WESTERN AUSTRALIA

Parliamentary Debates
(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1999

LEGISLATIVE COUNCIL

Wednesday, 26 May 1999

Legislative Council

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

CITY OF ALBANY

Petition

Hon Norm Kelly presented the following petition bearing the signatures of 490 persons -

> To the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned residents of Western Australia, request an appropriate Committee of the Parliament to examine the following issues of community concern in regard to the City of Albany:-
>
> i) Albany Foreshore Development
> ii) Rainbow Coast Waste Management Services
> iii) Disposal of Used Tyre Dump
> iv) Administration of Councils Town Planning Schemes
> v) Minutes & Records of Meetings
> vi) Valuations for Leases and Rating of Council & Private Property
> vii) Engagement of Consultants
> viii) Regional Saleyard Development
>
> Your petitioners respectfully request that the Legislative Council will, as a matter of urgency place these matters before an appropriate Committee of the Parliament in order that the unity of the first elected Council of the City of Albany may not be jeopardised by these community concerns remaining unresolved.
>
> And your petitioners as in duty bound, will ever pray.

[See paper No 1080.]

STANDING COMMITTEE ON CONSTITUTIONAL AFFAIRS

Petition Regarding the Actions of the City of Fremantle Concerning Ocean View Lodge

Hon M.D. Nixon presented the thirty-fifth report of the Standing Committee on Constitutional Affairs in relation to a petition regarding the actions of the City of Fremantle concerning Ocean View Lodge, and on his motion it was resolved -

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

[See paper No 1081.]

ORDERS OF THE DAY

Rearrangement

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [4.04 pm]: I move -

> That motion No 4 be taken before motion No 1.

We have already dealt with crayfish and milk, and now it is time to deal with wine. Even though we have the order wrong, it is an appropriate time now to start on wine. There are two motions on the Notice Paper with respect to wine. The management committee met last Thursday, and it was agreed that we should proceed to deal with them. It was the intention to deal with them concurrently. However, I understand that is not possible under the standing orders. Therefore, I have moved that we deal firstly with motion No 4. In the event that any members wished to add anything to motion No 4 which perhaps is not reflected in that but is reflected in motion No 6, they could move an amendment to that effect if they so desired. However, it is the intention to deal with motion No 4 and hopefully send a strong message to the Federal Government on that matter.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.05 pm]: Members will note that this motion has the effect of dislodging immediate consideration of motion No 1. It is important to the Labor Opposition that motion No 1 be dealt with expeditiously. Although I have some reservations about proceeding down this path suggested by the Leader of the House right now, I do so in recognition of two things. Firstly, the Labor Party in the Legislative Assembly moved a motion of the sort to be discussed, and it has already been carried with the support of the Government in the Assembly. That motion was dealt with expeditiously in the Assembly. I hope that members in this place will deal with this motion expeditiously. I hate to think that this will become a filibustered motion which will prevent the House's consideration of other important items. Secondly, I am disappointed that the Leader of the House has chosen to deal only with motion No 4. The House is master of its own destiny, and if the House were to give leave for cognate debate of motion No 4 and motion No 6, it is of no concern to anyone else how these motions are dealt with.

Hon N.F. Moore: Subject to the standing orders.

Hon TOM STEPHENS: No. As we have always been told by the presiding officers, the House can do whatever it likes, whenever it likes, by leave. In that circumstance, I am surprised that this motion is being dealt with in this manner. It was dealt with in a bipartisan manner in the Legislative Assembly. It is a pity that approach is not being adopted on this occasion.

The PRESIDENT: Before I put the question, I make one comment because the Leader of the Opposition referred to statements made by presiding officers. The House can suspend its standing orders for proper purposes - perhaps the Leader of the Opposition was taking a little latitude when he said to do what it likes. I say no more in that regard. I just do not want other members to think that we can do anything at any time. The other point is that it would not be possible to deal with motion No 4 with motion No 6. Although the House can suspend its standing orders, it cannot produce motions that are in effect a nonsense. I assume that that is why the Leader of the House said that if members do not like motion No 4 in its present form, it is subject to amendment. I will therefore put the question that motion No 4 be taken before motion No 1.

Point of Order

Hon TOM STEPHENS: As I understand it, the House can, with leave, do whatever it chooses, and if the House chose by leave to grant consideration of motions 4 and 6 together, if leave had been sought, leave could be granted. As I understand it, that would be sufficient for it to proceed.

The PRESIDENT: I would have to warn the House that in treating both motions together, it might in fact be dealing with a nonsense where there were clearly conflicting matters. The principle, from what I read, is basically the same. I say again to the House that no doubt that is the reason that the Leader of the House said that in dealing with motion No 4 first, it is able to be amended, and no doubt could be made to take into account issues raised in motion No 6. However, that is a matter for the House.

Question put and passed.

WINE TAX

Motion

HON BARRY HOUSE (South West) [4.10 pm]: I move -

That the Western Australian Legislative Council recognises that -

(1) Most of Western Australia's wineries are small wineries, producing approximately 25 per cent of Australia's premium wines, and are a vital part of the State's small business, tourism and export sectors.

(2) The Federal Government's intention to tax wine on an "ad valorem" basis will severely impact on most of the grape growers, wineries and associated industries in Western Australia.

(3) And requests that the Federal Government amend the tax package, to tax wine on a "volumetric" basis to provide equity across the industry.

(4) And urges all Western Australian representatives in the Federal Parliament to oppose the "ad valorem" wine tax in favour of a "volumetric" tax to demonstrate support of the successful and emerging wine tourism industry in this State.

I look forward to dealing with this matter expeditiously, and also to supporting the motion to be moved by Hon Christine Sharp which is on the Notice Paper when it comes before the House. I thank the House for bringing this matter forward. It is important that it be dealt with as soon as possible. I am sure all members are aware of the current debate on the federal scene involving the future taxation system that will be used in this country. Bound up in that taxation system is the way that products such as wine are taxed, or will be taxed in the future. The shape of that taxation system leading into the future will be determined in the next few weeks. From my point of view, and from that of virtually every Western Australian, it is important that the message that the system of taxing wine must be changed is put strongly to our federal representatives. The Senate is considering it now, with discussions principally between the Federal Government and the Australian Democrats. We hope that they can resolve the matter in a positive way.

I know that most members in this Chamber have a keen interest in wine matters. Besides being a consumer, I also have a keen interest from the point of view of my constituency. With my electorate office being based in Margaret River, I am surrounded by some of the world's premium wine growing areas. It is a vital industry to that part of the world and also to other parts of Western Australia. In July last year, I made representations to many of my federal coalition colleagues when the taxation package was being formulated on the federal scene. I wrote letters to a variety of people, including the Prime Minister, the Treasurer, the Minister for Finance and other federal representatives, asking them to consider earnestly the way that wine was taxed at that stage and to consider the proposed changes which would benefit the industry in Western Australia. I made those representations following discussions I had with people involved in the wine industry in Western Australia, principally the Margaret River wine growers, the Western Australian Wine Industry Association, Denis Horgan from Leeuwin Estate, Bruce Tomlinson and others. At that stage I was seemingly unsuccessful because the wine equalisation tax, as it was proposed in the federal coalition's tax package, would continue the current system of taxation on an ad valorem basis, rather than a volumetric basis. It was disappointing at the time. We lost the battle, but I do not consider that we have lost the war. At the end of the day, if we can have some small impact on the future of the way that wine is taxed, it will be a victory for all Western Australians.

I am encouraged by recent support from the Premier who has lobbied the Prime Minister and other federal representatives. As mentioned by the Leader of the Opposition, a motion in the other place had cross-party support. A similar motion was supported by all parties in the Tasmanian Parliament. I am also encouraged by the response to the motion which I circulated to all Western Australian federal parliamentary representatives, not just my party's parliamentary representatives. I have received responses from many of them indicating their support. The Western Australian Wine Industry Association has also started to lobby the Federal Government and the decision makers quite heavily.

It is worth pointing out the nature of the wine industry. It is in two parts: The alcoholic beverage industry and the fine wine business. The alcoholic beverage industry is primarily concerned with producing cask wine. Mr President, you would know the stuff - a bladder in a box. It has many unflattering names such as chateau cardboard. That accounts for 64 per cent of Australia's domestic wine sales. It accounts for only 1.6 per cent of Australia's wine exports. They are critical figures. The totality of that production is in the hands of 20 companies Australia-wide which produce about 98 per cent of Australia's wine. The other part of the wine industry is the fine wine business. Over 900 small producers are involved in the fine wine business. There was a figure of 914 small wine growers, but I will not put an exact figure on it because small producers are popping up every day in the south west of Western Australia. The fine wine business is involved with producing bottled wine - premium bottled wine for the most part. It is involved with other aspects of the industry; that is, offshoots such as restaurants, tourism, galleries and a host of other ancillary activities.

The taxation system, as it currently exists on an ad valorem basis, significantly benefits one sector of the industry to the detriment of the other. The alcoholic beverage industry has benefited, not the fine wine industry. The purpose of advocating a change in the system of taxation is to bring about not only some simplicity in administration, but also some equity. I will cite some figures to illustrate the two different parts of the industry. The 20 largest wine producers in Australia produce 782 100 tonnes of grapes; that represents 98.2 per cent of the total volume. The costs of this current ad valorem tax system must be demonstrated. Currently, the tax paid on a litre of cask wine is 74¢; on bottled wine in comparison, it is $3.23. If we convert that figure to per tonne of grapes, $518 per tonne of grapes is paid on cask wine and $2 216 per tonne is paid on bottled wine. That illustrates the skewed taxation system which severely penalises the bottled wine industry. I have a range of figures but I will not start at a $5 bottle of wine because none of us would drink a $5 bottle of wine! For a 750 millilitre bottle of wine worth $10, the tax paid is $2.30; for one worth $20, the tax paid is $4.60; for one worth $30, it is $6.90; and for one worth $40, it is $9.20. The cask equivalent for 750 ml of wine is 55¢. That illustrates that the tax on bottled wine is much higher than that on cask wine; in fact, the tax on bottled wine exceeds the cost of the grapes. That is sacrilege to those of us who like a decent drink of wine.

The costs of the current ad valorem tax system can be summarised as being inequitable. It is unfair on small producers; it is a tax on quality; and it is a tax on excellence. There are also health aspects to which I will refer in a moment. If we changed to a volumetric basis, it would bring it into line with the way in which beer and spirits are taxed in this country, which seems logical to me. The consequences first of all on the Western Australian wine industry will be severe. The Western Australian wine industry consists entirely of small wineries with the exception of two of the big players that have bought into it: Southcorp Wines Pty Ltd has an interest in Devil's Lair Vineyard in Margaret River and BRL Hardy Ltd has a 50 per cent interest in Brookland Valley Vineyard. They are the only two major players.

Hon N.F. Moore: And Houghtons.

Hon BARRY HOUSE: In the scheme of things Houghtons is concerned primarily with producing premium bottled wine. Incidentally, Southcorp and BRL Hardy are also in these operations in Western Australia. It is only on the riverland in South Australia, Victoria and New South Wales, particularly South Australia, where there are mass plantings of vineyards which aim purely at the volume market.

As I mentioned, the value added aspect of the Western Australian wine industry - and we should be promoting value-added products - through its restaurants, wine tourism, galleries and a whole range of other activities, attracts large investments and there is a multiplier effect throughout the economy. In fact, the first national wine tourism conference was held in Margaret River last year. To highlight the point Mr Ian Sutton, the chief executive of the Wine Federation of Australia, said -

> The stark reality is that if many small winemakers do not add to their income stream by offering tourism facilities, they may cease to exist.

That was a very apt comment. Those activities not only add to the economy of Western Australia, particularly in places like Margaret River, Mt Barker and the Swan Valley, but also to the fabric of the community; they play a vital role and have an enormous impact on the industry. Margaret River, for instance, has attracted the next international wine tourism conference in the year 2001. That is a very significant achievement.

I have seen a little of some of the other wine growing areas in Australia and I think the sentiment is shared among the bulk of small wine producers in the Yarra Valley in Victoria, for instance. South Australia is an interesting case. The South Australian wine industry is dominated by the big players but there are many more small wine producers than large producers producing wine for the premium bottled market in that State. Therefore, there is a real school of thought in the wine industry that it is not fully supporting its own producers. In Tasmania, for instance, the motion fully indicates that State's support. If the system is not changed it will place all that in jeopardy.

The health effects are another aspect that must be considered. As I mentioned previously, 64 per cent of the large players' production goes into cask wine. The vast majority of that is consumed locally in large part by many young people and by many other groups wherein alcoholism basically becomes a problem. We all know of those groups that exist in our society. Promoting cheap wine through not taxing that sector of the industry very highly is adding to the availability of cheap alcohol in those areas and worsening the problem.

In summary, Mr President, the case for a volumetric tax is overwhelming and indisputable. The case is for equity across the industry so that all producers are taxed on the same basis. There is a case for equity as, from a parochial point of view, the Western Australian wine industry consists entirely of small wine producers. There is a real case for regional and rural development as that is where development in Western Australia is occurring. If one looks at other parts of Australia the

same argument applies. There is certainly a case for encouraging quality and excellence. That has been a very impressive part of the development of the Western Australian wine industry in the south west which is aimed at producing quality wine and, as a result, has gained an international reputation. I reiterate the health aspects that I mentioned previously.

