Legislative Council said. She carried on negotiations on a completely different set of issues while the committee heard evidence contrary to what was being agreed elsewhere. Rather than just one process which involved this place, a parallel process was going on simultaneously in which the minister ignored many of the major recommendations put forward by the committee. It is hardly fair for the Government to say now that for some reason an agreement had been reached by consensus between the TLC and the CCI, and then to blame this place for somehow destroying the agreement, when the minister has not been properly involved with the Legislative Council to come to a proper consensus decision at all. She went off on her own path. I wanted to see a fair agreement reached. I am very disappointed by the minister's approach to this matter. It is irresponsible, especially given that the Attorney General agrees that the legislation is not perfect. To say that he will not accept amendments is a total nonsense.

New clause 32(3), as amended, put and a division taken with the following result -

Ayes (15)

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

Noes (14)

Hon M.J. Criddle	Hon Peter Foss	Hon M.D. Nixon	Hon Greg Smith
Hon Dexter Davies	Hon Barry House	Hon Simon O'Brien	Hon W.N. Stretch
Hon B.K. Donaldson	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon N.F. Moore		

Pairs

Hon Tom Helm	Hon Derrick Tomlinson
Hon Mark Nevill	Hon Ray Halligan

New clause 32(3), as amended, thus passed.

Hon PETER FOSS: As I indicated when we started on this debate, we must remember there are two Houses in this Parliament. The amendments that have been made are not acceptable to the other place. The amendments that were put up by the Government, as I indicated, were as a result of extensive negotiations by the minister, who not only spoke to the people principally affected who obviously had to be given some priority - that is, those from the Trades and Labor Council and the Chamber of Commerce and Industry of Western Australia - but also spent a lot of time trying to negotiate with everybody else. However, she ended up unable to arrive at an agreement. The minister put in a huge amount of time. The number of different Supplementary Notice Papers which we have seen for this Bill indicates the minister's sincere endeavours to see whether she could find some legislation which would pass through this Chamber in an acceptable form.

Unfortunately, no member opposite has taken up the challenge to explain to me what the tremendous benefit was of the amendments that have been made. Everyone realises that this legislation is of an interim nature and that a review is about to take place. Some members do not feel able to take their hands off legislation; they feel compelled to redo the job that the minister tried to do by speaking to everybody outside the Chamber. She has tried to do a very important job in trying to reconcile all the parties. However, she failed to do it and to achieve unanimity. There cannot be a situation in which one House decides that it will completely ignore what has been passed by another House. The Government cannot have the Legislative Council ignoring the fact that a minister has made every endeavour to arrive at some form of consensus before bringing the legislation to this place. The minister has done everything possible, but the changes make it unacceptable. Accordingly, Mr Chairman, I move that you do report progress.

Progress reported.

STANDING COMMITTEE ON ESTIMATES AND FINANCIAL OPERATIONS

Report on ComsWest

Hon E.R.J. Dermer presented the twenty-sixth report of the Standing Committee on Estimates and Financial Operations in relation to ComsWest, and on his motion it was resolved -

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

[See paper No 645.]

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Report on Spent Convictions (Act Amendment) Regulations (No 3)

Hon N.D. Griffiths presented the thirty-eighth report of the Joint Standing Committee on Delegated Legislation in relation to the Spent Convictions (Act Amendment) Regulations (No 3) 1998, and on his motion it was resolved -

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

[See paper No 646.]

HEALTH AMENDMENT BILL

Report

HON MAX EVANS (North Metropolitan - Minister for Finance) [8.32 pm]: I move -

That the report of the Committee be adopted.

HON KIM CHANCE (Agricultural) [8.33 pm]: I have some regrets about this motion. I am raising the matter on this occasion because were the House to wait until the third reading stage, or any time after the motion had been dealt with, it would have the effect of cutting off options which might be available to the House in the sense of possible recommittal of a clause within the Bill. I must say at this stage that the Australian Labor Party remains satisfied with the Bill as amended. I hope I have made that clear to the Minister for Finance. I certainly made it clear to the Minister for Health this afternoon when I spoke to him by telephone. That is as far as it goes. The ALP will hold to its support of the Bill because it is satisfied with the clause that has been inserted; however, I must make a couple of comments.

The Opposition's support for this Bill came as a result of a very carefully crafted agreement. That agreement was accurately described by the Minister for Finance last night. Members will recall that the Bill dealt with the situation in which premises had more than two enclosed public places. The ALP remains four-square behind its decision in that respect. There is no doubt about public buildings - hotels for example - which have three bars or three enclosed public places. The ALP is happy with that situation. Similarly, and for other reasons I will not go into now, there is no dispute about a public building which contains one public enclosed space. The difficulty relates to premises that have two such public enclosed places. The reason I am happy to support the Bill as it stands before the House at the committee stage, is that it is actually silent on the proposition that the regulations may deal with premises which have two public enclosed spaces. This is a very important class of building in the context of this legislation because it includes just about every country pub, and there is no doubt that it was a matter of some considerable negotiation.

Although the Bill remains silent on the matter of those premises with two public enclosed spaces, that issue was the core of the agreement that had been reached with the Government. It was the core of an agreement which had its genesis some time before Monday, but which was confirmed at a meeting at which I was not present. I understand it was attended by the member for Fremantle, the Minister for Health, Hon Norm Kelly and certain of the minister's staff. It is my understanding from both the member for Fremantle and Hon Norm Kelly, that arising from that meeting there was no doubt in anyone's mind that in those premises with two public enclosed places, one would be designated as a non-smoking area. That has always been my view and it was my view at midday today when I had to explain my position and that of the Australian Labor Party to a number of television stations. I drew my reliance on that being the nature of the deal not only from reports of that meeting, but also from what the Minister for Health told me directly outside this place. Leaving that aside, because I may have misunderstood what happened at the Monday meeting and what the Minister for Health told me directly, one thing I cannot misunderstand is the statement made by the Minister for Finance in this place yesterday. In answer to a question raised by Hon Norm Kelly about the failure to include a second sentence in a relevant government amendment to an ALP amendment, the Minister for Finance was reported in the uncorrected proof of the daily *Hansard* for Tuesday, 15 December as saying - I believe entirely accurately -

> Our legal advice is that the second sentence is redundant. The amendment refers to two or more enclosed places.

The next sentence, which is critical, reads -

> If a venue has only two bars, one may be a smoking area, and one a non-smoking area. However, if a facility has three bars, one could be non-smoking and smoking could be permitted in the other two areas.

Members can put aside the effect of the third sentence. It is dealt with clearly in the amended legislation because it contemplates a premises containing more than three public places. The second sentence is critical. It contemplates only one variation from two bars one smoking and one non-smoking; that is, both may be deemed non-smoking - as is the case of the newly reconstructed hotel in York, which does not allow smoking on the premises at all. It does not contemplate both bars being smoking bars. Despite the perfectly clear explanation on legal advice given accurately and honestly by the Minister for Finance while the Minister for Health was sitting in the Chamber, the Minister for Health told me from Sydney today that two bars can be deemed smoking bars even if a hotel has only two bars. We had a deal and the Opposition based

its support of the Government's position on that deal. The Minister for Health told me on the phone that we misunderstood the deal. I was about to say the deal is off but I hope it is not because I am holding the Government to the words in *Hansard*; that is, the Government's statement of policy. We cannot use it under the Interpretation Act because it is stated in the *Hansard* of the committee debate and not in the second reading speech. I know I cannot rely on the Interpretation Act, but the statement of the Minister for Finance accurately reflects the deal which was done and on which the Opposition based its support.

I cannot accept an argument put to me outside this place that the Minister for Finance was somehow mistaken. I cannot accept that for two reasons. The Minister for Finance stated -

> Our legal advice is that the second sentence is redundant.

That was the statement the minister made in front of me while his adviser was present and when, I believe, the Minister for Health was in the Chamber. The second reason I cannot accept the argument is that if members read the part of the *Hansard* immediately before Hon Max Evans' comment - that is, the question asked by Hon Norm Kelly - it is impossible to get this issue out of context. If members follow the logic of Hon Norm Kelly's question, there is no way that the minister could possibly have misinterpreted what Hon Norm Kelly was getting at.

The deal which I understand was concluded on Monday arose out of a letter from the Australian Hotels Association in which its executive director, Mr Bradley Woods, put forward a proposition and asked if we could find some way of agreeing with the Government on the basis of the proposition. In part the letter stated -

> These amendments will have the effect of restricting smoking to a maximum of two enclosed Public places within a premises on the basis that a further enclosed public place is set aside in that premises to be smoke free.

It says a maximum of two, not a minimum; it does not say that if one has two public enclosed places, both can be smoking. The letter says a maximum of two on the proviso that there is a smoke-free place. That goes back to what the amendment said. The letter continues with a proposed amendment which the minister was referring to in the *Hansard* I quoted. The second sentence states -

> Smoking shall be permitted in two enclosed public places in a premises provided that a further enclosed public place is set aside in that premises to be smoke free.

In other words, if there are only two public places, the Government cannot gazette regulations allowing smoking in those two places because there must be a third place which can be deemed smoke-free. The minister told me today that that is what the Australian Hotels Association said but it did not understand what the amendment meant. If I were Mr Bradley Woods, I would be deeply insulted at that interpretation being put on my letter. There is no doubt that everyone was clear that if premises had two enclosed public places, one was to be deemed non-smoking.

Members might realise that I am just a little angry about this and I always will be. I am not angry enough to disable the Bill because the Australian Labor Party clearly stated that it would vote with the Government on this Bill. Although we will and are wearing some pain on this, we will not disable the Bill because it actually delivers something. However, I do not like doing a deal with a minister and the Government - I am not in any sense criticising the Minister for Finance because he has been dead straight on this issue - and finding the very next day that the other party to the deal is out there saying that that is not what it means when we all know exactly what it means. The Minister for Health knows precisely how angry I am and when he returns he will find out how angry the member for Fremantle is.