I applaud the roles played by a few people in this debate, for instance Bruce Tomlinson from Lenton Brae Vineyards who has been a relentless campaigner for a change in the taxation system to reflect equity across the industry. Denis Horgan from Leeuwin Estate has taken a high profile in recent days to lobby the decision makers at the federal level. Conor Lagan from Chateau Xanadu Winery was the former president of the Margaret River Wine Industry Association and is still an active campaigner. The Margaret River Wine Industry Association headed by David Moss, the current president, has consistently advocated this line for some time as has the Western Australian Wine Industry Association through its president, Bill Mackey. A couple of weeks ago Michael Wright from Voyager Estate very clearly illustrated to me the impact of the tax on his business; it is staggering. If the industry cannot carry that sort of tax, and a day may come when it is not able to carry the weight of that type of taxation, many businesses will be in trouble. Many of our Western Australian federal representatives have worked very hard. I consider the case to be overwhelming for the federal decision makers to change the system of taxation on wine from an ad valorem system based on price to a volumetric system consistent with beer and spirits. I commend the motion to the House.

HON KIM CHANCE (Agricultural) [4.28 pm]: I support the motion. It has already been indicated by the Leader of the Opposition that this would be the Australian Labor Party's position. Hon Barry House has so accurately described the situation that there is no reason for me to go into it at any length. I remind members of an observation made by Hon Murray Nixon last year when he said very accurately that the wine industry, along with the cattle feedlot industry, is the leading value-adding industry in the field of rural commodities. We must give special weight to that observation. I join with other members of the Western Australian Parliament in reminding our colleagues in Canberra that the success of value-adding industries will always depend on at least an even-handed approach on taxation issues.

So often we have had difficulties with the emergence of value-adding industries, particularly those in regional areas, which have been set back as a result of federal taxation initiatives. One mentioned quite often in this place is the fringe benefits tax. Whatever our view of the outcomes of the fringe benefits tax, it would be difficult for anyone to argue that its impact on regional areas has not been negative; we can argue only about the degree of negativity.

One activity has revolutionised industry in the south west and, in so doing, has provided some very significant and very well-paid, skilled and semi-skilled employment opportunities, both directly in the wine industry and its spin-off industries, such as packaging, tourism and hospitality. Tourism in particular and most obviously has benefited greatly from the presence of the wine industry in the south west and - I do not think we should forget - the Swan Valley as well. I will put in a personal plug for the mid west. A winery has been established in the mid west at the Chapman Valley. I believe it is going along quite successfully. It has connections with the Pederick family, who are well known in the Wagin area and also as wine growers in the Margaret River area. I certainly wish them every success.

Hon N.F. Moore: There is one at Toodyay as well.

Hon KIM CHANCE: Indeed there is, which is much closer to my home. Old maps which detail land use and which were originally printed at about 1920 show Kellerberrin as a wine producing area. The remains of the vineyard are still observable in the foothills of the Kellerberrin Hills.

Several members interjected.

Hon KIM CHANCE: I do not know how good the wine was but I believe it was quite successful. The property remains intact as it was and the cellar is still under the house, which is now owned by the McWhirter family.

I am particularly concerned for the future of the low-volume producers in the event that the range of adverse tax measures cannot be modified in the manner suggested in paragraphs 3 and 4 of the motion. As Hon Barry House observed, these low-volume producers are the whole basis of the Western Australian industry. They produce almost exclusively premium bottled wine. This product will quite obviously be hardest hit by an ad valorem rather than a volumetric tax. I am concerned that the wine equalisation tax is to be set at such a high level of 29 per cent. I am told by industry sources that if one calculates that out to a wholesale sales tax equivalent, it equates to a 12 per cent increase in wholesale sale tax, which is very significant indeed.

Our colleagues in Canberra when going about their onerous duties must be reminded sometimes by State Parliaments that they need to look to the regions and the way in which regions can be expected to flourish or, in some cases, simply to survive. This industry, along with the dairy industry, has been the life blood of the south west in its regional sense. It is not generally a stand-alone industry, which in a sense the dairy industry is, because it has drawn with it a number of other industries, most notably tourism. I am concerned that perhaps this motion is not broad enough, because I am also worried about the potential loss of wholesale sales tax exemptions on cellar-door sales and sampling. I hope that our federal colleagues look at the whole question of the wine industry.

Hon Barry House: I still think they would rather have that as a fall-back position and basic method of taxation.

Hon KIM CHANCE: I did not want to deviate from the primary focus but I wanted to note that there are other aspects of the taxation effect on the wine industry than this, although clearly the offset between ad valorem and volumetric tax is the key issue.

HON MURRAY MONTGOMERY (South West) [4.35 pm]: Hon Barry House gave a fair summary for one of the

premium wine producing areas, Margaret River. He also indicated that there were other wine producing areas across the State. It is only fair to say that I have a personel interest in the great southern region. However, at the same time, across the board the industry will be affected greatly by the suggested tax. Hon Kim Chance certainly summed up that in his view of the additional tax that would be paid out.

A few weeks ago Mark Vaile, the federal Minister for Transport and Regional Development, came to Western Australia. One of his ports of call was Margaret River. He talked with Denis Horgan, Conor Lagan, Tony Devitt and Terry Hill, along with representatives from the minister's office. Hon Monty House was accompanied Hon Dexter Davies and me. Denis Horgan expressed in unequivocal terms that such a tax would have a large impact on the smaller wine producers in this State. The wine industry directory shows Western Australia has 183 wine producers according to Australian Bureau of Statistics figures. That is an increase from 1994 of 53 producers. It is interesting to note that New South Wales producers have also increased at a fairly rapid rate from 170 in 1994 to 241 at present. Other States' wine producers have similarly increased. Over the past six years to which I referred, 40 000 hectares of wine grapes have been planted through new investment.

Hon Bob Thomas: Is that Australia-wide?

Hon MURRAY MONTGOMERY: Yes. It equates to about $1b of new investment. The number of jobs that investment creates is huge because the wine industry is very labour-intensive. The proposed ad valorem wine tax has made growers look to see where they can go to earn extra dollars. As has been said, people have gone into the tourism industry. The wine export industry has really held up, particularly with exports to Asia, which have been the thrust. There are dollars to be made in Asia. At the same time, one must develop a local market and produce a quality product so that buyers come to the wineries.

Wine production is decentralised and creates development in regional Western Australia, even as far as Geraldton and beyond. There will be opportunities to plant wine grapes in other regions. Western Australia produces only 2.4 per cent of Australia's grape crop. Although a lot of plantings are occurring in this State, the big players are in South Australia, Victoria and New South Wales, and they call the tune. The Federal Government has listened to the big 20 corporations - if members prefer they can pull the number down to 10 - which produce the bulk of Australia's wine. While those 20 corporations produce 98 per cent of Australia's wine, Australia produces less than 2 per cent of the world's wine. Even though we believe that we produce a lot of wine, in world terms we rate around tenth or eleventh among the countries that produce wine.

Western Australia produces 23 to 25 per cent of Australia's premium wines. We market our wines, and do very well out of them. However, as Hon Barry House explained, the proposed wine tax will give an unfair advantage to bulk wine producers. Western Australia is trying to ensure that the Federal Government takes notice and replaces the ad valorem tax with a volumetric tax. That will be in the best interests of all small wine producers in Australia.

HON J.A. SCOTT (South Metropolitan) [4.43 pm]: This is a timely motion in more ways than one. The introduction of an ad valorem tax will put the Western Australian wine industry at some risk. Hon Christine Sharp wanted very much to speak on this debate but is ill today. She passed on some correspondence that she received. The key words in these letters are "our survival is at stake". Recent information on the state of the wine industry is that it is not in a powerful position right now. It is also at a crucial point in gaining further export markets. Yesterday I heard a radio news bulletin that for the first time a Western Australian winery, Abbey-Vale Vineyard, had broken into the French market. That was a very exciting moment for the local wine industry, France being the hardest market in the world to crack. It is like sending coals to Newcastle.

A volumetric tax would be a great advantage not only to Western Australian winemakers but also to Australian winemakers because it would help generate the export industry. As members have pointed out, the major producers are not producing high-quality wine. The small producers are attempting to export quality wines overseas and they make up nearly all of the market. European and other world markets are flooded by vast amounts of cheap wine from other wine producing countries which are closer to those markets. The future of the industry in Western Australia is in its quality rather than quantity. That is the way to go for the wine industry in Western Australia.

In addition, the small, quality vineyards are bringing a new excitement to the industry. They have brought in new varieties, tried new ideas and pushed out the boundaries of winemaking in this State. The proliferation of those wineries is helping all of the wine industry in Australia. Further than that is the health benefits of a volumetric tax. We are seeking in this House to improve the quality of wine rather than to increase the quantity of wine being consumed in this country.

The Independent Winemakers Association has put forward an alternative tax system to the Federal Government which will raise the same amount of goods and services tax as the current ad valorem tax proposal. Hon Christine Sharp's notes set out the four elements contained in the proposal by the association. The first is a direct wine equalisation tax on deemed alcohol content; the second is deeming of alcohol contents; the third is a low-alcohol incentive, similar to the system with beer; and the fourth is a phase-in period over five years to assist the cask wine industry. That will help to produce better quality low-alcohol wines. Hon Christine Sharp's notes state that the Australian wine industry leads the world in the production of reduced-alcohol wines. That is an offshoot of the volumetric tax, not of the ad valorem tax. We are creating a new niche market, which is important.

Alcohol and tobacco remain the biggest killers in Australia and are responsible for over 90 per cent of drug-related deaths. A tax that makes stronger alcoholic drinks more expensive will provide benefits to society. That has been demonstrated in the Northern Territory. The Alcohol Advisory Council has advised that after the Northern Territory Government imposed an additional tax on alcohol by increasing the price of higher alcoholic content products there has been a 30 per cent

reduction in the number of alcohol-related road deaths, a 31 per cent reduction in the number of alcohol-related accidents, and a 29 per cent reduction in the number of breath tests over the legal limit. The only downside I can see with this sort of tax is that it makes wine a little dearer for poorer people. The up side for those people is that over time they will be drinking better quality wine at a cheaper price. For all concerned and for all sorts of reasons, a volumetric tax would be better, particularly if we accept the proposal put to the Federal Government by the Independent Winemakers Association.

Amendment to Motion

Hon J.A. SCOTT: I move -

To delete paragraph (4) and substitute the following -

(4) And that this House resolves to notify the Prime Minister, the federal Treasurer and all Western Australian federal members of Parliament of this House's opposition to the "ad valorem" wine tax and request them not to support such a tax measure but to instead pursue a "volumetric" tax measure.

HON NORM KELLY (East Metropolitan) [4.50 pm]: I will be speaking to both the amendment and the original motion. This debate comes at a critical time, not only for the Western Australian wine industry but also for the development of a new method of taxation for Australia. The emergence of the premium wine industry in Western Australia in the past couple of decades has now reached a consolidation phase. Changes to the taxation system for wine could bear a critical impact on that consolidation. The combination of the higher-volume wine producers with the smaller-volume premium wine producers currently provides a good complementary blend in Australia of affordable high-volume vintage wines and smaller-volume vintage premium wines. The additional benefit to Western Australia is the development of tourism industries, particularly those based in the south west. These industries are not based solely on wineries or associated galleries and restaurants, but also on the various other attractions, such as the forests, caves, beaches and other facilities in the south west. Quite often when a tourism industry is developing, much importance is placed on keeping the tourists in the area for a longer time. A good example of this is the tree top walk, which often causes tourists travelling through the region to remain in the region for an extra day. Other industries based in the region have experienced a flow-on benefit by attracting those tourists while they are in the area. Tourists will not visit the area simply for the wineries, but for a combination of these various attractions.

The argument for an ad valorem tax is based on treating wine in the same way as we would treat any other drink products such as soft drinks, cordials and the like. The current taxing schedule often results in cask wines being cheaper by volume than soft drinks, which is an amazing situation. However, it is essential that we treat the taxation of wine and other alcoholic beverages as a way of not only raising revenue but also of regulating and impacting on the level of alcohol consumption in our society. It is a legitimate way of implementing health initiatives to limit the level of alcohol abuse in our society.

The submission of the National Centre for Research into the Prevention of Drug Abuse to the GST select committee revealed that findings of a study of 53 other research projects conducted in 17 different countries indicated that a negative correlation exists between the consumption and the price of wine; that is, as the price increases, consumption decreases. Another submission to that committee stated that a correlation also exists between certain types of alcoholic beverages and the levels of social abuse resulting from the use of those beverages. Standard beer and cask wines are more closely related to high levels of violence, injury and illness than light beer and bottled wine. It is important that wine taxes are considered in conjunction with taxes on beer and spirits, so it is legitimate to consider the taxation of alcohol per standard drink. Under the current taxation laws, a $9 cask of wine is taxed at 6¢ per standard drink compared to a tax of 26¢ per standard drink from a $9 bottle of wine. Through this taxing regime we are encouraging the consumption of cheap bulk wine. Beer is similarly treated; low-alcohol and mid-strength beer are more highly taxed per standard drink than full-strength beer. The current taxing policy and that which is proposed under the Federal Government's new tax system is detrimental to public health and personal safety.

The national centre's submission to the GST committee in a 1995 report on alcohol misuse stated -

> A report commissioned by the Commonwealth Department of Health and Family Services estimated that alcohol is associated with: 44% of fire injuries, 34% of falls and drowning, 30% of car accidents, 50% of assaults, 16% of child abuse, 12% of suicides, and 10% of machine accidents.

In 1992, the national figures indicated that the misuse of alcohol resulted in over 55 000 person-years of life lost and a total of approximately 3 700 premature deaths. That provides an indication of the extent of the impact of the misuse of alcohol in our society.

Currently, alcohol taxes represent about 2 per cent of combined state and federal government revenue. It would be extremely disappointing if this opportunity were lost to implement a tax schedule that addresses not only the revenue raising of tax. I am aware that concern has been expressed that it is not strictly an equalisation tax, but it is increasing the amount of taxation raised. More importantly, it deals with the positive impact on the social aspect of alcohol consumption in our community by way of taxation. Ideally a portion of such a tax would be hypothecated to address the health and social demands caused by the misuse of alcohol. Surveys have indicated that the general community would be supportive of an increase in the tax rate if it were on a hypothecated basis. A proposal put forward by the national centre, which is based on a 10 per cent GST and a tiered volumetric excise, would increase the price of cask wine by more than $4 per 4-litre cask. At the same time, it would maintain the price of bottled wine and significantly reduce the price of low-strength beer. An analysis done by the centre of how such changes can impact on our society revealed that -

> each additional cask of wine per person per year contributing to total annual alcohol consumption would result in

> between 16 and 20 additional night-time assaults and between 13 and 25 hospital admissions for injuries in Western Australia per year;
>
> each additional carton of regular strength beer drunk per person per year contributing to total annual alcohol consumption would result in 77 additional night-time assaults and 74 hospital admissions for injuries per year;
>
> each additional carton of low strength beer per person per year contributing to total annual alcohol consumption would result in 42 fewer night-time assaults and 36 fewer hospital admissions for injuries per year.

They are interesting conclusions which indicate the impacts of alcohol misuse in our society.

I refer to the way that two other Legislatures have handled the social impact of this taxing. In 1992 in the Northern Territory a levy of 20¢ a litre was imposed on beer with an alcohol content of more than 3 per cent. Cask wine was levied at almost twice the rate of bottled wine. Those levies were then used to resource the living with alcohol program, which provided services to community groups affected by alcohol misuse.

Debate adjourned, pursuant to standing orders.

[Questions without notice taken.]

AUSTRALIA ACTS (REQUEST) BILL 1999

Introduction and First Reading

Bill introduced, on motion by Hon Peter Foss (Attorney General), and read a first time.

SENTENCING LEGISLATION AMENDMENT AND REPEAL BILL

SENTENCE ADMINISTRATION BILL

Second Reading

Resumed from 25 May.

HON HELEN HODGSON (North Metropolitan) [5.42 pm]: Prior to the close of debate on these Bills last night I had made a few comments about their underlying policy. I will now look at some of the issues which are specific to the Bills. As has been said previously, these Bills basically cover three areas of sentencing. The first concerns the reporting of sentencing - commonly known as the sentencing matrix; second, they contain a raft of provisions relating to parole, remission and similar matters; and third, a number of miscellaneous provisions of themselves merit some discussion.

The sentencing matrix has been addressed by previous speakers and I had the advantage of being able to read the proof *Hansard* overnight; therefore, I should be able to limit my comments to points which may not have been made by other members. Members will be aware that last year a report prepared by the Chief Justice of Western Australia, Hon David Malcolm, on the Sentencing Legislation Amendment and Repeal Bill and Sentence Administration Bill was tabled in this House. He took the unusual step of requesting the President to table this report in Parliament because it was his belief and that of the justices of the Supreme Court and the judges of the District Courts that there had been a lack of consultation on this matter. On a number of occasions it has been suggested in this place that the justices of the Supreme Court and the judges of the District Court have differing views on the application of the sentencing matrix. I reread my copy of the report to clarify for my own benefit -

Hon Peter Foss interjected.

The PRESIDENT: Order, Attorney General! Hon Helen Hodgson is addressing the Chair and not inviting or responding to interjections.

Hon HELEN HODGSON: The context of the debate about the difference of opinion between the District Court judges and Supreme Court justices needs to be considered because the judges and justices are particularly concerned about the sentencing matrix. On page 12 of his report Justice Malcolm states -

> These provisions appear designed to impose unreasonable fetters on judicial discretion inconsistent with the judicial discretion conferred by the *Sentencing Act 1995*. As such they constitute an unwarranted interference with the jurisdiction of the courts.

The justices of the Supreme Court signed off on those comments. Page 8 of the section of the report dealing with the judges of the District Court states -

> Bold measures such as the sentencing matrix are not needed here as they were in the United States in order to achieve consistency in sentencing. Any need to correct individual sentences is already met by the on-going work of the Court of Criminal Appeal. Against this background the Judges of the District Court are surprised to learn that a sentencing matrix of some sort is to be enacted by regulation and applied to us in the exercise of our sentencing discretion.

It is clear that the judges and justices of the District and Supreme Courts are uniformly opposed to the implications of a sentencing matrix. The principal Bill disregards the principle of discretion; in effect it is a move to disempower the court system and impose an executive framework over it. It was said in debate last night that the effect of this will be an increase in the rate of imprisonment and I agree with that assessment.

An aspect of this Bill which has not been addressed in debate yet is that of the power of the Executive when it comes to the working of this sentencing matrix. It is a complex scheme and even after reading the legislation a number of times and receiving a briefing I am still not sure how the words of the legislation give effect to the intention that the Attorney General says underlies this Bill. At this stage I can only hope that we receive further clarification before this part of the Bill is passed. My understanding of the way this is set up is that ultimately the power to change sentencing will be embodied in regulations. In doing that we are moving away from the separation of the judiciary and the Executive in the administration of this State. That is a move which needs to be resisted. It is true that the regulations can be disallowed by either House of Parliament but that imposes an obligation on the members of this Parliament to ensure that the regulations are picked up and dealt with as quickly as possible. We have seen what happens in this place when it comes to the disallowance of regulations. In one instance last year involving the disallowance of regulations affecting the fire and emergency services a contract was effectively signed immediately the regulation was gazetted, prior to tabling in this place, prior to debate and potential disallowance in this place. Even disallowance of the regulations would not have overturned the contract that had been signed.

Let us look at the principles of the Interpretation Act as they apply to the sentencing legislation. The Interpretation Act says that if a regulation is disallowed, it is not disallowed with retrospective effect; it has only prospective effect. Under this sentencing regime, after gazettal of a regulation, we have new provisions that the courts must apply which subsequently can be disallowed. Then there is a differential between pre-gazettal, the period during which the regulation is in force and the final potential disallowance of that regulation. That is just one aspect of the way in which this matrix system works about which I have serious concerns, and I want to see addressed in far more detail before it is enshrined in law.

As I have said, the court system is moving towards harsher sentences. There is evidence of that in the media every day, in the studies to that effect, and also the sentences being hand down. Sentencing in Western Australia is already among the harshest in Australia. For the past 20 years, Western Australia has had the highest adult imprisonment rate of any State, according to the report of Justice David Malcolm last year. The Ministry of Justice is still endeavouring to develop an appropriate program to collect and publish sentencing statistics for the court and the public in a way that will help to explain sentencing. Under the Sentencing Act 1995, judges already have a legal duty to give reasons for the sentences they impose, which includes setting out aggravating and mitigating factors which are taken into account. All the reasons for the sentencing matrix being neither needed nor appropriate have been set out by the Chief Justice of the District Court. We must maintain the independence of the judiciary.

There has been a lot of debate about the United States and other countries that have moved in the direction of harsher sentencing. I refer interested members to the New South Wales Law Reform Commission report of 1996 which looked at the issue of sentence disparity and the potential ways of dealing with it. On page 30 of that report the Law Reform Commission stated that it emphasised the individualisation of sentencing and it rejected punishment by tariff, but it said that court cases can establish general principles. It went on to state that it is quite wrong to compare the sentence under challenge directly with that imposed upon another offender who is not a co-offender, simply because the two offenders may have similar characteristics and may have committed crimes; and that what must be looked at is whether the challenge to sentence is within the range appropriate to the objective gravity of the particular offence and to the subjective circumstances of particular offenders, and not whether it is more severe or more lenient than some other sentence which merely forms part of that range.

How do we develop a matrix that takes into account all of these factors? As yet, we have not come to grips with these things. It is premature to be setting up such a system in this State. Another area of the sentencing matrix has not yet arisen. Hidden in the detail of the sentencing matrix provisions is a reversal of the onus of proof on appeal of a sentence. I have heard criticism of that from members of the legal fraternity. I have been told that it will encourage disgruntled offenders to appeal; increase the number of appeals in an already crowded court list; drain the already critically underfunded system and cut into the resources of the Director of Public Prosecutions, leading to an increase in the number of unrepresented defendants in the system; and ultimately to delays in hearings. I am not in a position to say whether these comments are correct or otherwise; however, it is appropriate that this place is aware that a fairly senior member of the legal profession made these comments to me. I have with me a letter from the Law Society of Western Australia which raises its concern in this respect, although not in this amount of detail.

Hon N.D. Griffiths: Can the member tell me about the content of the letter from the Law Society? I want to see whether it is in the same terms as the one I got.

Hon HELEN HODGSON: I will provide that to the member at a later date. I have so many papers with me that to locate that one will take a few moments.

There are major issues to be addressed in respect of the parole provisions. We have already heard a fair bit about this. I will probably go over similar ground in these areas. First of all, we must examine the purposes of parole. One purpose is that it is part of the rehabilitative process. It is a way of ensuring that people are released back into the community and we hope - this picks up on another issue - they will have undergone rehabilitation prior to their release and that process will continue. It has been shown that lengthy periods of parole do not work in this way. It is generally accepted that about two years is the period within which the benefits of a person being on parole will be maximised. I use the word "benefits" in a rehabilitative context. Once we go beyond that period, the offenders psychologically cannot see the end of sentence, the end of the time during which they have to keep the slate clean. That provision is underpinning this Bill. It says that people have a parole period which may be defined at the time of sentence and there is no chance of having it reduced.

A new creature has been developed - unsupervised parole. I had some difficulty coming to terms with this concept while

I was trying to decide whether an amendment was feasible. First of all, I tried to determine what the parole term is. There is nothing that limits the discretion of the Parole Board to reduce a parole period. I do not know whether the Attorney General has done that deliberately, but I am sure I will find out in due course. We have a formula in place which says that the offenders will have a supervised parole period for a certain length of time. The underlying assumption is that the balance of the original term is this unsupervised parole period. What is unsupervised parole? What are the rights of the offenders? What programs are delivered to the prisoners? The obligation is for the offenders to keep a clean slate and to make sure they do not get locked up again. They get only one chance. Given the way these provisions work together, I found it very difficult to trace through them and to conceptualise and find the detail of what is going on. The table is useful because is says what the supervised period is. The assumption is that the rest of the period is unsupervised parole. The underlying provision, which says that the sentence is for a fixed term, is repeated from the original legislation. We still have a term, but now we also have supervised parole, which used to be a parole term.

On top of that there is this unsupervised parole which continues until the end of the term. Effectively that is the period during which the offender is at risk of reoffending and being returned to prison. That will have an immediate impact on the prison population in this State. I also have some concerns with the way in which the early release orders, home detention orders and so on are being reorganised and replaced with the release program order. Basically, those concerns are to do with the way in which we are reducing our available tools in the rehabilitative process. The Sentencing Act and the Sentence Administration Act interrelate. I accept some forms of orders which continue under the Sentencing Act not being repealed.

Sitting suspended from 6.00 to 7.30 pm

Hon HELEN HODGSON: I have said that some serious issues are raised by the restructuring of the programs and methods of release that are available. The repeal of the provisions in the Sentencing Act which deal with early release orders, home detention orders and so on is a major issue that we should consider carefully, because these are proved methods of ensuring that offenders have the opportunity of being reintegrated into society. All prisoners should come out of jail at some stage, and those people need to be reintegrated into the community. Unfortunately, in a number of cases, which is decreasing, thank goodness, people never make it out of jail -

A member interjected.

Hon HELEN HODGSON: I was thinking of a different context. It occurred to me that deaths in custody are regrettable instances of people who do not make it out of jail.

The new system of release program orders raises some interesting issues. RPOs are limited to people who are not eligible for supervised parole. I have referred to the issue of supervised parole versus unsupervised parole. I find it interesting that we are developing this new form of unsupervised parole when, according to my understanding, eligibility for a release program order is dependent on a person's not being eligible for supervised parole. At the time of sentencing, the judge can say that a person is eligible either for parole or for an RPO at some time in the future. That is a conceptual shift. RPOs may have benefits that are similar to the existing system of early release orders, work release programs and home detention orders, but if that is the case, why do we need to remove what currently exists and replace it with an unknown quantity? In fact, that unknown quantity may extend a person's sentence, because previously a person who was released was reintegrated into the community and had certain obligations and a parole period. A person who is released from prison will now be subject to the additional obligation of an RPO. An RPO may advantage some offenders, but I have serious reservations about why we need to replace the existing system with these RPOs.

I also have reservations about the value of delivering these programs after a person has been released from custody. I note and recognise the comment of Hon Mark Nevill yesterday that there are examples of where the delivery of these programs after release can be advantageous, but I am concerned about the lack of delivery of programs pre-release. Offenders must go through various stages of rehabilitation. They must be prepared for release into the outside community, and once they have been released into the community, they must be prepared for dealing with issues that are quite different. I would hate to see the RPOs used as a way of deferring the obligation to provide rehabilitation for these prisoners.

I am very concerned about the reparation provisions. The concept behind the reparation provisions is already contained in the legislation, and this Bill strengthens that concept. One issue in the Bill that no-one has raised in the debate so far is that if a person has a reparation order made against him, it is up to the courts to determine whether he should pay reparation. That may mean that a person who has already served time for the offence he has committed is sent back to jail for a prescribed number of days because he does not have the funds to pay the reparation. I find that abhorrent. At a time when we are trying to find ways of dealing with fine defaulters other than to send them to prison, it is a backward step to send people back to prison in this way. We must ensure that people who have been injured are paid reparation, but we must also find a fairer way of enforcing those orders.