The PRESIDENT: Order! The question before the Chair is that the report be adopted. Until Hon Kim Chance's last comments we were doing pretty well. His job is to explain to the House why the report should or should not be adopted. I understood him, initially, to be raising issues which were raised in this House and over which he believes the parties are in conflict; to that point he was in order. Introducing other people immediately raises the spectre of debatable matter, which is not what this motion is about. Hon Kim Chance was doing his job within the rules, and that job is to tell the House why the report should or should not be adopted.

Hon KIM CHANCE: Thank you for your advice, Mr President; I was starting to drift off the issue.

The PRESIDENT: The member is allowed to be angry.

Hon KIM CHANCE: I understand that. I believe I am also entitled to refer to the fact that the member for Fremantle is angry.

The PRESIDENT: That is not a reason why we should or should not adopt the report.

Hon KIM CHANCE: Indeed it is not. At this point I want to express my views. I hope at some time in this debate we will hear an explanation from the Minister for Finance because he has been involved in, and is a victim of, this issue as innocently as I am. I am concerned because I find myself in this place not as the shadow minister but as an opposition member with carriage of a particular piece of legislation which has been the subject of some fairly considerable and heavy negotiations.

I have had to take a position in those negotiations which is not altogether popular with some of the Opposition's key supporters - the health lobby and the Liquor, Hospitality and Miscellaneous Workers Union. My position is not popular with them because the LHMWU must front up to its members, the croupiers at Burswood, and tell them that, as a result of the Labor Party's lying down on this issue, they must sit there and do their jobs while people are smoking in front of them. It is not necessary. We all know that that is not necessary; we all know that regulations could be promulgated under sufficiently strong legislation to prevent that from happening or at least to minimise the damage. Members can understand that I am not the most popular person at 61 Thomas Street.

Nonetheless, we went that far because we thought it was better to go that far, rather than have the Government throw the legislation out, as it threatened at six o'clock yesterday evening. I was not inclined to be a party to disabling the legislation. That is still my position. Despite the fact that I am extremely angry, I will not disable this legislation. However, I want to hear some straight talk from the Government, because it will be extremely difficult for me, or for the member for Fremantle, to ever want to do a deal like this with the Government again. This deal has cost us some support in certain quarters. On balance, we thought it was the right thing. As a shadow minister, I will not be a party to that again. As a shadow minister representing another shadow minister, I will certainly not be a party to it ever again. I will not get caught in this situation again. It is just ridiculous. I expect that when a minister tells me he will do something, he will do it. When a minister tells me that black means black, that is what it means, and the next morning it does not mean dark blue or turquoise. I do not want to be told that the Australian Hotels Association wrote these words and did not bloody understand them.

The PRESIDENT: Order! That is unparliamentary.

Hon KIM CHANCE: I am sorry. I withdraw the expletive, Mr President. The Opposition will still be supporting the legislation. However, I expect some straight explanation from the Government on what has been the most remarkable turnaround that I have seen in this place for a long time. The minister stated what I know to be a fact. We are then told by the minister in the other place the next day that it is not a fact any more.

HON JOHN HALDEN (South Metropolitan) [8.51 pm]: Since returning to active duty in this place, if I can express it that way, I have found that the most noticeable feature of proceedings is that seemingly members cannot understand what a deal is. Every deal that I have heard in the last 24 or 48 hours seems to be misrepresented by somebody.

Hon N.F. Moore interjected.

Hon JOHN HALDEN: I will not go into it. I do not want to know. Coming back to this place, I am appalled at what I understand happens behind the Chair. From my perspective, what was agreed behind the Chair was once sacrosanct, and one never broke one's word. However, it seems to be all over the place at the moment. I want to talk directly to the Minister for Finance, because this is important. I hope the minister will speak.

Hon Max Evans: I will.

Hon JOHN HALDEN: I am sure he will.

The PRESIDENT: Order! The minister will not be able to speak, because he has moved that the report be adopted. Therefore, any hope of a reply will be subject to a discretion that the House may avail itself of.

Hon JOHN HALDEN: Thank you, Mr President. You are absolutely right. In all the times I have dealt with the Minister for Finance, I have never known him to misrepresent anything to me personally. He has provided me with every piece of information that I have ever required, and he has bent over backwards to do so. Having witnessed what happened last night and having read today in *Hansard* what the minister said, I cannot believe that he did not say what he said in good faith. I do not know that, and I understand that the minister will not be able to comment. However, I do not believe that the minister was not acting in good faith. Nobody would ever convince me that he was not.

Clearly, this House was dealing with a controversial piece of legislation. The Labor Party said that it would support a Bill. The Labor Party had moved ground; I guess members opposite would tell me that they had moved ground, and probably members of the minor parties would say the same. A minister of the Crown, representing another minister, said something on the public record. Seemingly, the minister representing the responsible minister in another place accepted a deal, a compromise. It does not matter what one calls it. Therefore, we reached the point where there was an acceptance. The advantage of that acceptance was that progress on this issue was made. We all lose a bit; we all gain a bit. Traditionally, that is what this place is about in many ways, particularly of recent times.

I refer briefly to the minister's statement on page 21 of the uncorrected *Hansard*. In the second sentence he said -

> If a venue has only two bars, one may be a smoking area, and one a non-smoking area.

That is fairly clear. Tonight I have read the letter from the AHA. The AHA was not confused. I do not think any members were confused as to what was being talked about, the pressure we were under, and the reason that we came to that decision. The Minister for Health cannot say that the responsible minister did some deal without competent advice, and he cannot say

that he was not present when that advice was given. I saw him sitting in here. Unless I have gone blind from some mysterious disease that I have developed recently, I saw him here.

Hon Simon O'Brien: Or some other habit.

Hon JOHN HALDEN: It comes with age or something. However, the players were here. Let us not be silly about that.

Hon N.F. Moore: Nobody is being silly.

Hon JOHN HALDEN: No. I am not pointing the bone at anybody. Please, Leader of the House, let us not get to that sort of position. We have a difficulty confronting us. Today, the Minister for Health, who is in the eastern States, has a different interpretation. I will not say the word "new" because that would be derogatory; he has a different interpretation. Every member in this House - not just the Labor Party, not the minor parties, not the Government - is left with the problem, and we must deal with it now. What was intended last night is clear. Of course, people can misunderstand. Whether it was the minister, the representative minister, the Government, the Labor Party or whoever does not matter. There is now a simple course of action that is available. We do not have to make a decision here and now. We all know we will be back here tomorrow.

Hon N.F. Moore: There is no doubt about that.

Hon JOHN HALDEN: Exactly. We will be back here the day after.

Hon N.F. Moore: And tomorrow week.

Hon JOHN HALDEN: Exactly.

Hon N.F. Moore: And tomorrow fortnight.

Hon JOHN HALDEN: Okay. We all agree that time is not of the essence.

Hon N.F. Moore: Hon Tom Stephens is champing at the bit to make his speech.

Hon JOHN HALDEN: Let us not go into that. We will just deal with this matter. I know that we all want to go home and be involved in Christmas celebrations. We are all tense. As I said at the beginning of this speech, there are misrepresentations about deals. I do not know, nor do I care at this moment, who is responsible. However, there is a course of action which is very clear. Without pointing the bone at anybody, I suggest to the Minister for Finance that what we need to do, if I can be so presumptuous, is to adjourn this matter. People need to sit down and take some time to think about what was done last night, what is on the public record, what they thought happened, and then reconsider this matter.

I do not want to filibuster or to push this into Christmas or whenever. This House can consider this issue tomorrow. I put to the minister very sincerely that it requires nothing more than a simple, smart decision on his part. In the midst of all this confusion and misrepresentation - alleged or real, I do not care, and I do not think any one of us should care - the realities are that, with the minister being in Sydney, we cannot deal with this matter now. In all fairness to the Minister for Finance, I do not think he can deal with what is on the public record. I do not mean that offensively. We have no option about working through this week, and we have all had a bit of a chuckle about working through next week or the week after. There is a simple solution: We can take the time and deal with it at one o'clock tomorrow. Hon Kim Chance has put our position on the record, and everyone in this Chamber knows what it is. A mistake was made, and I am not pointing the finger at anybody.

Hon Max Evans: We are not saying that anything is wrong yet.

Hon JOHN HALDEN: The misrepresentation could be attributed to anybody. I am not saying it was the Minister for Finance, the Leader of the House, or Hon Kim Chance; it could be anybody. We need all the players present and some time to discuss this. A dose of goodwill at this point, after what I have seen in the past 24 hours and what I know is coming in the next one-week or two-week period, could be a brave, wise and astute measure on everybody's part. I think other people may want to speak in this debate, so I will not move the motion to adjourn debate, but we will lose nothing by waiting 24 hours. We know what will happen, but let us clarify this so we know what we are doing. We should understand what this is all about. I cannot put a more reasonable, non-filibustering and obvious compromise to this impasse. I will not go on or I will be accused of filibustering.

I have never made an attack upon the integrity of the Minister for Finance, and I do not know the Minister for Health well enough to do that, so I do not intend to. There is a way out of this, so let us take it.

HON KEN TRAVERS (North Metropolitan) [9.05 pm]: The last couple of days have been the most interesting that I have spent in this place. Getting to this stage with this report has been a difficult process for all involved and has required a great deal of negotiation. I note the interjection from the minister that the Labor Party's interpretation of the report is wrong. I hope that is the case. From your comments, Mr President, I hope the minister will have the opportunity to clarify the matter.