I turn now to guideline judgments. The reason that matter attracted my attention is that I asked a question in this House last December about the existing provision for the Court of Criminal Appeal to hand down guideline judgments and the extent to which that was in use, and Hon Peter Foss advised me that no guideline judgments have been handed down by the Court of Criminal Appeal. This Bill will give the Chief Stipendiary Magistrate the power to make certain guideline judgments. If the Court of Criminal Appeal is not making those judgments, what makes us think the Chief Stipendiary Magistrate's Court, which is a lower court in the scheme of things, is appropriate to make those judgments and will make those judgments?

I have listened to this debate fairly carefully, and I have had the advantage of reading the daily *Hansard* overnight. I have been struck by the almost unanimous lack of support for this Bill. I do not think anyone has wholeheartedly supported this

Bill. Most of the members on this side of the House who have spoken have said that the Bill has major, not minor, defects. The only argument that I could find in support of this Bill was in the comments of Hon Nick Griffiths, who said that the Government has the right to govern and that, therefore, on a bipartisan basis, it is appropriate that the ALP support this legislation. I have paraphrased his comments, because I do not have the final *Hansard*, but that is what I gleaned from his comments.

When one listens to the comments of other members who talked about the alternatives that need to be explored and how this legislation is returning to a regime of imprisonment, it is obvious that these alternatives are not being fully explored. Members on this side of the House acknowledge that this Bill is concerned with getting tough on crime and does not address the causes of crime. Members on this side of the House spoke of the enormous blow-out in prison numbers to be expected. These are comments from the Australian Labor Party which over the last few months, and on the weekend in particular, was severely critical of the rate of imprisonment and the fact that prison numbers are increasing and showing no signs of decreasing. Yet, it appears that the ALP will support the provisions of this Bill which will cause an increase in prison numbers.

This Bill - and I use the actual words that Hon Mark Nevill used in his speech last night - is all about imprisonment. This is an extremely hypocritical position being taken by members of the ALP in this Chamber. If the ALP members cannot individually find anything good to say about this Bill, I question how the ALP in its collective wisdom can decide that it is appropriate to support it. So far, all the indications are that the ALP is intending to support the passage of this Bill at the second reading stage, and probably beyond. There are members of the ALP who are calling for genuine progressive reform. As I have already said, this Bill is reactionary, retrogressive and will return us to policies of justice from which I thought we had moved beyond in this State.

To wrap up on that point, my final comment is from the New South Wales Law Reform Commission report on sentencing. That commission refers to the importance of particular goals of sentencing which vary from time to time, reflecting changes in society and community perceptions. The report stated -

> Currently, sentencing theory tends to identify just deserts (however defined) as the predominant goal of punishment. . . . By way of contrast, in 1949, rehabilitation was clearly identified as the ultimate objective of sentencing by the Supreme Court of the United States, which said:
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> > Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become the important goals of criminal jurisprudence.

I believe that there has been a backlash in the past few years in this State and in this country; it is actually an international phenomenon. However, I do not believe that it is appropriate for that backlash to continue. We must look for solutions, we must look ahead, we must look at rehabilitative processes, and we must look at alternatives to imprisonment for punishment. I do not resile from the fact that punishment is an important part of the sentencing regime; however, it does not necessarily mean locking people up for longer and putting them in conditions which will simply lead to their developing further in their criminal career. With those comments, it is probably clear to most members in this Chamber that I do not support this Bill at all and at the appropriate stage the Australian Democrats will vote against this Bill.

HON KIM CHANCE (Agricultural) [7.43 pm]: I will be contributing but briefly to this debate. I have promised to be brief in my comments once already today on the wine tax motion and I was indeed brief; I think I took about seven minutes.

Hon Simon O'Brien: Does lightning strike twice?

Hon KIM CHANCE: Hon Simon O'Brien should not tempt me.

So that members opposite can have someone to blame, I was prompted to join this debate by the contribution of Hon John Halden last night. In one part of the exchange between Hon John Halden and the Attorney General, Hon John Halden was asked if he thought people should be sent to jail at all, or words to that effect. His response was yes, of course people need to be sent to jail; however, because it was not in the general line of his speech he did not go on to qualify that response. That is the part that I would like to pick up on. It is very much my own view that a large proportion of those who are in jail now should not be in jail; it is as simple as that. It is a personal view; however, I have a real reservation about whether imprisoning a large proportion of those people currently incarcerated is in society's best interests. I have had that doubt for a long time; it is a doubt I had even before I joined the Australian Labor Party. Indeed, penal reform was one of the reasons I did join the ALP in 1971 because I thought it was more progressive than some other parties. Jail is the wrong place for many of those people - not all of them. There are obvious exceptions; however, jail is the wrong place for many people who are currently in jail and neither those people nor society is served by their incarceration.

Hon N.D. Griffiths: The budget papers disclose that.

Hon KIM CHANCE: They do. What purpose is served by sending a non-violent offender to jail?

Hon Peter Foss: Alan Bond, for instance.

Hon KIM CHANCE: That is a very good example.

Hon Peter Foss: What do you think should happen to him?

Hon KIM CHANCE: I am not speaking for the Australian Labor Party; the shadow Attorney General might kneecap me for saying this. It is my view that people committed to imprisonment for offences such as those for which Mr Bond was convicted - not that I wish to personalise the matter to him in particular - would probably serve society better in a white-collar version of a community service order than by incarcerating them in a maximum security jail, which is just absurd.

Several members interjected.

Hon KIM CHANCE: The shadow Attorney General is now attempting to kneecap me. However, I have qualified this as very much a personal view. A person convicted of a swindling or non-violent crime who clearly has qualities that could be diverted to the fundraising section of a charity, for example, should be working in that area.

Hon Peter Foss: You tend to discriminate against your supporters, the poor and the ones who are not educated. In other words, my supporters would end up not going to jail and your supporters would.

Hon KIM CHANCE: That is an interesting point because the blue-collar workers, the people who may be inclined to vote for the Labor Party, actually have a wide range of community service orders available to them. However, the white-collar workers - the crooked lawyer, the crooked accountant or the dodgy doctor - do not get that opportunity; they tend to go to jail and that is a little unfair on some of the Attorney General's supporters.

Hon B.K. Donaldson: But the gentleman being talked about was fundraising for himself. Ask some of this shareholders.

Hon KIM CHANCE: He was very talented. How much better off could society have been if Alan Bond had spent four years as the principal fundraiser for the Cancer Foundation of WA, for example? How successful could he have been? He was a man of immense talent. I do not think anyone disputes that. What purpose is served by having him in prison, given that Mr Bond spent some time in a maximum security facility? Did that improve him? Did that improve society? I think the answer in both cases is no.

Hon Peter Foss: What would the Aboriginal who got drunk and struck his wife think?

Hon KIM CHANCE: That is a violent offence.

Hon Peter Foss: Yes, I know, but what would he think of the fact that he got drunk, and while drunk he struck his wife? It was a violent offence, therefore he goes to jail; but Mr Bond, who takes hundreds of millions of dollars, goes and does the same job.

Hon KIM CHANCE: I think we have found a defining moment, Mr President, and that is what keeps the Attorney General on that side of the House and us on this side of the House; and I do not mean in the sense of government and opposition but in the sense of progressive and conservative. The Attorney General is talking about a man who actually caused a loved one physical injury. In my view that man is a criminal and needs incarceration and rehabilitation. The Attorney General is implying that Mr Bond committed a greater offence because, he says, he stole hundreds of millions of dollars. That is a non-violent offence. The man who injured his loved one is a criminal of higher order than Mr Bond.

Hon Peter Foss: What about a person who drives a car while drunk but does not injure anybody?

Hon KIM CHANCE: That is a potentially dangerous and violent offence. One could say the same of a drug pusher.

Hon Peter Foss: What about a person who takes $500m from a Government, which then cannot be spent on hospitals and schools?

Hon KIM CHANCE: Generally in the old days we used to give them knighthoods!

The PRESIDENT: Order! As much as I think that there should be some free flow and general discussion, especially when the speaker is prepared to entertain questions, we are dealing with the second reading.

Hon KIM CHANCE: Thank you, Mr President. I believe the point has been made. I wonder what purpose is served by sending a drug addict to jail when we cannot even guarantee that the maximum security facility in which the drug addict is incarcerated will prohibit the free trade of narcotics. The situation is crazy. A drug addict who commits a housebreaking offence to support his addiction needs medical help. We must address the cause of the crime; that is, why that person needed $150 a day but was incapable of working at a job that would generate $150 a day and what led that person to commit the crime was his addiction. If we take the addiction away, that person is unlikely to be a criminal. Yet what do we do with such people? We say that the offence is breaking and entering and the sentence will be four months' incarceration, but the cause of the problem is the person's addiction. Are we addressing that person's addiction by putting him in jail? I think not.

Hon Peter Foss: Should we excuse the offence?

Hon KIM CHANCE: No, and nor am I suggesting that the person, having committed that offence, should be free in society. The person needs to have specific medical assistance and to be restricted in his or her movements for a period. I do not think that we have a huge difference of opinion here - I do not know but I hope we do not. This legislation in its present form seems to do nothing more than point our direction to even higher prison numbers.

Hon Peter Foss: Where does it do that?

The PRESIDENT: Order! The Attorney General will have an opportunity to respond in due course. I am sure that he can make notes of these comments. He is spoiling Hon Kim Chance's flow.

Hon KIM CHANCE: Thank you Mr President. I do not need to answer that question because I ask the Attorney General to refer to Hon John Halden's speech.

I thank Hon Ljiljanna Ravlich for making some information available to me. I will not go through it and read it but I will quote a couple of sources. One is a bulletin of 11 May 1999 on private prisons, which I found a fascinating article, because it includes in its exposé two American private prison companies, one of which is the Corrections Corporation of Australia,

which is the company currently constructing, with or without a contract, a private prison facility in Western Australia. In addition there is a media statement from the Christian Centre for Social Action and Restorative Justice Network of Western Australia dealing with events at Casuarina Prison five months after the riot. If I had unlimited time, I would read some of the articles. Members need to look at material such as that. Notwithstanding some of the evidence that we have seen which shows that private prisons in Britain can be conducted in a better way than public prisons - I do not think they are always necessarily evil - it seems as though the trend towards private prisons and higher incarceration rates in the United States has not served the United States' society well nor the individuals who have been incarcerated.

By the very nature of what they are, prisons are not pleasant places, even open prisons like Wooroloo Prison Farm. As a group of people the prisoners themselves are not particularly pleasant. Some are charming, but a proportion of prisoners, not to be unkind, one would describe as having antisocial attitudes.

Hon Derrick Tomlinson: You might even call them criminals.

Hon KIM CHANCE: Yes, but I meant to define the kind of person they are and how comfortable one feels in their company. I feel marginally threatened by some, to put it frankly. In five years' time a very large proportion of that prison population will be walking around on the streets with us. Maybe 80 or 90 per cent of people who are at present in prison will be sharing the streets with us, our wives and children. Our resources need to be devoted to making sure that when those people are back on the streets and sharing them with our wives, children and us, they are better people than when they went in. We cannot achieve that outcome if the prison system is overcrowded, its rehabilitative capacity is under-resourced and it has the effect of brutalising prisoners. What happens then is that they come out worse people, who hate society and have no respect for our wives or daughters. I really think that we have got the whole issue wrong. I certainly think that the United States has got it wrong. The United States has two million prisoners. Every time some lunatic conservative comes up with another law and order platform, whether he is running for mayor or to be a judge in that jurisdiction, the sentences get tougher and tougher. Sadly, we in Australia have inherited some of that. The Northern Territory adopted the policy "three strikes and you are in" and we did the same thing. Now we are seeing people favouring the policy "one strike and you are in".

Very shortly, Hon Tom Helm will be telling people about how a young man ended up in jail. Members will find the story quite shocking. Maybe that young man who went in as a decent man will come out a decent man. I sincerely hope so. I hope that he is a strong young man who will come out of the process a better man. However, I wonder about some of the people who are going into jail who are not strong and have a weakness in their character or health in that they might be drug addicts. Very many of our young people are addicted to one drug or another. Do we have a system of incarceration which we can be sure will make them better people? I do not think we have. I am not at all sure that the legislation before us, notwithstanding our support for it, will guarantee that.

HON TOM HELM (Mining and Pastoral) [7.59 pm]: I enjoyed the lead in by Hon Kim Chance. I should explain that my reasons for making a contribution to this debate are to illustrate the dire need for changes to the Sentencing Act. I will also be suggesting that we need to change the Road Traffic Act. I am sure the Minister for Transport will be sympathetic to the story I must tell, which I believe could be repeated many thousands of times. I must make it clear that I would dearly love to attack the Minister for Transport, the Attorney General or any other minister for that matter, over this issue, but I cannot because I, along with everyone in this Chamber, share the guilt for those unintended consequences. I hope I can make the House understand why we need changes.

The person to whom Hon Kim Chance referred came to my attention about two weeks ago. He was a friend of my stepson. My stepson neither drinks nor smokes but at the age of 19 he is sailing close to the wind with his demerit points; like all of us he has fallen foul of the law. This young man is serving time in the East Perth lockup for offences under the Road Traffic Act. I believe that is the only Act on the statute book which contains only one penalty, that of imprisonment; there is no opportunity for community services orders or any other penalty. Members will have to forgive me if I am wrong - the Attorney General will correct me if this is a mistaken belief - but this is the story as I understand it. In 1997 this man was doing his tertiary entrance examinations when his father died suddenly. That threw a spanner in the works and the young man failed his TEE. He was granted a drivers licence but he lost 12 demerit points and had his licence suspended. He did not tell his mother about this because he thought she had enough on her plate. He had assumed the male role in the family and did not want to place an additional burden on his mother. His sister attends Applecross Senior High School because they previously lived in that area. They now live in North Perth and someone needs to take the sister to school. The man's mother was a nurse working shifts and was not always able to do that. The man did not want to tell his mother that he was unable to fulfill his family duties. The family lives in the man's 93-year-old grandmother's house with an uncle who suffered meningitis as a child and has some mental problems. The young man's mother was recently diagnosed with breast cancer and has just left hospital after an operation. This is the sort of pressure this man was under. As a result of losing his drivers licence in 1997, the man entered the loop and was caught driving without a licence and received a minor fine and a suspended prison sentence.

Hon Peter Foss: That was the next time.

Hon TOM HELM: The first time was a minor fine and the second time he received a suspended prison sentence.

Hon Peter Foss: Because he also failed to stop and gave a false name.

Hon TOM HELM: That was the third time time, not the second. I am not trying to paint a good picture or suggest for a minute that there should not be appropriate penalties for breaches of the law. However, I wonder if these penalties are appropriate. This man has never been required to attend counselling in all this time. Hon Kim Chance talked before about drug addicts and people who frequently commit robberies or are career criminals. Our system has the ability to provide those

people with rehabilitation programs - no matter how inadequate the programs are. No effort was made to explain to this young man the effects of driving at speed, of going through stop signs or of flouting the road traffic laws. If we are dinkum about Multanovas not being revenue collectors - which is debatable at present - and about reducing road trauma, people must be made aware in the most graphic way of the effect of those offences. Offenders should be forced to go to the casualty wards of our hospitals and see the effects of road trauma. They should be forced to join a rescue team and help people trapped in smashed cars. They should watch some of the graphic videos which are available to show them that these laws are not put in place by old people to keep young people down but have a purpose. Traffic offenders should be able to work in casualty wards.

I was greatly offended by the stories this young man told. He is quite well built, has short hair, does not have pierced eyebrows, ears or nose, does not have a tattoo and is not even Aboriginal. He is not black so he does not have that strike against him. He is a fine, upstanding, polite young man.

Hon Ken Travers: That is why he was 19 before he went to jail.

Hon Kim Chance: Instead of 13.

Hon TOM HELM: That is right. He is now attending Murdoch University and receiving passes in all subjects, but he has a criminal record.

Hon Derrick Tomlinson: Is this the young man who is still serving time in the East Perth lockup?

Hon TOM HELM: Yes. At first I thought this was all a mistake. I went in with all guns blazing, convinced that somebody had made a mistake. However, I understand - the Attorney General will correct me if I am wrong - a Supreme Court ruling and the Sentencing Act do not allow a magistrate to take a lenient view or to take those circumstances into account.

Hon Peter Foss: The magistrate took them into account. That is your problem; he took them into account and still jailed him.

Hon TOM HELM: Yes. Section 39(2) of the Sentencing Act sets out the types of orders a court may make following the finding of guilty against a person. These can range from no conviction and no sentence at all under section 39(2)(a) to conviction and a sentence of imprisonment under section 39(2)(h). The sentence of imprisonment can be suspended pursuant to section 76. There are other sentencing options in between including what might generally be described as community based options. As a matter of law and sound sentencing policy, a person should not be sentenced to imprisonment unless no other disposition is appropriate. However, in the recent Supreme Court case of Mills v Veersma it was held by a majority that the community based options are not able to be used for offences against section 49(2) because of the combined effect of section 106 of the Road Traffic Act and section 9 of the Sentencing Act. Effectively, magistrates are limited to imposing fines or imprisonment or both for these offences and cannot use community based options. I cannot understand why this is so; it is a mystery to me. There does not appear to be any reason why community-based options should not be available for section 49(2) offences when they are available for very serious offences including robbery, sexual assault and drug dealing.

I understand the Law Society of Western Australia may be writing to the Minister for Transport quite soon, asking him to consider appropriate amendments to the Road Traffic Act to reflect its concerns. I have spoken to the Attorney General about this matter. Up to this juncture the people in the office of the Attorney General could not have been more helpful. I owe a great deal of thanks to Karry Smith, who works with the Attorney General. She has been particularly helpful. She has telephoned me at home to provide me with information on this matter and used her influence to ensure that every possible avenue was explored so that this young man could serve his sentence as easily as possible, and to investigate his eligibility for legal aid. Yesterday, I had an offer from a lawyer - I will not use his name because I am unsure whether that is permitted - a member of the Law Society, who offered to take up this young man's case pro bono. He will see this lad tomorrow with a view to discussing an appeal of the case. I have received advice across the board - the Attorney General agrees with it - that the possibility of an appeal being successful is very remote. About 80 per cent of appeals have been unsuccessful in these matters. We sometimes wonder how much the sentencing authorities, whether they be magistrates or judges, are hamstrung in applying the law. I will be trying to encourage the Labor Party to take a different position on this matter. I do not want to go against the wishes of society in this instance. I am well aware of the hanging and flogging brigade being attractive to all sides of politics. In this instance and in these cases, I think society is interested not in punishing people but in reducing road trauma. We are told all the time that this is what everybody wants. I have received advice from the Ministry of Justice that in 1997-98, 13 000 convictions for road traffic offences were recorded, of which between 5 per cent and 10 per cent attracted a prison sentence.

Hon Peter Foss: Some of those are suspended now. About half are suspended.

Hon TOM HELM: Across the board, all people have been as helpful as possible in this matter. I am also advised that over 38 000 people have had their drivers licence suspended. It is rather frightening that a potential 38 000 people could attract a prison sentence just because they may not have paid their fines. The whole object of fines being replaced by a provision to suspend drivers licences is unravelling a little, and we are adding to the prison population quite unintentionally. It would be better if we could use another method to get our message across.

We must take into account these stories. I have been told - I have not been able to check this out, and it is virtually impossible to do so - why this man is in the East Perth lockup. Those who have come across him and his circumstances are totally sympathetic. Rather than having him serve his time in Casuarina Prison or Canning Vale Prison, they believe East Perth is the easiest option. I tend to agree with that. I have visited him on a number of occasions. If people had to serve time, the East Perth lockup, with its understanding police officers, rather than prison officers who have a different job to do -

Hon Derrick Tomlinson: Midland is better.

Hon TOM HELM: I will take the member's word for that. I hope members will ask me about this young man's circumstances when I have finished my speech. Like most young people, this lad is not an idiot. He is reasonably intelligent. When I asked him why he did not apply for an extraordinary licence, given his circumstances, he said that he was told by everyone he spoke to - those people are probably only his peers - that there is no point applying for it; that it is not worth it; that it is a waste of time. He reflects the attitude of my stepson. This young man did not think he would ever be caught. I will give members an idea of the type of person he is. He had just about finished mending his motor bike, but it had no front headlight. He decided to go for a spin, notwithstanding the fact that he had no licence. A young person on a motor bike with no front headlight might as well wear a sign that says, "Pick me, pick me." The police did exactly that; they picked him easily. He got caught; he panicked and gave a false name; and when he tried to outrun the police, the engine of the motor bike collapsed on him. Members would not read about it. Given those circumstances -

Hon Derrick Tomlinson: How could we put a bloke like that in prison?

Hon TOM HELM: Perhaps he should be in a psychiatric ward! If we analysed our behaviour at 17 years of age, or 19, or even now, we might find that a few members of Parliament have sailed close to the wind, although this might not be the case for Hon Derrick Tomlinson. I wonder how Hon Eric Charlton might have felt about these offences. We are all guilty of having done these sorts of thing without thinking about what we were doing. That is the point I am trying to make. It is not a matter of the offender getting a pat on the head and being told that everything is okay, that he should not worry about what he has done. I think this young man was trying to do the right thing. He did not give a second thought to the accidents that could have occurred as a result of his behaviour, or to the effect his possible death might have had on his family, or to how he would have felt had he killed another person when he was driving without a licence.

I have a son who is aged 21 years and is living in the United Kingdom. Having been caught drinking and driving, he is now an evangelist when it comes to others who drink and drive. He is so frightened, having thought about the implications of his offence. He was caught with a blood alcohol level in excess of 0.2 per cent; he had a huge amount of booze in him - there is a story behind that - and had an accident. He just did not know what he was doing when he was driving while he was drunk.

Hon Derrick Tomlinson: With 0.2 he would not have known much at all.

Hon TOM HELM: He has realised he could have killed not only himself, but someone else. He has learnt his lesson, and not only financially. This incident will cost him about $40 000 by the time he pays for the damage he caused. His car was a write-off. He has gone the other way: He believes no-one should drink at all, not even a shandy. He has been confronted with the repercussions arising from his behaviour.

I raise these matters at this time because I think the House should be aware of them. This young man's case must go on the record. We all make mistakes. We as members of Parliament must realise that we are responsible for passing Acts of Parliament - I do not know which party passed this law; it does not matter - which in this case resulted in this young man being jailed. In this case, it is totally inappropriate. I hope the Minister for Transport can view the letter that may come from the Law Society in a couple of weeks.

Hon Peter Foss: Cabinet has already resolved to make a change.

Hon TOM HELM: I hope that when the result of Cabinet's decision is finally brought to this Parliament, it will contain those ideas I have put to the House; that is, it demonstrates in the clearest possible terms the reasons for Acts of Parliament on road traffic matters. It is too late once young people have died because they have drunk too much, driven too fast or been careless and not bothered to pay attention to stop signs.

Hon M.J. Criddle: We are endeavouring to do something about that and other issues.

Hon TOM HELM: It is bizarre that burglars, drug addicts, drug dealers, murderers and those who commit manslaughter can get this assistance. If this young boy had stolen a car and done a ram raid, he might have had a rehabilitation aspect to his sentence. I hope people will take these matters on board. I hope, as I am sure members in this Chamber hope, that the lawyer who has taken on the case pro bono is successful in his appeal, and that this young man has learnt his lesson and will fulfil his potential, even though he will have a criminal record for as long as it takes to discharge that.

HON RAY HALLIGAN (North Metropolitan) [8.21 pm]: I have heard from members opposite their concerns generally about the number of people in prisons, and that they believe many of the people currently incarcerated should not be in prison. It may surprise them to know that I agree with them entirely. As far as I am concerned, there are certainly far too many people in prison. Unfortunately, some people decide for themselves that they will commit crimes against society that they know will place them behind bars. It is a great pity that it happens, and everyone would like a situation - some may well call it Utopia - where we could go back and change the way these people think or at least the way they have thought; change what has happened to cause them to undertake those crimes against society; and change their situation so that they are no longer incarcerated. Unfortunately, this problem has been around for some considerable time - thousands of years. If there is a simple answer to all this, one might have hoped it would have been found during this time but we in Australia, as well as those in every other country, are still trying to find the answer to this problem. As far as I am aware the great majority of countries have jails.

I agree with members opposite that something needs to be done to try to change that situation. Therefore, it will probably require any number of different strategies. Everyone's situation is different no matter whether they are young, teenagers, middle aged or older persons, such as me. Of course, we cannot create some form of suspended animation and stop

everything until we sort this out. We cannot stop the world, analyse what is going wrong and make the necessary changes. Life does not work that way. Therefore, at this time something must be done about those who we, as a Parliament, and many in the community, believe must be incarcerated. That is what these Bills are about.

We heard a number of comments about the matrix. Some members have suggested that because of the matrix, the number of people in jail will increase. I have yet to hear some evidence that that will be the case.

Hon Bob Thomas: It is already happening.

Hon RAY HALLIGAN: We do not yet have a matrix.

Hon Bob Thomas: It happened in New York.

Hon RAY HALLIGAN: Does that mean that everything that happens overseas should not be tried in Australia? Should we ignore overseas experience?

Hon Bob Thomas: Do we want 650 per 100 000 people in jail? The current figure is 190 per 100 000.

Hon RAY HALLIGAN: I have heard from members opposite that they would prefer that we close our jails and that people not be placed in jail.

Hon Bob Thomas: They said they were sending the wrong people to jail.

Hon RAY HALLIGAN: I believe the matrix will to some extent explain who should be incarcerated. Of course, all members are aware that in the United States there is a Sentencing Commission associated with the matrix. Apparently, in 1994 the United States Congress addressed the issue of fairness in sentencing, and that is what this matrix is all about. The public want some form of fairness and consistency. The United States developed these guidelines which -

> were to be fair so that similar offenders convicted of similar crimes would receive similar sentences.

I stress that they were not the same sentences but similar sentences. The guidelines were also to be honest, meaning that the sentence received was to be the sentence served. The establishment of those guidelines meant that a person convicted of an offence would have a fair idea of the range of sentences he or she could receive. Apparently 25 or 26 years ago a judge by the name of Marvin Frankel gave a lecture at the University of Cincinnati. His theme was caught up in the subtitle of a book called "Criminal Sentences, Law without Order". In his words sentencing was lawless. It was the only thing that judges did for which there were no rules that gave them any guidance at all as to the decisions they made. There were no standards for the appellate court to look at to decide whether judges had done it correctly. That prompted some people to look at guidelines of some description to provide some form of consistency. It was said that the idea of guidelines was a means of bringing greater predictability and rationality to sentencing, and reducing bias and disparity. Admittedly, as I am sure members will agree, it has not worked perfectly, but there is clear evidence in many States that disparities were reduced when the guidelines took effect.

There is also mention of Rob Lubitz, a director of the North Carolina Sentencing Commission. According to information on the Internet Rob Lubitz stated -

> Particularly on reflection on the extent to which judges have changed their sentencing patterns on who goes to prison and who doesn't.