From listening to the debate in this place and in conversations that have occurred outside of this place, I have a clear impression of what I thought we were doing; that is, where there are only two bars in a public place one may be a smoking area and one a non-smoking area. However, it now appears that is not the case and the interpretation of people outside of this place and of the minister is that if there are only two bars in a public place there can be two smoking bars. I hope that the minister can clarify that, and put the position on the record. I have the highest respect for the integrity of Hon Kim Chance, and for the Minister for Finance. Like Hon John Halden, I do not know the Minister for Health well enough to comment on his integrity. However, from what I have seen, he is an honourable man.

I have been involved in wheeling and dealing in the Australian Labor Party from time to time. We rely on trust and being able to take on face value the commitments that are made. We accept that when someone says something, that will be the case. The minister also has the opportunity, by way of regulation, to clarify the position. I hope that will be the outcome of this debate. Hon John Halden has offered a good solution of how that process could be assisted. Hon Kim Chance also made it clear that the Labor Party stands by the interpretation of the report that was given in this place by Hon Kim Chance. His interpretation was based on the advice that the minister gave to this place. I take the point that Hon Kim Chance made during the debate - that is, one must look not only at the comments by the minister but at the question asked by Hon Norm Kelly prior to the minister's answer. The member's question related to the situation in which a public place has only two bars, and whether one bar should be smoking and one non-smoking. To reach this point we have worked long and hard on a package of proposals. Members from all sides of the debate have been required to negotiate and to compromise. We have only to look at the previous debate in this Chamber and the comments by ministers from the other side about the need to bring parties together and to reach an agreed position. However, if that agreed position is then not what is placed on the record in this place, we will have a difficult time when we deal with legislation, particularly as we go into the next couple of days and maybe a bit longer to reach agreement through compromise. I hope the minister will take the opportunity to clarify the situation for all concerned. The Labor Party is keen to support the report as it stands, provided it means what we thought it meant and what we understood from the debate in this place.

HON MAX EVANS (North Metropolitan - Minister for Finance) [9.08 pm]: I believe that the report should be adopted. I had no part in the negotiations on Monday, Tuesday, Wednesday or whenever they occurred. As the minister handling the Bill, my aim was to pick up the last threads of what needed to be done. There were seven amendments to the legislation. If we became involved with amendments Nos 3, 4 and 5, we would get lost with Nos 6 and 7, and No 8 is another story because it came in later. I had no part in negotiations. I know that members of my party wanted to make sure that certain matters were brought about. At 5.55 pm yesterday I said that if members opposite continued to talk, I would move to report progress and that would be the end of the Bill. The House resumed at 7.30 pm and Hon Tom Stephens said that he would speak for five minutes as members were trying to reach agreement outside the Chamber. He said that if they had not come back by 7.35 pm I would report progress.

As we both know, at 7.35 pm, Hon Kim Chance came into the Chamber, and I sat down with my adviser. We heard the comments from the Chairman, and we then came back to the situation of two bar hotels. Today's *The West Australian* reported that the new laws provide that hotels can allow smoking in a maximum of two bars, and hotels that have only two bars can allow smoking in both bars. That is probably what started the discussions today. I understand from our backbench members that country hotels generally have a front bar and a lounge bar, and that people do not generally mix between those two bars, yet many of the people in those two bars will be smokers. Hon Kim Chance read the letter from Bradley Woods which said that hotels that have two bars will make every effort to provide a non-smoking area. It will be a commonsense move to make available a third bar for non-smokers, because otherwise all the non-smokers will go to another hotel. A hotel that has only two bars can allow smoking in both bars. However, a publican may want to have one bar for smokers and another bar for non-smokers; in other words, it will not be obligatory to allow smoking in two bars, which is how the amendment may be misconstrued. I understand that the York Hotel - I have not been there, although I was invited to a ball there last month - will be a non-smoking hotel. It wants to start off from scratch and develop a new clientele.

I am not sure why the Labor Party wanted an amendment to allow smoking in two bars, because if it had left the legislation the way it was -

Hon Kim Chance: We wanted to provide for the situation in which there were more than two bars.

Hon MAX EVANS: The amendment was to delete the word "one" and insert the word "two". As I said, I do not like doing amendments on the run, but the Labor Party was quite happy with it, as it said at the time -

Hon Kim Chance: On the basis of the deal that we had done.

Hon MAX EVANS: If a hotel has two bars, smoking will be allowed in both bars. Our backbench members who live in the country believe that the legislation should be drafted in that way, and as Bradley Woods and our people have said, it will be in the interests of all hoteliers to provide a third bar for non-smokers, otherwise they will lose their customers. That is a sensible way to do it. I am not sure where the Labor Party stands on the exemptions for the casino. The legislation has now been drafted in the most commonsense way, in that a hotel that has two bars can allow smoking in both bars.

Hon Kim Chance: Let me get this quite clear. Are you saying that if a publican wants to allow smoking in two bars, he will be forced to provide a third public enclosed space which is deemed non-smoking?

Hon MAX EVANS: I did not say they would be forced. I said that hoteliers would do that in their own self-interest to keep non-smokers in the hotel.

Hon Kim Chance: Why do we need a law to do that?

The PRESIDENT: Order! If members want to debate a specific area of the Bill, there is only one way to do that procedurally; and if we are to do that, we will do it the right way. For the time being, we are debating the motion that the report be adopted.

HON NORM KELLY (East Metropolitan) [9.14 pm]: I appreciate the comments from other members and also the minister in attempting to clarify the Government's position on this matter. I inform members of what has happened in recent days, having been a participant in the meetings and discussions on this Bill. The Australian Democrats believe that this Bill is essential to the future health of Western Australians, but only if it is drafted in a form which will achieve that purpose. That is one of the reasons that we have been so active in moving amendments that we believe will be in the best interests of the State. Prior to the debate on this Bill in the other place, I made the position of the Democrats quite clear so that the Opposition and the Government would know where we came from when the Bill reached this place. It was made clear in that debate in the other place that the final form of the Bill would be decided in the Legislative Council, because of the different positions about how this Bill should be handled. Hon Kim Chance has referred to the uncorrected *Hansard* of the debate last night. Members will recall that that debate was quite heated; it was probably the most heated debate in which I have been directly involved. That is probably a combination of the issue, the time of the year, and the length of this session. However, it is important that we reflect more calmly on what occurred last night and on the legislation that passed through the committee stage last night.

The Bill provides powers to regulate one and two-bar hotels. However, the Bill remains silent on how that regulation will occur. The Bill deals clearly with the scenario of hotels with more than two bars; and although I am concentrating on hotels, we must remember that it applies to all premises with a number of enclosed public places. Hotels with more than two bars could get around this legislation quite easily and cheaply, because all the hotelier would need to do is get out a sledgehammer and knock out a wall to create two bars rather than three, and he would have a two-bar hotel, which would mean that smoking would be allowed in the entire hotel. I am sure that some hoteliers around the State are well aware of that and may even have started hammering away.

Hon Max Evans: If a hotelier had two bars, he would be more likely to split one bar in half and create three bars, because he would want to accommodate different people's interests and requirements.

Hon NORM KELLY: Other members have already referred to the uncorrected *Hansard*. I have been trying to eke out those guarantees which were given to me prior to the debate about what the Government's position would be, because members may remember that we were arguing about whether these requirements should be placed in the Bill or be left for the regulations to determine. The Australian Democrats agree that the Bill should not be overly prescriptive. However, at the same time we are seeking that those guarantees be provided in the regulations that will be gazetted in the future. For that reason, I raised a question about the two-bar scenario. I will not quote that exchange directly, because Hon Kim Chance has already done that. To our mind that reaffirmed what we believed to be the intent of the AHA's proposal, which was also quoted. However, there was more to the agreement than simply the scenario of hotels. We were concerned also about what would occur in nightclubs, cabarets and the casino. I will now quote directly from the uncorrected *Hansard* of yesterday. On page 22 I asked the minister this -

> The draft regulations to make 50 per cent of the casino floor space smoke-free will be implemented from 1 January 2001. Could this be brought forward so the improvement applies from 1 January 2000?

The minister's response was -

> I have been advised that the Government agrees with that and can see no problem with it.

By saying that, the minister gave us the guarantee which we were seeking and which was part of that agreement. I then asked -

> I also seek an assurance that the restriction will be further decreased so that from the beginning of 2001, smoking will be allowed in only 25 per cent of the floor area of the main gaming floor of the casino, and that the area in which smoking is allowed in nightclubs also be reduced to 25 per cent from 1 January 2000.

The minister's answer was, "No". I asked for the reason and the minister elaborated on why he was not willing to give that guarantee. That request from me was also part of the agreement which we believed we had reached with the Opposition and the Government.

I return to the meeting that occurred on Monday. As I said before, the Australian Democrats have been heavily involved in working on this legislation. I mentioned last night how long we had waited for this legislation to enter into the Parliament and the short period of time we had to view the draft regulations, far shorter than groups such as the AHA had in order to provide their input. We have worked hard in the past three weeks to develop our position and assist the Government to achieve what we believe is better legislation.

Last week I contacted the minister's office and requested a meeting with the minister so that we could nut out sticking points and issues that were contentious and had the potential to stop the Bill. As I said, we are supportive of this Bill although we believe it does not go far enough. However, they are debatable points. We are supportive of the Government bringing in this legislation and I make it perfectly clear that we do not want to see the Bill lost. However, I know there are other interests who do want to see the Bill lost because they realise that if the Bill is lost entirely, no restrictions at all will be created; and that suits the interests of certain parties. For those reasons I requested that meeting with the minister. I spoke to Robert Reid, his chief of staff, and because the matter was so urgent he requested my mobile and home phone numbers so that he could organise something. In that discussion, I said it would be preferable if the member for Fremantle, as the ALP's shadow Minister for Health, could be present so that we could come to agreement on how to implement the best changes. Although the Greens (WA) were not involved, I have discussed the matter with Hon Giz Watson and I appreciate receiving her feedback. However, I appreciate also that at the time of the discussions she was heavily involved in the very rushed Select Committee on Native Title Rights in Western Australia. However, we attempted to look at the Greens' concerns also and incorporate them into the discussions. Therefore, we tried to achieve a multi-partisan approach and an agreement to provide good legislation.