Not everyone goes to prison. It continues -

> And it is quite stark for the most serious categories of violent crimes, it is basically 100% of people are going to prison in North Carolina.

That is for the violent crimes. It continues -

> But also a substantial drop in the percentage of people in the lowest levels of their guidelines grid who are going to prison, which means greater certainty at the top but a substantial prison diversion at the bottom.

Therefore, it would appear that they may have found ways of getting around sending people to prison.

Hon Bob Thomas: How contemporary is that quote?

Hon RAY HALLIGAN: I believe this was in 1998.

Hon Bob Thomas interjected.

Hon RAY HALLIGAN: I have no doubt that many people are. The information I have been able to obtain from the Internet suggests that about 33 per cent of the States in the United States either have or are going down the path of these sentencing matrixes. Some States have not bothered to go down that path. Whether they are looking into the matter, I know not.

I return to the question of whether someone should be incarcerated. We have heard that there should be rehabilitation. I do not think anyone, even on this side of the House, would disagree with that.

Hon Bob Thomas: Who would fund it?

Hon RAY HALLIGAN: I will ignore that comment. Judges at this time try to take on every conceivable role with respect to someone who perpetrates a crime. I am sure that older members in this House would have heard the term, "If you do the

crime, you do the time." That is something I believe in as well. Although I believe in rehabilitation, that is not the province of the judges. Rehabilitation should be undertaken by people who know what they are doing. With a matrix, people know exactly where they stand. If they did the crime, they would do a certain amount of time. There is some flexibility for judges, even within a matrix system. There is also a need for rehabilitation. However, that is a separate issue.

When considering this sentencing legislation, I cannot see how we can lump everything together and say that it is deficient. It is but one aspect and one of any number of strategies that will need to be developed if we hope to reduce the number of people who are being incarcerated and the number of people who are perpetrating offences against society in general.

Hon Ljiljanna Ravlich: Surely you would start with courses?

Hon RAY HALLIGAN: As I said previously, what do we do here and now? We cannot go into a form of suspended animation and expect everything to stand still until we find the answers that no-one has been able to find for hundreds of years.

Hon Ljiljanna Ravlich: The Government has been in office for how many years?

The PRESIDENT: Order, Hon Ljiljanna Ravlich!

Hon RAY HALLIGAN: Hon Ljiljanna Ravlich's side of the House was in Government for 10 years. What did it do? It did absolutely nothing. It could not stop crime then and it cannot stop it now. The Opposition is a lot of hot air.

Hon Bob Thomas: Crime has gone up since you guys got into government.

Hon RAY HALLIGAN: According to Hon Helen Hodgson, that is not the case.

Hon Ljiljanna Ravlich: You know it is.

Hon RAY HALLIGAN: The Opposition does not believe its voting colleague. It is a pity she is not here to hear that.

Hon N.D. Griffiths: We think the Australian Democrats are good at talking about death and taxes, but just leave it at that.

Hon RAY HALLIGAN: There are not too many areas in which the Opposition is good. There are no quick fixes, as members opposite would suggest. There is not one Bill that can be brought before this House which will overcome all the problems that have been around for hundreds of years. There must be a start, and this matrix is most definitely a start in the right direction. Our judges should be accountable. They should be able to tell the community why they have sentenced some people to lesser terms than others, whether it be incarceration or otherwise. There must be some guidelines. The matrix will be the guideline; it will be the starting point. That is not in place at the present time.

Of course, we hear the Judiciary complaining about the fact that members of Parliament might very well make some of the decisions that they would dearly love to continue to make. However, I can see no reason why members of this House should not be able to set some of these parameters. I have heard nothing from members on the other side of the House during this debate that has caused me to change my mind. However, I am still willing to listen.

I will not take up any more time of the House. I support in principle what the Attorney General is trying to achieve. More will have to be done. I sincerely hope that it is done in as short a time as possible. We cannot afford to allow what is currently happening in the community to continue, particularly what is generally known as the revolving door situation whereby the Judiciary continually lets people back into the community who obviously should not be allowed back into the community. How can we have offenders, as young as they might be, who have offended hundreds of times allowed back into the community? There are not just one or two of these people; there is a great number of them. Something must be done to protect the community against these people.

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order! Hon Ljiljanna Ravlich must understand that if she comes into this Chamber, one of the unfortunate requirements is that she remain silent. Everyone else seems to be able to do it.

Hon RAY HALLIGAN: It is particularly important that in the shortest possible time we find a number of strategies with which everyone will agree, which will hopefully lessen the number of crimes against members of our community, which in turn will lessen the number of prisoners who are incarcerated.

HON J.A. SCOTT (South Metropolitan) [8.38 pm]: It is interesting that Hon Ray Halligan's conclusion is the antithesis of my beginning, because in principle I oppose this Bill. The principles have been clearly delineated in this debate, because this Bill defines the philosophical differences between the various parties in this House. The Greens (WA) are probably furthest away from the Government in this debate, with other parties being somewhere in between. On the one hand, the Government wants to deal with the effects of crime via tougher penalties and by spending taxpayers' money on more jails. It sees our community largely as potential criminals who must be controlled. On the other hand, the Greens (WA) see our citizens as potentially good citizens and deal with the causes of crime, such as social alienation, lack of resources, poor education, no jobs, addiction and poor communication skills, and spend taxpayers' money on that, rather than on the sorts of controls that the Government would like to put in place. We would spend the money on early intervention, more education, rehabilitation, treating addiction as a health problem and dealing with alienation and poverty. We see the Government's path as an expensive social disaster. The Government's solution is, by nature, a paternalistic one, imposing strict rules and locking up people. The Greens (WA) prefer to give greater flexibility to the judiciary and to empower people to change their lives for the better. We are optimists; the members of the Government are pessimists. They see the worst in our young people, and see that we are heading for disaster. Our way of thinking is exactly the opposite.

This Bill attempts to provide more control over the decisions of the judiciary. This is clearly what it is all about. The guidelines or the matrix are presented to us without public consultation and comment. In this case they are the paternalistic expressions of the Cabinet, but particularly the Attorney General's department. They are also reactionary in that it is responding in a knee-jerk way to the problems experienced in our community that are caused by social alienation, drug addiction and so on, rather than responding in a way which will deal with the real problems. I do not believe that no-one should be kept away from society; however, what we are seeing in the jailing State -

Hon Simon O'Brien: You want nobody sent to jail.

Hon J.A. SCOTT: I said that I do not believe that no-one should be kept away from society; for most people it is not the best solution. The problem with most people who end up in prison is that they are already alienated from society in some way. By providing another alienation mechanism, the Government is making it worse. It is increasing the problem. It is training these people with new skills. This legislation will result in more people being in jail. I listened to Hon Tom Helm describe the case of a person who had ended up in East Perth lockup because of driving offences. I wondered whether my stepson might join him one day because he had been caught for riding a skateboard. He was pulled up by a policeman and charged with riding his skateboard on the road, which he said he was not doing. He was riding on the footpath, so it was not quite accurate; but neither of them is allowed in this society. That is the form of transport that young people have. He was going to his part-time job. Because we had just moved house, the wrong address was given - not deliberately, because he is a very honest man. I have never known him to tell a lie. We do not know whether he made the mistake or whether the policeman made the mistake, but we did not receive a notification. We waited for it because I wanted to take up this matter in court. I think it is ridiculous to arrest young people for going to work on a skateboard. It does not provide a danger to society. As a result, a larger fine recently arrived for him at our house because it had not been sent to the right address in the past. I am not sure whose fault that was, but by this time the fine had built up. It is easy for these sorts of situations to be imposed on people who do not have the supportive family backing that he has. Putting people in positions in which they do not have money to pay and the sorts of silly rules that are put on the people in society sometimes will lead to crime. We should look not at turning people into potential criminals by silly rules and locking up people for minor offences, but at finding ways for them to be educated about the sorts of social effects of what they are doing. Most people are good people and will not continue to do that. The sorts of sentencing that are proposed by the Attorney General will have the opposite effect to that which he hopes to achieve. The intention is to spell out to the potential criminals that if they misbehave, they will be punished strictly.

Hon Peter Foss: Where is that in the Bill? What section?

Hon J.A. SCOTT: The Attorney General is trying to lay down guidelines to take away the individual cases and the backgrounds that get people into these situations.

Hon Peter Foss: No, quite the contrary.

Hon J.A. SCOTT: He is laying down a matrix to have further control over the judiciary.

Hon Peter Foss: It takes into account all those things.

Hon J.A. SCOTT: It is not taken into account from that end; it is taken into account from the Attorney General's end. He is laying down certain things which can be taken into account, but there may be much wider experiences in the community than those of the Attorney General.

Hon Peter Foss: Have you read it?

Hon J.A. SCOTT: I must confess that I have not read it in detail. I am concerned about the whole philosophical aspect of putting in place restrictions on the judiciary.

Hon Peter Foss: You had better find out what are the restrictions.

Hon J.A. SCOTT: They are restrictions. The Attorney General cannot pretend they are not. He is putting down guidelines by which the judiciary decides the sentences.

The PRESIDENT: Order, members! There is too much audible conversation in the first instance. If the Attorney General makes notes of these points, no doubt he will reply to them in his response. It is very hard to hear Hon Jim Scott from that position not just for me, but for others who are trying to record what is being said.

Hon J.A. SCOTT: I am trying to explain that I have a philosophical problem with this Bill, not a detail problem with this Bill. As Hon Nick Griffiths said, the Government has a right to govern, but it does not have -

Hon N.D. Griffiths: I did not use those words. Hon Helen Hodgson purported to paraphrase me and if she had read *Hansard*, she would know exactly what I said, and so would you.

Hon J.A. SCOTT: The Government should have the right to govern, but it should not have the right to break down the separation of powers.

The Attorney General is suggesting that we return to the days of Bob Dyer. Instead of *Pick a Box*, it is tick a box.

Hon Peter Foss: Read the Bill.

Hon J.A. SCOTT: Does this not involve a matrix by which -

Hon Peter Foss: You should read the Bill.

Hon Ljiljanna Ravlich: Leave him alone. He has probably read enough. I am enjoying it.

Hon J.A. SCOTT: Tick a box justice is injustice, and it will not reduce social disorder and crime.

Hon Peter Foss: The example given by Hon Tom Helm suggested that where there is discretion there is justice.

Hon J.A. SCOTT: What we need in this State is not tough sentencing but fair sentencing. The system must be fair to the victim, to the community and to the offender. It should take into account all the facts of the case and a magistrate should have flexibility to deal with it. Too often I hear magistrates say that they would have liked to have done something else but they have no power to do so.

Hon Peter Foss: It is not because of anything we enacted.

Hon J.A. SCOTT: Flexibility is the key in imposing sentences. The Attorney General feels that his legislation allows that flexibility but the judiciary and legal practitioners do not agree. They have written to us about this Bill. The Western Australian Bar Association has a number of concerns about it.

Hon Peter Foss: I am sure it does.

Hon J.A. SCOTT: I understand that the Attorney General will be able to vary this matrix by regulation.

Hon Peter Foss: Read the Bill!

Hon J.A. SCOTT: I would be very concerned -

Hon Peter Foss: So would I. Why not read the Bill to find out what it does.

Hon J.A. SCOTT: The Western Australian Bar Association states -

> Regulations made for the purposes of a *reporting offence* and a *regulated offence* come into operation upon publication in the Government Gazette on the day specified, under section 41 of the Interpretation Act.

Hon Peter Foss: It does not specify how people are sentenced.

Hon J.A. SCOTT: The association continues -

> However, as with all such regulations, they may be disallowed if either House of Parliament passes a resolution of which notice has been given within 14 sitting days of such House after the regulations have been laid before it, under section 42 of the Interpretation Act.

The Attorney General is able to -

Hon Peter Foss: No, I am not. There are three types of matrix. Only the third one has an effect on the court and that has to be agreed to by this House.

Point of Order

Hon N.D. GRIFFITHS: Given the continued interjections from the Attorney General, I assume that he will not make a lengthy response.

The PRESIDENT: That is not a point of order; it is a point of view. I would expect not. As much as it is my job to try to get members to comply with the standing orders, it is not unruly if genuine questions are being asked as long as the speaker wants to entertain those questions, responds or whatever. The problem is that when one person asks a question, six members want to give an answer. I have said before that the acoustics at the point from which Hon Jim Scott speaks for some reason are not very good. That is not the member's fault. However, if Hon Jim Scott were to speak to me and the Attorney General were to make notes, I would be able to hear. I make the point again so that members do not think I get up every morning and take grumpy pills: There are other people in this House who are required to write down what is being said. At times the interjections are grossly discourteous to them. I will leave it at that.

Debate Resumed

Hon J.A. SCOTT: I have almost completed my remarks, Mr President, so you will not have to strain your ears - nor will the Hansard reporter.

The PRESIDENT: I do not object to having to listen to the member. My objection is to members who want to keep interjecting on the member on his feet. The member will be pleased to know that I will listen.

Hon J.A. SCOTT: I query the view that regulations of this type are not increasing the power of the Executive over the Government. I would like to see these regulations the subject of a full debate in this House.

I am surprised that the Labor Party has not opposed this Bill at the second reading stage because of its philosophical implications. The Bill will not do anything to prevent crime or social disorder. We will reduce crime only by addressing the causes. I oppose the Bill.

HON PETER FOSS (East Metropolitan - Attorney General) [8.56 pm]: There is a well-known saying that for every complicated problem there is a simple solution that does not work. There is not a simple solution to most of these problems.