The meeting was arranged and we met on that Monday afternoon in the minister's office. Present were myself, the member for Fremantle, the Minister for Health, the Executive Director of Public Health and Robert Reid. During the meeting we nutted out what we perceived to be the contentious issues. The contents of the letter that the member for Fremantle had received from the AHA and other contentious matters were raised and discussed. Some suggestions were dismissed and some were thought to be in need of further work. Although the letter given to the member for Fremantle was not available, I believe a copy was obtained from the AHA and was circulated at the meeting. I am not 100 per cent sure of that but I believe that is where the copy came from. We all read the letter and discussed what we believed to be its intent. I know Hon Kim Chance has already quoted from the letter, but it is an essential part of this whole debate. A critical part of the letter reads as follows -

> These amendments will have the effect of restricting smoking to a maximum of two enclosed public places within a premises on the basis that a further enclosed public place is set aside in that premises to be smoke free.

We discussed that paragraph and came to the understanding that the only way we could allow smoking in two of the enclosed places would be to provide a third public place where there was to be no smoking allowed. The letter goes on with a proposal for an amendment to the Bill; that is why last night I referred to it as the AHA amendment when the Government moved part of it. That amendment was passed last night. The second sentence of the AHA's proposal was not moved. That second sentence states -

> Smoking shall be permitted in two enclosed public places in a premises provided that a further enclosed public place is set aside in that premises to be smoke free.

This was all discussed at the meeting. It was agreed that there might need to be some drafting corrections to encompass that proposed amendment in an acceptable form in the Bill. However, we went away with what I believed to be a general understanding among the five of us about what had been agreed and how we would incorporate the changes into the Bill.

Yesterday, further discussions were held in the build-up to the debate. In my discussions with the member for Fremantle, we further developed -

The PRESIDENT: Order! The motion is that the report be adopted. Members are meant to be debating why it should or should not be adopted. I am forced every two or three minutes to ask myself the question: Is what is being said relevant to the question before the Chair? Usually I am able to make excuses to myself that what somebody is saying is relevant. However, it seems that the member is giving me a history of his involvement in negotiations concerning the Bill. As much as I am interested, as I am sure the House is, the member must speak to the motion. Although some of the history is no doubt relevant, a full-bodied report is probably not necessary.

Hon NORM KELLY: Even though I may have been elaborating too much, it was important that, because of the minister's statements last night, we did agree to address the Bill from that point. I want to make clear the basis of this form of agreement.

To finish the history, there was more than just one part of the agreement. The first part was about premises with two bars requiring a third bar to be provided as a non-smoking area. There was also a requirement for casinos and night clubs to provide non-smoking floor space areas. That is why I asked the other questions following on from the first question in the

relevant passage that I read from the *Hansard* of last night. I wanted to see where the Government stood on those other aspects of the agreement before we agreed to adopt the report. It is important that we clarify the Government's position on this Bill. The minister has said that some members may have misconstrued what he said last night. I believe, in all innocence, he used a wrong choice of words, which has created an ambiguity of the Government's intent in this legislation. I tried to contact the minister today - obviously I did not have as much luck as did Hon Kim Chance - and I have spoken to his chief of staff.

In many of these debates, I have dealt with the Executive Director of Public Health, who has been very helpful. Unfortunately, she is also in Canberra and I have not been able to contact her. It is essential that these elements come together to clarify this issue before we progress the Bill any further. I appreciate that this order of the day was moved down the list to allow further discussion, but unfortunately, because these key people are not in the State, it has been impossible to clarify that issue so that we know what position to take on further aspects of this Bill. As I have said, the Australian Democrats earnestly want to support this Bill and see the legislation pass; however, it is impossible at this stage to decide where we should go, given that we have not been able to consult with either the Minister for Health or the Executive Director of Public Health. Given that this Bill has been in the public arena for fewer than four weeks, it is appropriate that consultation with the minister and departmental staff should take place. I am only trying to get a window of opportunity to speak to those two people to see where we are going. I have been able to work constructively with them on this issue until now. I feel that is the best way to expedite this Bill with the least degree of trouble. Other alternatives could be taken, but that could bog down the remainder of the precious sitting time of this House this year.

Debate adjourned, on motion by Hon Norm Kelly.

TITLES VALIDATION AMENDMENT BILL

Second Reading

Resumed from 17 November.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [9.33 pm]: This Bill is the first of a series of three Bills in the native title area, which the Government wants to see processed through Parliament before the House rises for the Christmas recess. At this time of year, the legislation most typically to be placed before parliamentarians in this place, when faced with the conservative parties occupying the government benches - whether it be in 1982 or subsequently during the past five, nearly six, years of the present coalition - is aimed at reducing or removing the rights of sections of our community. In my experience in this place, this pattern of attempting to remove, to extinguish, to reduce the rights of indigenous peoples in regard to land matters and other issues, or the rights of workers in industrial relations or workers compensation, has been repeated on a number of occasions at Christmas time. For me, Christmas is regularly becoming mixed with this unpleasant experience.

Native title has only relatively recently been recognised as existing in Australia. We know that indigenous rights have been recognised in regard to native title issues throughout other countries of the Commonwealth, including New Zealand and Canada, and in the old empire, the United States of America. This emergence of common law rights, whether it is in regard to native title or any other area of law, is typically a process that has some relaxed length to it, whereby Parliaments will often leave the area of common law that has emerged out of the courts to be processed and litigated, before the Parliaments have stepped in to respond to the needs of the community to get an area of law settled.

That has not been the case with native title. Governments of both persuasions have moved quickly in this area to produce legislation to respond to the decisions of the court. Prior to the Mabo No 2 decision of the High Court of Australia, Australia was regarded as terra nullius at the time of first European settlement. That basic notion has been reinforced by the decision of Justice Blackburn in the Milirrpum v Nabalco case. That was effectively the only reported court decision on native title issues prior to the Mabo case. In 1971, that case went before the Northern Territory Supreme Court, in which a group of Aborigines representing native tribes sued a mining company and claimed relief in relation to the possession and enjoyment of areas of land which had initially been part of the colony of New South Wales. Justice Blackburn had rejected the plaintiffs' claim of common law native title, relying on the principle that a doctrine of common law native title had no place in a settled colony, except under express statutory provisions, and under any such doctrine the plaintiffs had failed to establish any pre-existing interest in the land which satisfied the requirement that it be of the category of the rights of property. The High Court in the Mabo No 2 case rejected this decision and the principles that were enunciated in that judgment, and recognised the rights of the indigenous people of Australia at common law, effectively dispelling that notion of terra nullius and reflecting the entitlement of indigenous inhabitants of Australia to their traditional lands in accordance with their laws and customs.

I find that particular judgment of great import indeed for all Australians. It is important to acknowledge that the High Court in so doing was not inventing rights, but was recognising those that had existed in Australia for thousands of years and that, in some places, in the view and decision of the High Court which became law, still existed. Those rights have become known as native title, and reflect the entitlement of Australia's indigenous inhabitants to their traditional land in accordance

with their laws and custom. In that same judgment - Mabo No 2 - Justice Brennan stated, as part of his rationale when he acknowledged the existence of native title, that the common law of this country would perpetuate injustice if it were to continue to embrace the enlarged notion of terra nullius and persist in characterising the indigenous inhabitants of the Australian colonies as people too low in the scale of social organisation to be acknowledged as possessing rights and interest in land.

I thought members of this Chamber would be the first to recognise what the High Court judge was rejecting in his decision; that is, the very views that members heard articulated in this place, without censure, by one of our former colleagues from the government ranks. That person was elevated to the Senate where he again articulated those views rejected by the High Court judge, and in the Senate was forced by his Prime Minister effectively to apologise for and disown the comments that had gone without censure in this place.

The High Court also held that the Crown could extinguish native title by valid government acts that granted exclusive possession over land or waters in so far as that was inconsistent with the continued existence of native title.

Justice Robert French, President of the National Native Title Tribunal, brought down a report in September 1998, in which he provided an assessment to which I believe all members would be wise to pay close attention. With regard to the current situation facing the House as it deals with these issues of native title, he said -

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

In a press release accompanying the report issued by the National Native Title Tribunal, the key points are that native title is a property right; it is here to stay; it is an opportunity for everyone - not a problem or threat; that many non-indigenous Australians have recognised this and are working with indigenous Australians; and that certainty, mutual recognition and equity will be achieved only by using this approach. Justice French is not lacking in experience of native title, in view of his role as the first person to chair the National Native Title Tribunal and his work in this area since 1993 when he has wrestled with the challenges of that tribunal.

I recognise that I cannot complete my remarks tonight but I want to put the debate on this legislation in the context of some work the Parliament has done, which allowed for the establishment of two select committees to consider this issue. I refer to the report of the first select committee I chaired on native title and how this State should proceed. Members will recall that although I chaired the committee, it had a government majority. It made the following recommendations, and I believe it is important to draw them to the attention of the House as we enter into this debate. I quote from the report -

> The Committee has concluded that a workable system should provide the following:
>
> > respect for the property rights of all Australians;
> >
> > respect for the cultural and religious beliefs and practices of all Australians;
> >
> > a cost and time effective, efficient, equitable and just process for the determining and granting of interests in land and resources;
> >
> > certainty, efficiency and equity for all parties in the administration of land tenure issues;
> >
> > security for industry operating on lands on which native title may exist; and
> >
> > the need to avoid costly, lengthy and disruptive litigation which is unpredictable in its outcomes.
>
> This is most likely to be achieved through a system of agreements, which parties have a mutual interest in maintaining.

It is stated at page 28 of the select committee's report -

> The preferable way of determining the content of native title in any given case is by agreement with native title holders and government to enable it to be accommodated within the existing property system of private property interests and State and Commonwealth laws.

The recommendation from that section of the report, agreed to by the committee, was that -

> The State endeavour to reach negotiated agreements with claimants to define and provide certainty as to the content of native title rights and interests for all stakeholders.

Each of the findings of the select committee is important to the deliberations before the House. The committee noted that Mr John Clarke, formerly of the Ministry of the Premier and Cabinet and now a consultant, gave evidence to the select committee on 31 October 1997, which was summarised by the committee as follows -

> . . . that the State Government would have to exercise extreme caution in compulsorily acquiring or extinguishing native title so as not to expose the State to potentially large compensation claims.

Under the heading of "Committee discussion" in chapter 3 of the report it is stated -

> If it is the case that any of the scheduled interests included in the list of "exclusive possession acts" are found at a future time not in fact to extinguish native title, then the State and Federal Governments will be liable for an as yet undetermined amount of compensation.

It is stated in the following paragraph -

> While the committee acknowledges the problems that exist in predicting where native title has been extinguished, it recommends extreme caution in the drafting of legislation "confirming" extinguishment of native title on "previous exclusive possession acts".

This takes the advice of Mr Clarke. Although he seems to have been unable to convince the Government to take his advice, nonetheless, he was successful in persuading the select committee to do so. The paragraph continues -

> This caution should arise from the strictness with which the High Court has interpreted extinguishment and to the possibility that an as yet undetermined amount of compensation may become payable to native title holders should it be found that native title had not, in fact, been extinguished by a specific grant of land. His caution should also be equally applied in the validation of 'intermediate period acts'.

The next point is relevant to the details of this legislation. It is important for members to reflect on this paragraph in considering the schedule which will come before us later. The report states -

> . . . it should not include stock routes and should determine on a case by case basis, whether native title has been extinguished on community purpose leases and public works. With the combined effect of Court decisions and Federal legislation, it is arguable that native title may co-exist with these non-indigenous tenures.

The report continues -

> The Committee notes that proposals to 'confirm extinguishment' in relation to those interests included in the Schedule of 'Previous Exclusive Possession Acts' in the *Native Title Act 1975* could probably lead to lengthy and costly litigation.

I have flagged many quotes in this report of the Select Committee on Native Title Rights in Western Australia. They were the reason I was delighted with the work of the select committee. Government members will know that I am selectively quoting the report. I could emphasise other aspects of the report, as I am sure Government members will do, but these sections of the report document, detail, acknowledge and accept the difficulties of trying to process the issues of native title in this State. Each of the sections I quoted contains committee agreement about not going down a certain route. That route is now before this House by virtue of the legislation which the Government has persevered with despite the advice of the select committee. I will not take up the time of the House by quoting all the sections of the report but I will draw on bits and pieces of it during this debate.

The committee found that there was a need for basic agreement on the way the Government should proceed in handling this issue. Attempts to litigate and legislate the issue of native title out of existence will get the State nowhere. Therefore, the committee urged the parties to this issue in this State to embark upon a different approach. The Labor Party acknowledges that there are and have been problems with the issues of processing native title for a multitude for reasons, not the least of which is that within this State a group of advocates have presented an argument that somehow or other native title can be swept away, that it will somehow disappear off the stage and that we can return to a state of pre-High Court Mabo No 2 judgment where this issue can be resolved without having to accept reality. The case of those advocates has been championed by the Premier as he has pursued various alternatives to resolve this issue. First, there was the ill-fated legislation of 1993, the Land (Titles and Traditional Usage) Act. The pursuit of those alternatives has taken the State down blind alleys and through an expensive detour to the High Court where time and again we have been left with decisions which have not advanced the cause any further. To this day, the Premier is championing the cause of changing the playing field and moving the goal posts far away from the interests of the native title parties in this State. He thinks that to do otherwise will leave us with something that is unworkable and not in the interests of the entire community. Nothing could be further from the truth. Effectively we are left with the need to recognise that the goal posts must be put fairly and squarely in the middle of the field where all of the parties and stakeholders have the prospect of finding workability, certainty, equity and justice. Any other alternative is inevitably at risk of being knocked down by the courts of this country. Some of this legislation faces the certain prospect, in the first instance, of being disallowed by a federal minister if it is not amended or

of being disallowed by the Senate on the basis that it fails to comply with the requirements of the federal native title legislation.

For the moment we are dealing with titles validation. The state Parliamentary Labor Party proposes to support the passage of this legislation. In doing that, it recognises that it can be legitimately criticised by opponents of that course of action. Those opponents include the indigenous peoples of Western Australia, who, quite rightly, point out that this is discriminatory legislation. The Federal Parliament provided for this discriminatory legislation by virtue of the way the 10-point plan was passed in July this year. Some people will argue that we should not enact discriminatory legislation just because we are entitled to do so. There is a strong and compelling argument for the party to closely examine what it is on about if it is prepared to advance this legislation. We are prepared to accommodate the Government's stated objective of this legislation. That objective is to validate the acts of government affecting land in this State which impinged upon and diminished the rights of indigenous people but were nonetheless acts entered into by the Government with other interests in this State - I will not use the term "in good faith". The Australian Labor Party believes those interests have a right to expect their tenures to be validated and it will embark upon that course. However, as a party we will not embark on mass extinguishment of the native title interests of the indigenous people of this State by enacting the schedule attached to this Bill. That process simply invites those indigenous interests to immediately convert their native title claims into claims for compensation. That will burden the taxpayers of Western Australia and Australia with the cost of meeting the compensation. We understand a deal has been done by the State and Federal Governments to split those costs 75-25. We will not accept that course of action. Instead, we will provide a positive response to the Government's stated request concerning this Bill. That request would accommodate the interests of those parties granted interests which would not be valid otherwise. I can appreciate why indigenous interests will be disappointed with the party's decision. I came to this State specifically to work for the Miriuwung-Gajerrong people. My first job in this State was to work for those families. I understand their apprehension about this Bill. I will conclude my remarks on this Bill tomorrow.

Debate adjourned, pursuant to standing orders.

House adjourned at 10.00 pm

QUESTIONS ON NOTICE

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

CONSULTANTS - MINISTRY OF PREMIER AND CABINET

547. Hon KEN TRAVERS to the Leader of the House representing the Premier:

In reference to the "Report on Consultants Engaged by Government for the Six Months ended 31 December 1997", page 1, under the heading "Ministry of Premier and Cabinet" -

What is, or was, the hourly fee paid to the following companies and individuals during the term of their consultancy contracts -

(a) Christine Glenister & Associates;

(b) Dover Consultants Pty Ltd;

(c) Gunn Sutherland;

(d) Jillian Mercer;

(e) Mark Smith, Signet Realty;

(f) Peter Fitzpatrick;

(g) Peter Rowe;

(h) Ross Hughes, Australian Property Consultants; and

(i) Ted Rowley & Associates?

Hon N.F. MOORE replied:

(a) $65.

(b) $95.

(c) $150/hour (45 hours/month) then $100/hour for hours in excess.

(d) $100.

(e) Not applicable (fixed fee to maximum of $9605.20).

(f) $80/hour plus incidentals.

(g) $65.

(h) $150.

(i) Not applicable (no hourly rate set, contract up to a maximum of $85,000 per annum)

CONSOLIDATED CONSTRUCTIONS PTY LTD - CONTRACT DETAILS

565. Hon KEN TRAVERS to the Minister for Transport:

(1) Have any agencies or departments under the Minister’s control awarded any contracts to Consolidated Constructions since July 1, 1996?

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

(a) the contract number;

(b) the date it was awarded;

(c) the project the contract was awarded for;

(d) the cost of the contract;

(e) if the contract has been completed, the final cost of the contract; and

(f) the names of any other companies who tendered for the contract?

Hon M.J. CRIDDLE replied:

Bunbury Port Authority

(1) Yes.

(2) (a) 8/9697.

(b) 15 April 1997.

(c) Design and construction of a 30 000 tonne storage shed.

(d) $1 960 000.

(e) Completed $1 987 865.

(f) Kerman Contracting.
Entact Clough.
Transfield.
Devaugh Pty Ltd.
Concrete Concepts.
Broad Construction Services.

Fremantle Port Authority

(1) Yes.

(2) (a) 254/97-54C97.

(b) 27 May 1998.

(c) Bulk Cargo Jetty, Kwinana - Storage and Handling Facility - Design and Construction 1300 tonnes per hour Import Conveyor.

(d) $3 330 000.

(e) $3 672 879.

(f) Barclay Mowlem Construction Ltd.
John Holland Construction & Engineering.
Kerman Contracting Pty Ltd.
GEC Alsthom Pty Ltd.
Cooperative Bulk Handling Pty Ltd.
Fluor Daniel Power & Maintenance Pty Ltd.

Main Roads Western Australia

(1) Yes.

(2) (a) 361/97.

(b) 5 November 1998.

(c) Bridge construction over Hill River, Cervantes-Jurien Road.

(d) $1 120 000.

(e) Not completed.

(f) Barclay Mowlem Construction Ltd.
Bocol Construction Pty Ltd.
MacMahon (WA) Pty Ltd.

and

(a) 702/96.

(b) 8 January 1998.

(c) Bridge Construction over Serpentine River, Karnup Road.

(d) $1 253 337.

(e) $1 327 192.

(f) Barclay Mowlem Construction Ltd.
Bocol Construction Pty Ltd.
MacMahon (WA) Pty Ltd.