In fact, there is not even a simple series of solutions; this is a very complicated problem that needs a complex series of solutions. I have never suggested to anyone that this legislation is a solution to any problem. It is intended to address the one part of the law referred to in the names of the two pieces of the legislation. One is the Sentence Administration Bill and the other is the Sentencing Legislation Amendment and Repeal Bill. We are dealing only with the question of sentencing, not the degree of punishment, whether there should be punishment, the causes of crime or their removal, or preventing crime. We are dealing with one simple weapon in the armoury of the law; that is, sentencing. Members should not believe that this legislation addresses a wide variety of society's problems that lead to offending behaviour. It deals with a very minor aspect of the law - sentencing. I make this distinction because it is helpful, although it does not exactly apply in the present case.

The law has made a distinction between what we call substantive law and adjective law. Substantive law is that which directly affects the rights and obligations of individuals. Adjective law tells one how to go about determining those matters. A clear example is the law of property, which is substantive law; it states what one owns and how one transfers ownership. The law of evidence is adjective law which states the way in which one proves a fact in court. Adjective law helps one to decide the matter of substantive law.

Hon Derrick Tomlinson: Adjective law is descriptive - a noun and an adjective.

Hon PETER FOSS: That is right - substantive law as a noun, and adjective law as an adjective.

Hon N.D. Griffiths: You were not paying attention the last time the Attorney gave this speech. It was the same interjection.

Hon PETER FOSS: It is important. The Sentencing Act is akin to - although it has substantive ramifications - a form of adjective law. The Criminal Code states that something is an offence. If one wanted to abolish criminal behaviour, one could repeal the Criminal Code so we had no offences. Whether an offence exists is determined in the Criminal Code, which also outlines the range of penalties to apply for that offence. The Sentencing Act tells the court how to go about the process of sentencing, assuming that the person has committed an offence, has been found guilty and has reached the stage of the court applying a sentence. Once the sentence is imposed, the Sentence Administration Act deals with how to administer that sentence.

It is desirable that no offending should occur in society. I do not for a moment believe that we will achieve such a society - no-one ever has, and we will not suddenly achieve it; most importantly, it will certainly not be achieved by means of legislation. People who believe that crime can be abolished through legislation are kidding themselves. If it were that easy, every nation in the world would have passed that law long ago.

These Bills are not, as I have heard some people say, all about imprisonment. For instance, it happens that the provisions amended by the Sentencing Legislation Amendment and Repeal Bill deal with parole and remission, which apply when a sentence of imprisonment has been imposed. Of course, those amendments deal with imprisonment because that happens to be the part of the Sentencing Act dealt with. The Sentencing Act deals with imprisonment, as well as a variety of alternative methods of dealing with convicted offenders. It sets out all the principles to be dealt with. This Act has been highly commended in outlining in one measure the way in which the process of sentencing takes place. Much of that process was already in judge-made law before the passage of that statute, but codification has made certain points very clear. Importantly, the Act has made it clear that imprisonment is to be regarded as the sentence of last resort. Section 6(4) of the Sentencing Act reads -

> A court must not impose a sentence of imprisonment on an offender unless it decides that -
>
> (a) the seriousness of the offence is such that only imprisonment can be justified; or
>
> (b) the protection of the community requires it.

That is clear. We are not talking about imprisonment as that principle will remain within the Act. The Government does not suggest for one moment that imprisonment be other than within the principles set out in section 6(4) of the Act. We just happen to be dealing with parole and remission, which apply only when one has imposed a sentence of imprisonment. That matter is dealt with because it was universally stated that the current provisions relating to remission and parole were unsatisfactory. The judiciary was continually complaining about them. I must have a little gripe here: The provisions were regarded as unsatisfactory as a result of the ways certain courts had interpreted the law. We find ourselves in this situation on occasions. We pass laws about which everyone who is uneducated on the law would say, "The law seems to be clear. I understand that." The law reaches the court and, strangely enough, it receives an interpretation that the person in the street finds unusual. Once that interpretation is made, it becomes law.

Part of the problems with the parole provisions resulted from interpretations placed on them by not local courts, but higher appellate courts. This left us with a fairly unmanageable situation. It is not unusual for that to occur. The same problem arose with the whole-of-life sentencing provision: Its wording as enacted by the previous Labor Government was clear and simple; I thought no-one would have a problem understanding it. However, it remained that way until it was interpreted differently by the High Court, and we then needed to enact a far more convoluted provision to achieve the result we thought we had achieved in the first place.

The parole and remission provisions to be amended by these Bills before us were thought to be unsatisfactory by the judiciary and the public. The public could not understand why people had one-third taken off their sentences. Why should people be sentenced to six years' imprisonment if one meant four years? Why take two years off immediately for no reason? It was not done because the person behaved well. The one-third was taken off no matter what happened purely because it was part of the sentence. Putting it mildly, the public raised a reasonable query: Why give a sentences if one-third is to be instantly taken off?

Hon Derrick Tomlinson: It was not done with juveniles.

Hon PETER FOSS: No. They did not receive any remission at all. Hon Derrick Tomlinson makes a very good point, as a different regime applied to juveniles.

The other aspect which caused people an amazing amount of difficulty was that if a person was to be given eligibility for parole, a method to work it out was available. Up to six years' imprisonment was simple; namely, one-third of the sentence, which was two years. When the sentence was over six years' imprisonment, one worked it out as two-thirds of the sentence, less 24 months. Try explaining to somebody how much time he or she will spend in jail when sentenced to 14 years' jail. Two-thirds of 14 does not divide equally by three, so some months must be part of the calculation. Take 24 months off that figure. One could see eyes glazing over when one tried to explain to the Press that a person would spend considerably more than one-third of a 14-year sentence in jail. I did not bother to explain this to the Press after some time; no way were journalists going to work it out. Therefore, the public received a false impression about how long people were to spend in jail with certain sentences. That was unsatisfactory. The public became indignant when told that a person sentenced to 15 years' jail would spend only five years in jail.

Hon N.D. Griffiths: It is not correct.

Hon PETER FOSS: No, but that is the way the Press reported it. The court was not obliged to state how much time a person would spend in jail under a sentence. These Bills will ensure that an offender will be told at the time of sentencing exactly how much time must be spent in jail. Therefore, people need not make those calculations, which caused problems.

There was dissatisfaction in the community with the system because people did not know what the sentence was, and when they worked out the sentence, often incorrectly, they got indignant for a number of reasons. One was that they got it wrong. Another was that they did not understand the very important matters of sentencing relating to aggravating and mitigating factors. There will always be a very wide differentiation even for the same crime, depending on those factors. That is in the Sentencing Act. It says that judges will take into account those aggravating or mitigating factors. That was always the intent of the law. Very seldom did we get an easy explanation of what were the aggravating factors and what were the mitigating factors. We saw only those cases where it seemed that a person got off lightly.

I can tell members that in many cases when people think they will get off lightly, they will get the reverse; they will get the book thrown at them. I hear all about those. I get letters from very aggravated grandparents who want to know why their grandchildren who committed a serious crime, but there were many mitigating factors, had the book thrown at them. We will not read that on the front page of newspapers or see it on television. I have to put up with getting those letters, and I read them. Often I have the same feeling about their grandchildren. No matter what age they are, as far as their grandparents are concerned they are still their grandchildren. I find it quite emotional to deal with because at times it seems that somebody has got the raw end of the deal. On some occasions some do get a very light sentence and others seem to get a serious sentence.

In my discussions with the Criminal Law Association regarding this matter, I have been told it believes there are vagaries of sentencing. Of course, we must have judicial discretion, but not judicial whimsy. The granting of discretion to judicial officers is not to allow them to do anything they like; it is to allow them to apply the principles of law in a consistent and fair manner. It should not be the case that a sentence is determined not only by the seriousness of the offence and the circumstances of mitigation and aggravation, but also as a result of whom offenders happen to come up before. All people will say that it would be inappropriate if that were to be another factor. The members of the Criminal Law Association will say there are some factors. There will be the usual bell curve variations. The large body of the judiciary will sentence in a fairly tight, methodical, predictable way. Some will consistently come out at one end of the bell curve, while others will consistently come out at the other end. Of course, criminal lawyers try to appear before one of those who comes out at the lower end of the bell curve! Even that is not fair. People should get a reasonably predictable sentence once the factors have been determined.

We carried out some surveys, using criminal lawyers, from both the prosecution and defence sides, to see the result we would arrive at for a matrix. They were given a defence and aggravating and mitigating factors and so forth and we asked them to tell us what the sentence would be. It was amazing how consistent their predictions were. The only difference was that the prosecution lawyers predicted low and the defence lawyers predicted high. I think I know the reason for that: A defence lawyer will tell a client that he will get a certain sentence and if he gets less than that, the lawyer will say it was because he did a good job; in contrast, if the sentence is more severe than the prosecution lawyer predicted, he will say that he did a fairly good job. Leaving that little variation aside and the fact that the prosecution lawyers bid low and the defence lawyers bid high, it was interesting to see that we got a consistency in the prediction of sentence.

Hon Mark Nevill: Is it the prosecutor's job to ask for a severe sentence?

Hon PETER FOSS: Not usually.

Hon Mark Nevill: The prosecutor's job is not to ask for a severe sentence, but just to put his case to the judge.

Hon PETER FOSS: There are two aspects to it. The first is that the prosecutor puts the case to the court. Once it gets to the question of sentencing, the prosecutor can be asked to give his views on sentencing, without necessarily indicating the time to be served. He can certainly say what he thinks is a fair term of imprisonment or other serious punishment. The prosecutor can be asked for, and offer, his views as to the seriousness of the case.

Hon Mark Nevill: If an Aboriginal person has committed murder and has already had tribal punishment, how is that accommodated in the legislation in terms of the sentence? Is that a mitigating factor?

Hon PETER FOSS: Murder is unusual because it has only one sentence.

Hon Mark Nevill: What about manslaughter?

Hon PETER FOSS: It is taken into account in the severity of the sentence imposed. It gets very difficult when we know the person will be subject to tribal penalty, but he has not had it yet. In such cases, I know the police are reasonably slow to arrest so as to enable the tribal punishment to take place before the arrest. If the person is jailed without having had the tribal punishment, it causes immense problems because that punishment is carried out either after the person comes out of jail, and that would be terrible, or on other members of the family.

Hon Mark Nevill: Relatives.

Hon PETER FOSS: Yes. That is not to be desired. Generally speaking, as I said, the police in tribal areas are reasonably slow to arrest so that the tribal punishment has been dealt with prior to the arrest.

Hon J.A. Scott: Has thought been given to offering a matrix for the Aboriginal communities?

Hon PETER FOSS: They do not need one. They have a very clear matrix; their punishments are far simpler than ours.

Hon Mark Nevill: And far harsher.

Hon PETER FOSS: In the example of manslaughter, when fixing the period of jail and parole period, the court would take into account that the person had suffered a tribal punishment. It is difficult with murder because there is only one sentence - life imprisonment. It is only when we get to wilful murder that there is a capacity to hand down a sentence of life imprisonment or strict security life imprisonment and to fix a minimum non-parole period. The whole question of Aboriginal law, and the mix between the laws, has never been satisfactorily resolved. Very good work was done by the Australian Law Reform Commission. A professor - I cannot remember his name at the moment - who was leading that reference was appointed to very senior professorship of law at the university. We lost his expertise, which is a great shame, because this issue is very difficult. I do not know whether any person has satisfactorily resolved it. It must be addressed because it will have a significant effect on what Aboriginals, as opposed to how non-Aboriginal people, suffer by way of punishment. The point I am trying to make is that this legislation deals with a very difficult area of the law.

I started off by saying that every complex problem has a simple solution which is usually wrong. As a Government, we recognise that there must be, and there are, different and far better solutions than punishment to the whole question of crime. We do not deal with those when handling the Sentencing Act. The Sentencing Act deals only with sentencing. The fact is that we need sentencing. Hon Ray Halligan gave a very good, measured speech on the fact that, yes, we all agree with that. The points he made were excellent. Here we are dealing with a situation when it is necessary to sentence people. Until we have that ideal world where nobody commits crimes, and nobody commits serious crimes, sentencing will need to take place and there must be laws to deal with that.

I will deal with the question of restorative justice. I was disappointed by Hon Helen Hodgson's rather dismissive statements about restorative justice in the juvenile area. Those of us who were members of the Legislation Committee in 1992 had a reference to look into the Crime (Serious and Repeater Offenders) Sentencing Act after it was passed. We visited New Zealand and pointed out two particular aspects of that system. One was family conferencing, which is definitely restorative justice. We also pointed out that New Zealand had a policy against the detention of juveniles. In fact when we were in New Zealand it had only two juveniles in detention and later we were told it had none. The New Zealand people made a big thing of that.

Hon Derrick Tomlinson: It reduced the number of young people in prisons by 97 per cent within 12 months.

Hon PETER FOSS: I will say more about that because I have been back to New Zealand since then. It is interesting that in 1993 Western Australia had a policy of such a model of restorative justice and introduced the juvenile justice teams under the Young Offenders Act. They had been introduced unofficially prior to that and then were officially introduced under that Act. In 1997 the juvenile population in Western Australia was 214 000. Of those, 12 400 came to the attention of the police. Of that number, 7 400 were cautioned. Most of those young offenders come to the attention of the justice system once and once only.

Hon J.A. Scott: Are you talking about criminal offences?