MacMAHON HOLDINGS AND MacMAHON CONSTRUCTIONS PTY LTD - DETAILS OF CONTRACTS

583. Hon KEN TRAVERS to the Minister for Transport:

(1) Have any agencies or departments under the Minister's control awarded any contracts to MacMahon Holdings or MacMahon Constructions Pty Ltd since July 1, 1996?

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

(a) the contract number;

(b) the date it was awarded;

(c) the project the contract was awarded for;

(d) the cost of the contract;

(e) if the contract has been completed, the final cost of the contract; and

(f) the names of any other companies who tendered for the contract?

Hon M.J. CRIDDLE replied:

Main Roads Western Australia

(1) No contracts have been awarded to MacMahon Holdings or MacMahon Constructions Pty Ltd since July 1 1996. However, two contracts have been awarded to MacMahon Contractors (WA) Pty Ltd for this period.

(2) (a) 30/96.

(b) September 20 1996.

(c) Road and Bridge Construction, Beenup Mineral Sands Haulage Route, Sanson and Sabina Sections.

(d) $10 616 656.

(e) $11 405 656.

(f) BGC Contracting Pty Ltd.
Ertech Pty Ltd.
Henry Walker Contracting Pty Ltd.
Highway Constructions Pty Ltd.
John Holland Construction & Engineering.

and

(a) 335/97.

(b) October 14 1998.

(c) Road Construction, Eyre Highway, Fraser Range Section (Stage 2), 90.26 to 99.08 SLK and 118.00 to 139.46 SLK.

(d) $10 530 459.

(e) Not completed.

(f) BGC Contracting Pty Ltd.
Henry Walker Contracting Pty Ltd.
Highway Constructions Pty Ltd.

MAINLINE CONSTRUCTIONS - DETAILS OF CONTRACTS

589. Hon KEN TRAVERS to the Minister for Transport:

(1) Have any agencies or departments under the Minister's control awarded any contracts to Mainline Constructions since July 1, 1996?

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

(a) the contract number;

(b) the date it was awarded;

(c) the project the contract was awarded for;

(d) the cost of the contract;

(e) if the contract has been completed, the final cost of the contract; and

(f) the names of any other companies who tendered for the contract?

Hon M.J. CRIDDLE replied:

(1) No.

(2) Not applicable.

METROBUS, REDEPLOYEES' COSTS

641. Hon KEN TRAVERS to the Minister for Transport:

(1) What is the cost to date for salaries and other costs for the 403 redeployees of MetroBus still waiting for new positions?

(2) What is the cost per week for each of these employees awaiting redeployment?

Hon M.J. CRIDDLE replied:

(1) $7.7 million from 5 July 1998 to 30 November 1998.

(2) $880 per week which includes salary/wages, workers' compensation and superannuation, uniforms, protective clothing, training and administration.

LANDCORP/OCTENNIAL DEVELOPMENT, MT MINIM COVE

781. Hon J.A. COWDELL to the Minister for Finance representing the Minister for Lands:

(1) In regard to the LandCorp/Octennial Development at Mt Minim Cove, did Octennial holdings purchase a share in the containment cell areas from the Government or LandCorp?

(2) If so, on what date did the transaction occur and what was the cost of that purchase?

(3) If not, did Octennial Holdings have any ownership of any soil or property within that area other than Lot 416?

(4) What was the commercial rate for acceptance of -

(a) class 3 toxic waste;

(b) class 4 toxic waste; and

(c) class 5 toxic waste in 1995,

when the agreements were reached?

(5) How much of each different grade of waste from Octennial Holdings land has been placed in the containment cell?

(6) What is the commercial value to Octennial Holdings should they have had to take that waste to the only other available site for that waste at the time, Mt Walton?

(7) What would the transport costs of that waste be?

(8) What rate has Octennial Holdings actually been charged and what are the total costs to Octennial Holdings?

(9) What paper loss has been sustained by LandCorp, and therefore the Government, by not charging commercial rates for Octennial Holdings to dump toxic waste in Government land?

(10) How much public open space is Octennial Holdings giving up in the development plans for Minim Cove, Mosman Park?

(11) If that amount is not the full prescribed 10 per cent what amount will Octennial Holdings be paying to LandCorp in lieu of public open space?

Hon MAX EVANS replied:

(1) No.

(2) Not applicable.

(3) No.

(4) When agreements were reached in 1995 the environmental approval was for managing the waste material by on site containment. There was no approval at that time for disposing of waste material off site therefore commercial rates for off site disposal were not negotiated.

(5) There is no distinction made between different classifications of material as Octennial Holdings will pay the proportion, calculated by volume, which the quantity of any contaminated soil obtained from their land and placed in the Cell or now taken off site bears to the total quantity, calculated by volume, of all contaminated soil obtained from the Octennial land and the LandCorp land and placed in the Cell or now taken off site.

(6) Unknown.

(7) To establish meaningful commercial rates it would be necessary to specifically call tenders to transport wastes to Mt Walton. It can be advised that rates for transportation of wastes within the metropolitan area currently range from $9.00 to $14.00 per tonne, dependent on the type of material to be transported and the destination.

(8) Octennial Holdings will pay the proportion, calculated by volume, which the quantity of contaminated soil obtained from their land and placed in the Cell or now taken off site bears to the total quantity, calculated by volume, of contaminated soil obtained from the Octennial land and the LandCorp land and placed in the Cell or now taken off site. To date Octennial Holdings has paid $603 806 and lodged bank guarantees to the value of $453 000 to cover their share of works in progress.

(9) No loss has been sustained as Octennial Holdings has met their proportion of the costs.

(10) Approximately 3 100m² (subject to survey).

(11) If after the survey the above amount is not the full prescribed 10% then Octennial Holdings will be required to pay to LandCorp the current market value of any shortfall in public open space made up from LandCorp land.

QUESTIONS WITHOUT NOTICE

PAIRING ARRANGEMENTS

786. Hon TOM STEPHENS to the Leader of the House:

Will the Leader of the House give the House an unequivocal commitment to maintaining the pairing arrangements that operate in this House? Specifically, will he assure the House that pairs will not be cancelled in any circumstances without at least 24 hours' notice?

Hon N.F. MOORE replied:

What an extraordinary question. I have never known anyone from the coalition to cancel pairs. However, I know of an occasion on which someone from the Labor Party did. I was sitting opposite, where the Labor Party now sits, and the then Premier, Brian Burke, walked into this House as a result of an issue, called over the then government Whip and said that pairs were off as from that very minute. That is the only time I have ever heard of pairs being called off. I can give the Leader of the Opposition an absolute assurance that I will not be calling off pairs. I believe in the traditions of this House and I will abide by them. It is an insult to me that the Leader of the Opposition should ask that question.

FINES ENFORCEMENT LEGISLATION

787. Hon TOM STEPHENS to the Minister for Justice:

(1) Can the minister confirm that more than 4 000 people have had their drivers licences cancelled under the provisions of this Government's fines enforcement legislation?

(2) If yes, is he concerned that many of those people will be driving their cars without realising that their licences have been cancelled?

(3) Considering that jail is the last resort, is the Government concerned that people are being jailed for what might have been a minor penalty?

(4) Has the number of charges related to driving without a licence increased since the introduction of this legislation?

Hon PETER FOSS replied:

(1)-(4) A few assumptions are made in the question by the Leader of the Opposition. When I learned that there was an increase in the number of people in jail as a result of their driving without a licence, my immediate concern was that perhaps it was due to fines enforcement regulations. On inquiry I found that was not the case. The cause is twofold: First, there has been a considerable increase in the enforcement of traffic laws. I am not saying that has not changed. When I read this morning's newspaper I inquired whether that remained the case. The principal cause is people being caught on red light cameras with considerable regularity. That has caused a significant number of points being deducted from people's drivers licences. To some extent those people also tend to accumulate speeding points. The principal cause of these people losing their licences has been breaches of traffic laws.

Quite rightly, everybody would suggest that it is appropriate for somebody who continues to breach the traffic laws to lose his licence. That has happened more often with increased enforcement. I have raised the concern about the lack of alternatives to jail on the third offence with the Minister for Transport, who has indicated his support. The penalty is either a $1 000 fine - which most people cannot pay at that stage - or jail. The Government is looking at some form of community-based order as an alternative to jail and will introduce an amendment to the Road Traffic Act to allow that. The fines enforcement legislation is not leading to people being imprisoned, greater enforcement is. It is not surprising that the same people who lose their licences for continually flouting the speeding and red-light laws are the people who continue to drive after having their licences suspended. I recently visited a court where a woman was facing her fifth charge of driving without a licence and her umpteenth drunken driving charge, which is why her licence had been suspended. She was escorted to the train station after the court case and 15 minutes later she was seen back at the court picking up her car and driving off. Not surprisingly, at that stage the magistrate decided it was time for her to go to jail.

FEDERATION OF COMMUNITY LEGAL CENTRES WA

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

I refer to the question I asked on 2 December regarding consultation with the Federation of Community Legal Centres WA on legislation concerning the Legal Aid Commission. Precisely what consultation has taken place with the Federation of Community Legal Centres WA?

Hon PETER FOSS replied:

As I indicated at that time, I have not been conducting that consultation personally. If the member wants to know the level of consultation on what we should be doing and he places the question on notice, I will find out.

GANTHEAUME POINT TOURIST DEVELOPMENT

789. Hon GIZ WATSON to the minister representing the Minister for Lands:

In relation to tourism development at Gantheaume Point -

(1) Was the Government approached by any third party expressing developmental interests in the Gantheaume Point site prior to the calling for expressions of interest in the site?

(2) If so, by whom?

(3) What financial involvement does Richard Ellis Consultants have in the project?

(4) How many expressions of interest have been received for the 120 hectare site as a complete unit?

(5) How many expressions of interest have been received for a part of the 120 ha?

(6) What method has or will the Government use for community consultation?

(7) Has the Government received support from -

(a) the Shire of Broome;

(b) the Rubibi Aboriginal Working Group;

(c) the Broome Turf Club;

(d) the community?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Yes.

(2) LandCorp was contacted by Pearl Bay Resort Developments.

(3) CB Richard Ellis is a consultant to LandCorp.

(4) Two.

(5) Four.

(6) In addition to statutory consultation requirements, the Government will require broad community consultation.

(7) Support is not sought until development proposals are known. Community stakeholders were advised of the Government's intentions through a media statement made by the Minister for Lands in July 1998 following direct advice to (a), (b) and (c).

BENNETT HOUSE, DEMOLITION

790. Hon HELEN HODGSON to the Leader of the House representing the Premier:

In respect of the demolition of Bennett House by the East Perth Redevelopment Authority -

(1) Was Bennett House placed under the care, management and control of the Aboriginal Lands Trust for the benefit of Aboriginal people?

(2) Was the reserve on which Bennett House was located held for the benefit of Aboriginal people?

(3) Did the EPRA comply with the requirements of the Native Title Act?

(4) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) Bennett House was located on a reserve set aside for the purpose of "hostel" under the care, control and management of the Aboriginal Lands Trust.

(3)-(4) The East Perth Redevelopment Authority did not follow the procedures of the Native Title Act as the past development and usage of the land in the Bennett House area for public works is considered to have extinguished native title. Therefore, the Native Title Act does not apply.

TAFE COLLEGE ENROLMENTS, BUNBURY AND ALBANY

791. Hon MURIEL PATTERSON to the Leader of the House representing the Minister for Employment and Training:

How many places will be available for students enrolling for the first time in technical and further education colleges in Bunbury and Albany in 1999?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

At South West Regional College, Bunbury, 1 434 places are available for first-year full-time students, comprising -

Bunbury	1 127 places
Collie	90 places
Busselton	80 places
Margaret River	82 places
Manjimup	45 places
Harvey	10 places

At Great Southern Regional College, Albany, 772 places are available for first-year full-time students, comprising -

Albany	659 places
Katanning	61 places
Denmark	17 places
Mt Barker	35 places

In addition to the above, a smaller intake of new full-time students will take place in July 1999. The number of places will not be known until May 1999, but in past years several hundred additional places have been offered. It is expected that a similar number will be available in 1999.

PIER 21 SITE, FREMANTLE, DEVELOPMENT

792. Hon J.A. COWDELL to the Attorney General representing the Minister for Planning:

I refer to the article in *The West Australian* on 9 December 1998, page 63, concerning the Minister for Planning's decision to overturn a decision by the Fremantle City Council to veto a development proposal by the Lester Group Limited at the former Pier 21 site in North Fremantle. I ask -

(1) What were the Fremantle City Council's objections to the development?

(2) Why did the Minister for Planning reject these objections and uphold the developer's appeal?

(3) Will the Minister for Planning table all the relevant documents concerning the developer's proposal?

(4) If no, why not?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The City of Fremantle advised that its view was that the proposal did not comply with its local planning policy or with more general urban design and streetscape guidelines; that issues relating to the excessive scale, height, bulk and massing of the four-storeyed buildings adjacent to the foreshore had not been resolved; that the development did not comply with the plot ratio and residential planning code requirements relating to foreshore buildings; and that issues relating to the use of leases over foreshore land adjacent to the appeal site had not been resolved.

(2) Modified plans were prepared by the proponent as part of the appeal and these were referred to the city. These addressed some of the city's concerns, in particular reductions in the extent of the four-storeyed components of the buildings, increases in setbacks from the foreshore, and improvements to the appearance of the Corkhill Street elevation. These were acknowledged by the city to be improvements in respect of the city's concerns. Moreover, the proposal, although different in some respects, evolved from an earlier proposal, approved by the former Minister for Planning. The city has discretionary power to modify the standards of its town planning scheme but elected not to do so. Justification for exercising that discretion in the proponent's favour lies in the facts, among others, that the proposal will result in the removal of large, ugly, marine-industry buildings of approximately the same height as those proposed, the discontinuance of boat-building activities and a restaurant, the completion of a comprehensive, well-planned and designed residential facility in a strategic riverfront location, and it will increase and enhance public access to the foreshore.

(3) No.

(4) The proponent's plans are not public information. The minister's decision letter containing his reasons for the appeal determination is available from the city. Reports and other procedural information are available by way of requests through the freedom of information legislation.

PRISON MUSTERS

793. Hon JOHN HALDEN to the Minister for Justice:

What are the current muster numbers for the following prisons -

(a) Casuarina Prison;

(b) Canning Vale Prison;

(c) C.W. Campbell Remand Centre, Canning Vale;

(d) Broome Regional Prison; and

(e) Eastern Goldfields Regional Prison?

Hon PETER FOSS replied:

I thank the member for some notice of this question. As at 16 December 1998 -

(a) 528;

(b) 330;

(c) 169;

(d) 112; and

(e) 103.

MURDOCH UNIVERSITY, PENGUIN STUDY

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

(1) Has the Murdoch University study on the impacts on the penguin colony of the proposed Port Kennedy marina, which is part of the Port Kennedy Development Agreement Act monitored by the Ministry for Planning, been completed?

(2) If yes -

(a) Did the study indicate that the proposed marina would have a severe impact on the whitebait in the area on which the penguins feed?

(b) Will the minister table a copy of the report?

Hon PETER FOSS replied:

(1) The Department of Environmental Protection has advised that the objective of the fisheries and penguin study is to provide adequate baseline data to assist in the development of the environmental impact assessment, but is not an environmental impact study in itself. The proponent has advised that the Murdoch University study has been completed but the steering committee recommended additional investigations to assist in understanding the possible implications of the proposed Port Kennedy marina on the penguin colony. The additional studies are being undertaken and Murdoch University continues its involvement.

(2) (a) No. The DEP has advised that since the marina design is still being finalised, no assessment of the impacts of the marina on the whitebait resources or penguin population can be or has been undertaken to date.

(b) No. Tabling a copy of the report would be premature at this stage. The proponent has advised that the results of the studies will become public as part of the public environmental review process.

GOODS AND SERVICES TAX, VOLUNTEER FIRE BRIGADES

795. Hon TOM HELM to the Minister for Finance:

In answer to question without notice 745 on the goods and services tax last week, the minister said, "If a non-profit body such as a charity has an annual turnover in excess of $100 000, it will be required to register for GST purposes. It will have to pay GST on most of its purchases, but will be able to claim full input tax credits. This means that purchases by charitable organisations registered for GST purposes will be effectively tax free." I now ask -

(1) Given that the volunteer fire brigades do not pay sales tax or other taxes, what other input taxes could they claim?

(2) Will organisations such as the volunteer fire brigades have to pay GST and then claim it back?

(3) Will those organisations pay GST if a private-enterprise organisation purchases that equipment in competition?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I should have taken your advice, Mr President, on the GST question and ignored it. However, we are becoming involved in federal matters on a GST which even legislation has not -

Hon Tom Helm: Those are state organisations.

Hon MAX EVANS: I will answer the question; keep calm.

Hon N.D. Griffiths: You sold out Western Australia.

The PRESIDENT: It seems that members do not want to hear the answer.

Hon MAX EVANS: The answer is -

(1) Input tax credits will be available on the GST component of purchases by the volunteer fire brigades registered for GST purposes.

(2) Yes. The GST will be included in the price of most purchases by volunteer fire brigades, but the supplier of those purchases or inputs will have to collect and remit the GST to the Australian Taxation Office. Registered volunteer fire brigades will claim back the GST component of their purchases when they lodge their GST returns.

(3) If a private-enterprise organisation purchases equipment and then donates it to a volunteer fire brigade, the private-enterprise organisation will have to pay GST on the equipment and will not be entitled to an input tax credit. However, the volunteer fire brigade will not have to pay GST on the donated equipment.

As indicated in my previous answers to Hon Tom Helm, sales by voluntary or charitable organisations of donated second-hand goods and other goods or services sold for less than 50 per cent of their tax-inclusive market value will be GST free.

SECOND LIGHT-AIRCRAFT LANDING STRIP

796. Hon RAY HALLIGAN to the Minister for Transport:

(1) Have there been any proposals to build a second light-aircraft landing strip in the area immediately north of the Perth metropolitan area?

(2) If so, how far has this proposal progressed and what parties are involved?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) Five years ago a proposal was being examined to locate the second general aviation aerodrome in the northern suburbs. Following the examination of a number of sites, three sites within the former City of Wanneroo were short- listed, with a preferred site being located at Nowergup.

(2) In June 1996 my predecessor, Hon Eric Charlton, issued a media statement that following a review by a three-member task force of the North Metropolitan Region parliamentarians, there was a unanimous recommendation that the Nowergup site be ruled out. The minister went further and in a newspaper advertisement in the *Wanneroo Times* on 13 June 1996 advised that no site options within the boundaries of the City of Wanneroo would be considered for potential development of a general aviation airport.

BUS CIRCLE ROUTE, MORLEY-STIRLING-FREMANTLE

797. Hon CHERYL DAVENPORT to the Minister for Transport:

The document titled "Time on Our Side" states -

> The Government will . . . . extend the Circle Route linking Morley, Stirling and Fremantle to include QEII Medical Centre, Shenton Park Rehabilitation Centre, Fremantle Hospital and St John of God Hospital Murdoch. Links to seniors residential centres are also anticipated;

(1) When will this extension be effected?

(2) How will the links to seniors' residential centres be implemented ?

(3) Is this provided for in the 1998-99 Budget?

(4) If so, what is the cost?

(5) If not, in which budget year will it be provided?

(6) What is the estimated cost?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) The circle route will be completed in the first quarter of 1999.

(2) The circle route improves services to seniors' residential centres located on that route, and is currently providing an improved service to Swan Cottage Homes and nearby Rowethorpe Uniting Church Homes. As seniors' residential centres are generally located close to public transport routes, residents from these centres will be able to link into the circle route as it intersects with a large number of other bus routes and also includes a focus on linking with train services.

(3) Yes.

(4) $5m per annum.

(5)-(6) Not applicable.

CORPORATE CREDIT CARD, AGRICULTURE WA OFFICER

798. Hon LJILJANNA RAVLICH to the minister representing the Minister for Primary Industry:

I refer to the instance of non-compliant use of a corporate credit card by an Agriculture WA officer that was raised in question 439 -

(1) What was the government credit card used for in this instance?

(2) What was the total cost involved?

Hon M.J. CRIDDLE replied:

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

(1) Incorrect use for travel purposes while on agency business and purchase of goods.

(2) $1 600 approximately; however, investigations are continuing. The matter will be referred to the Anti-Corruption Commission when internal investigations are completed.

REGIONAL FOREST AGREEMENT, FORMAT OF REPORT AND MEDIA RELEASES

799. Hon CHRISTINE SHARP to the minister representing the Minister for the Environment:

(1) When presenting the Regional Forest Agreement report and the accompanying media releases, will the minister guarantee that all the relevant information is set out clearly and transparently? In particular, will the minister guarantee that the total areas for each of the following forest type categories will be set out in a clear, understandable format -

(a) original forest area;

(b) remaining old-growth forest;

(c) remaining old growth in genuine reserves - national parks, nature reserves and conservation parks;

(d) remaining forest within travel, river and stream zones and other non-statutory reserves that has been accredited by the RFA as part of the conservation reserve system?

(2) Will the minister also ensure that in any discussion of current and past RFA protected areas a clear distinction is made between -

(a) old-growth forest, regrowth and non-forest?

(b) forest in genuine conservation reserves and forest in non-statutory reserves?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1)-(2) The Regional Forest Agreement will present the data pertaining to forest areas in line with the definitions contained in the nationally agreed criteria for the establishment of a comprehensive, adequate and representative forest reserve system.

NOONGAR LAND COUNCIL, REPORT CLAIM

800. Hon GREG SMITH to the Leader of the House representing the Premier:

The Noongar Land Council has today claimed that a report prepared by government members in regard to native title issues is inaccurate. Is the Noongar Land Council correct in its assertion?

Point of Order

Hon TOM STEPHENS: The minister was asked for an opinion. As you, Mr President, have consistently ruled that such questions are out of order, I ask that you do so on this occasion.

The PRESIDENT: Did the member ask whether an assertion was accurate?

Hon GREG SMITH: I asked whether the Noongar Land Council is correct in its assertion.

The PRESIDENT: A statement made by somebody is a fact or not a fact. The question is not asking an opinion.

Questions without Notice Resumed

Hon N.F. MOORE replied:

I thank the member for some notice of this question. The first assertion is that the area of the State subject to the scheduled leasehold interests covered by the provisions in the Bill is unknown. The response is that the maximum extent of the scheduled leasehold interests defined in the commonwealth Native Title Act in Western Australia is 0.6 per cent of the State. This is the maximum figure and it is expected to be reduced as additional historical tenure searches are completed. This is

because many historical leaseholds have been converted to freehold title. The second assertion is that the Native Title (State Provisions) Bill has not been the subject of extensive consultation with interest groups. The correct situation is that the Government's draft Bills were made available for public comment between 18 August and 19 September 1998 and were amended as a result of comments received. All interest groups were sent copies of the draft Bills, and officers of the Ministry of the Premier and Cabinet were available to meet with any interest group to explain the Bills and discuss concerns.

The third assertion is that native title is not creating a flow of Australian development and exploration expertise offshore. The response is that native title has been identified as one of the most significant issues that is causing Australian companies to increase overseas exploration expenditure at the expense of local expenditure. The shift in so-called greenfields exploration expenditure overseas means there will be less chance of new discoveries in Western Australia in the years ahead. Today's developments are based on discoveries made 10 to 15 years ago in many cases. The fourth assertion is that native title has not prevented the release of badly needed residential blocks in regional Western Australia. The response is that the delays in the release of residential and commercial land in regional centres such as Karratha, Kalgoorlie, Port Hedland, Kununurra and many smaller towns is due entirely to the unworkable commonwealth Native Title Act regime and the refusal of claimants to negotiate. The State Government always ensures that heritage issues are addressed before development proceeds. It is totally false to accuse the State of not using the NTA procedures to resolve matters. In nine cases, the State has lodged section 35 applications under the commonwealth Native Title Act; a further 12 cases have been resolved by agreement; and seven cases have been resolved by claimants excising the development area from the claim.

ILLEGAL FISHING

801. Hon KIM CHANCE to the minister representing the Minister for Fisheries:

Can the minister now provide an answer to the question that I asked last week about the Auditor General's report? The question was -

Is the Minister for Fisheries aware that the Auditor General's twelfth report identifies instances of illegal fishing, which are recorded in data held by the Fisheries WA's catch and effort statistical system but which have never been corrected nor used as a basis for prosecution by the department? If so, will the minister explain what actions he will now take to ensure that identified breaches of the law are properly investigated by the appropriate agency?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question. The Minister for Fisheries is still considering the report. If the member will put the question on notice, he will be provided with an answer.

SUPPLEMENTARY FUNDING FOR TOURISM COMMISSION

802. Hon KEN TRAVERS to the Minister for Tourism:

Can the minister explain why the Western Australian Tourism Commission received supplementary funding of $142 000 for the chief executive's salary in 1996-97?

Hon N.F. MOORE replied:

Interestingly, this question is the same as the question asked by Hon Tom Stephens today, and the answer is the same as the answer that I would give to Hon Tom Stephens today.

I thank the member for some notice of this question. The Western Australian Tourism Commission did not receive supplementary funding for the chief executive's salary. In the past, the chief executive's salary was funded via the Salaries and Allowances Act, and other statutes, and in 1996-97 this was transferred to the WATC consolidated budget.

COUNCIL OF OFFICIAL VISITORS

803. Hon BOB THOMAS to the Leader of the House representing the Premier:

With regard to a letter written by Mr Mal Wauchope of the Ministry of the Premier and Cabinet, dated 4 December 1998, advising that government officers who are employed as visitors by the Western Australian Health Department's Council of Officials Visitors were not to be remunerated, I ask -

(1) How many visitors are employed by the Council of Official Visitors?

(2) How many of those visitors will be affected by this ruling?

(3) How many of those visitors who will be affected are in part-time employment with another government agency?

(4) Will the Government consider changing this policy to allow part-time government employees to be paid for their work as visitors, in the same way as retired or private sector employees are remunerated?

(5) What was the original purpose behind this policy which prohibits government employees from being remunerated for their work as official visitors?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(3) On the basis of information provided by Mr Stuart Flynn, Head, Council of Official Visitors, 18 visitors are appointed to the Council of Official Visitors. Of these, three are government officers, one of whom works in a part-time capacity.

(4)-(5) The relevant policy was introduced in 1982 to cover all government officers appointed to government boards and committees and is not restricted to government officers appointed as official visitors. This policy has been confirmed on several occasions in the intervening period following review.

BRENNAN CASE, DUGGAN CHARGE

804. Hon MARK NEVILL to the Attorney General representing the Minister for Police:

In respect of the Brennan car/drugs case and the 4 x 4 wheel Pajero stolen from Brisbane, why was not Mr N. Duggan charged with fraud for selling the 4 x 4 wheel Pajero to Mr R. Brennan?

Hon PETER FOSS replied:

I do not seem to have that question; I will inquire where it is.

SWANBOURNE PRIMARY SCHOOL, RELOCATION

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

In relation to the Minister for Education's decision to relocate Swanbourne Primary School, I ask -

(1) Has the Premier been invited to meet with local residents and the Claremont Town Council to discuss this matter?

(2) If yes, has the Premier responded to the invitation?

(3) If yes to (2), when? If no, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) The Premier has received a number of letters from Swanbourne residents regarding the relocation of Swanbourne Primary School.

(2)-(3) The Minister for Education has the responsibility for the provision of educational facilities throughout the State. The Premier understands that the minister has met with the staff and parent groups at the school. At these meetings all issues relating to the location of the school were discussed. These meetings indicated that there was strong support for the concept of relocating the school. The Minister for Education is also a local member for the Swanbourne area, and specific electorate concerns regarding Swanbourne Primary School should be directed to him.

BANDYUP WOMEN'S PRISON, MOVEMENT OF PEOPLE TO NYANDI

806. Hon GIZ WATSON to the Minister for Justice:

In respect of overcrowding at Bandyup Women's Prison, I ask -

(1) Will more than the 22 women and concomitant staff numbers be moved to Nyandi to try to alleviate, on a temporary basis, what still remains as severe overcrowding at the Bandyup Women's Prison facility?

(2) If yes, when?

(3) Has the minister considered allowing non-violent remand prisoners who have not yet been sentenced to be placed on home detention for the coming hot weather?

(4) Will the minister indicate what sort of appropriate prerelease programs will be provided at Nyandi for inmates at this temporary facility?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The Ministry of Justice is considering options for increasing prisoner numbers at Nyandi beyond 22 but this will depend upon the number of minimum security female prisoners suitable for this placement and the muster at Bandyup Women's Prison.

(2) This has not been determined.

(3) Home detention for unsentenced prisoners is a condition of bail and as such falls entirely within the jurisdiction of the courts.

(4) Prisoners at Nyandi will have access to the same range of prerelease programs as provided for at Bandyup, dependent upon their individual needs and eligibility. These include access to home leave, work release, section 94 activity programs, educational and developmental programs.