Hon PETER FOSS: Yes. That one contact with the law is sufficient to put them off forever. They are picked up by the police, carted off to the police station, given a talking to, handed a caution, and their parents are called in. For most kids that is enough. It must be recognised that most of our kids are pretty good kids. I agree with Hon Helen Hodgson that Western Australia does not have a big crime problem, no matter what the perception. The crime rate is a steady ratio to the number of 16 to 25 year olds in the community. Western Australia is a good place in which to live. People may not get that impression from the newspapers, but it is. A young lad from Brazil stayed in my house for about six months, and he could not believe the statements being made about our crime rates. He thought it was a joke, having come from Brazil, because he had never been in such a safe place in his life. He found the suggestion that crime levels were high just ludicrous.

As I said earlier, 7 400 juveniles were cautioned; 1 086 juveniles on 2 912 matters were referred to juvenile justice teams. Only 2 310 were convicted. That ratio of 1 000 to 2 300 is not a mere token number; it is a significant number. Western Australia is recognised as having one of the most successful and effective restorative justice systems for juveniles. Perhaps we have not blown our own trumpet or banged the drum enough, and perhaps we should be making much more of it. It is seen as a great move by Western Australia. Of the 2 310 juveniles with a conviction, 1 250 were given a penalty other than supervision, 860 were sentenced to supervision in the community, and only 210 were sentenced to detention.

I went to New Zealand recently and thought I would catch up with what is happening in the juvenile detention area. To my horror, I found children as young as 15 years of age in adult jails. Western Australia does not put children in adult jails. In New Zealand as soon as juveniles turn 17 years of age they go to adult jails, but a large number of children as young as 15, 16 and 17 years of age were in adult jails. While in New Zealand I also went to a Family and Children's Services residential centre. At that centre I saw children who were residing there without any option and they were locked in. There was a punishment area, which is something Western Australia has never had in its juvenile detention centres. The children were detained, but it was not called detention. I spoke to the minister and was told New Zealand is now building detention centres. He said the New Zealand juvenile people had spent so much time going overseas and claiming that it did not detain juveniles, that they could not admit that it was. Therefore the juveniles were detained in places totally unsuitable for detention and in adult jails. What can be done with a young murderer if there is no detention centre? New Zealand had closed all its detention centres. I sometimes wonder whether I should boast about Banksia Hill because it has class sizes of eight. How many children in the community are in classes of eight students?

Hon Derrick Tomlinson: Only those in Banksia Hill.

Hon Mark Nevill: That is the maximum number the teacher can fight off!

Hon PETER FOSS: No, we have the same number of staff as in the previous detention facilities and have reversed the ratio between the supervisory staff and the teaching staff. Has Hon Mark Nevill been to Banksia Hill?

Hon Mark Nevill: Yes, and that is the sort of thing you can do when prisons are not crowded.

Hon PETER FOSS: I agree with the member. That is the ideal situation. Banksia Hill is a great credit to this State. Those kids are being given a full education. Many have not had three meals a day, have not been free of physical or sexual abuse and have not been required to attend school every day. Many have not had access to these types of programs after school. It is a very positive system and this State can take considerable credit for what it is doing with juveniles. However, it is still not the solution because people still come into the justice system who should not be there, particularly Aboriginal children. The reason for that struck me forcibly when I became Minister for Justice. I had been Minister for Health, and was aware that one of the biggest problems in that portfolio was Aboriginal health. It became quite clear that the Aboriginal health problem was incredibly complex because we did not know where to start. What is the point of teaching people about certain rules of hygiene if they are not living in a house? What is the point of giving them a house to live in if they are not taught basic rules about nutrition, cleanliness and the fundamental skills we take for granted because we learn them from our families? People are not taught them, they live them. Many Aboriginal people have never been taught those things because they have lived in terrible conditions with abuse, overcrowded houses, substandard conditions, unemployment, one or both parents in jail or even half the family in jail.

As Minister for Health, the question I faced was how to get all this to start happening together. All the problems had to be tackled in a coordinated fashion at once. There was no point in tackling one problem, because all that happened was that the effort that one put into that area was wasted. What struck me forcibly when I became Minister for Justice was that there was exactly the same problem. It was the health problem, but standing somewhere else. It is not a health problem, a justice problem, an employment problem, a substance abuse problem and a too-large family problem. It is one problem; that is, the low socioeconomic status of Aboriginal people and the depressed status that they have in our community.

Hon Mark Nevill: On that issue of juveniles, in some European countries the courts have the choice of treating 18 to 21 year olds as juveniles or adults.

Hon PETER FOSS: I have not made a big fuss about it, but within our own prison system we have been treating, in circumstances when we think it is appropriate, people between the ages of 18 and 25 years with much the same programs and treatment as people who are under 18 years of age. There are some kids of 16 years, and the sooner they are put into an adult jail and can be treated as adults, the better. It is not chronological age that is important. The possibility of doing something for a person and getting somewhere is the important thing. We have been doing that. I do not know whether it is as fully accepted throughout the system as I would like, but certainly the instruction has been given and that is happening.

To return to this question of the Aboriginal difficulty, it is clear that if we want to stop the over-representation of Aboriginal people in the justice system, we must deal with all those other problems that really are in other agencies. I am continually asked to fund all sorts of programs. People say to me, "If you fund this educational program for young people, it will reduce offending." Of course it will. However, I cannot take over the role and the $1.5b budget of the Education Department in Justice. I have also been told that if I fund a certain health program it will overcome this offending problem. Of course it will, but I do not have the $1.5b budget of the Health Department. Government needs a coordinated approach to deal with the problem.

There is a further problem with Aborigines. It is not enough that we do certain things; Aboriginal people must be involved. When I was dealing with Aboriginal health, the first thing I did was to try to get partnerships with Aboriginal people so that we did what Aboriginal people wanted and they delivered the service. The classic example was at Wiluna, which Hon Mark Nevill will remember. We had a problem because we could not provide health services in Wiluna. We contracted the Aboriginal medical service there to provide the health service for the entire community. They did not have premises; we did not have people. We were prepared to take a different attitude and I was prepared to go out on a limb. Hon Mark Nevill will recall the occasion. There was some doubt about whether the white community particularly would accept it.

Hon Mark Nevill interjected.

Hon PETER FOSS: Some were, yes. However, these people reacted positively and quickly. I think it is still a success; I hope it is. Sometimes one moves on to the next ministry and does not know whether something that one started has

continued to succeed or whether it has failed. At that time it certainly addressed the problem. However, the most important thing was that it meant that Aboriginal people were dealing with the problem.

I entered into a number of other partnership agreements. Most of the Aboriginal medical services throughout the State at that stage were starved for funds because the Federal Government had stopped funding them. I entered into partnership agreements for them to deliver services. I said that as long as they delivered the service I would give them the money. I told them that they could expend that money in their service doing what they thought was necessary, so long as they delivered my service. We did that throughout the State. They are now getting a great deal of money for new premises and so on. At that stage they had nothing. It was a partnership whereby Aboriginal people delivered the service, they said what service they needed, and we gave them the backup which meant that that service had some chance of success. That does not happen overnight. The health status of Aboriginal people will not be changed overnight. In fact, the health status of Aboriginal people will get worse because many of them have not had the flowthrough effects of western diet.

It is the same situation with justice. That will not be changed overnight. It will be at least a generation, maybe several generations, before something can be done about the fundamental problem that we as Australians - not just Western Australians - have not addressed. We pass changes to the Constitution and give the Federal Government power over Aboriginals. However, what do we see by way of major change to the status of Aboriginal people in real terms?

Shortly after the change of government federally, I attended a national summit on Aboriginal deaths in custody. We were able to persuade the Federal Government, all the State Governments and the Aboriginal representatives to adopt a model for national cooperation to address the problem of Aboriginal people being in the justice system on a consistent basis. I mention this because the model we followed was the one we have set up in Geraldton, which is the plan to address the cycle of Aboriginal offending. It is not a panacea; it is not a click-the-hands solution. It obliges all government departments to enter into an agreement with the local Aboriginal bodies to cooperate to deliver health, education, employment, training, recreation and other services according to a plan worked out by the Aboriginal people setting their own local guidelines. I am going to Geraldton this week to sign that agreement. It has taken a long time to reach this point. There was a national agreement at that summit to deal with that problem in that way. It needed to be a national, state, regional and local agreement for cooperation between the Federal Government, the State Government, local government, communities, organisations like the Chamber of Commerce and Industry of Western Australia and the Aboriginal people for Aborigines to deliver those programs and to do something to change the status of Aboriginal people. Until the status of Aboriginal people is changed, these problems will not be reduced.

Substance abuse has always been a problem. Alcohol has been a problem; it is now other drugs. It is not just a medical problem. Somebody said that drug addicts are a medical problem. They are not a medical problem; they are a social problem. One might have to deal with the medical side of that problem in the same way as one has to deal with the judicial side of that problem, but it is a social problem. There are no simple solutions.

Having listened to some of the speeches, it is the old difference between being an armchair philosopher and actually being in the driving seat. I accept what members have said. It is easily said, much harder done. The same people tell me that if we bring back the birch we will not have any problems - look at what happened in Singapore. I do not know how many times I have walked into a room and been told, "Bring back the birch and you will solve the problem. Bring in minimum sentences and you will solve the problem." Everyone has these simple solutions. There is no simple solution. There are only large numbers of quite complex solutions, and there must be time and effort and a will to change. We might all pay some sort of lip service to this, but are we willing to change and do something about it?

I visited New Zealand, and the people there had a wonderful idea. They decided to get rid of their prison officers who had no qualifications other than the shortness and thickness of their necks. A large number of those people are in the prison systems everywhere. They have short, thick necks, are pretty strong, and do not have too much empathy for training and rehabilitation. People might think that was a very worthy idea. I suppose it was. However, one little thing was forgotten: They forgot to speak to the Maoris. Who do members think were able to get a substantial number of jobs in the New Zealand prison system simply because of their size, their bulk and their strength? It was the Maoris. The consequence of that decision, albeit a wonderfully justifiable decision, was that Maoris were removed from the prison system. The one thing they could offer, even if they could not offer an education, was that they understood Maori people. Therefore, my first direction when I became Minister for Justice was that an Aboriginal director be appointed. There has to be a senior management person who is Aboriginal so that whatever decisions are made, someone at senior management level can say, "Hang on, from an Aboriginal perspective that is a mistake." The decision made by the New Zealand Government was not intended to disadvantage Maoris; it was made with the best of intentions but it was a mistake.

What I am trying to say about all of this is that I accept what has been said by Hon Nick Griffiths, Hon Mark Nevill, Hon Jim Scott, Hon Helen Hodgson and Hon Kim Chance. One cannot gainsay the rightness of those statements but it is not that simple. There is a difference between sitting in an armchair and philosophising and being in the driving seat and actually having to deliver. It is not a matter of my delivering; it is a matter of the whole of Australia, communities in particular, delivering.

There is a town in Western Australia which had a problem with Aboriginals which was being well addressed by a program funded by this Government. The Aboriginals lost their premises in the centre of town and had to build new premises. They got money for the new premises and asked to build in the centre of town but were refused by the local council, which forced them out to the outskirts of town to where the young Aboriginals who were causing the problem could not get. What happened? There is now a lovely new premises on the outskirts of the town with no Aboriginal children in it and in the middle of town are all the young Aboriginal children causing problems. The council is complaining to the Government and

asking what will it do about it. The first thing the council should do is think, because everybody has a responsibility. There are recreational programs during school holidays that will drop offending rates by 50 per cent. We fund those programs for one year and the local councils refuse to fund them the next year. Yet, it is their communities which suffer. Do they not have a responsibility to make certain that something happens in their communities and to pay for it? They would save the money in their insurance premiums in no time at all. Local councils must recognise that as part of society they have a responsibility.

Another council I went to complained about Aboriginal children running across the roof of the shopping centre and causing problems. I said, "What else do they have to do?" They said, "We have a lovely sports centre". I said, "How many Aboriginal people are in it? Do you make them welcome in there?" The answer was, "No". The kids have to have Nike shoes and tracksuits and all those wonderful things to get in there. There were no Aboriginal kids in there because the council did nothing to get them in there.

The whole of the community has a responsibility to change its attitude, and to recognise that the social conditions of Aboriginal people is a longstanding problem for which we are all responsible. Although I accept all that members opposite say, the problem is that right now I must deal with sentencing and these are two Bills about sentencing. We will not solve the problems of the world with sentencing. I am not even purporting to solve the problems of the world with sentencing.

I am surprised about some of the statements made about the Bill because I wonder whether people have read and understood it. I admire Hon Jim Scott for his frankness in saying that he had not read it. That is a frankness seldom heard in this Chamber and I am sure that more than one speech has been made by people who have not actually read the Bill; Hon Jim Scott is not an orphan in that respect. The matrix can be criticised on the basis of the American experience or it can be supported on the basis of the American experience. I suggest again that people should read my report because it contains some interesting matters about how the matrix first came about in the United States. The United States got to the stage of having standard sentences; people either got life or 20 years. They were sent to jail and the solution then was to parole them. They could not keep everybody in jail for 20 years so they started paroling them quite quickly. In fact, some people turned up at the front gate of the prison and were told to go home because they were on parole. They eventually decided to have a tariff as to when they would let people have parole, which was the first matrix. They therefore started letting people out on the basis of the matrix. After they had been doing that for some years, instead of sentencing people for 20 years or life and then determining their parole by the amount of time they had been in jail, they put the matrix upfront and sentenced them to that amount of jail. It has had significant benefits; it gives a degree of certainty and gets rid of the problem of unfairness.

Hon Tom Helm told us about a situation. Interestingly enough, I have some figures on people who have been jailed for a similar offence. I know of a case in which somebody got that type of sentence when that person had 17 convictions for driving under the influence. The kid was really silly. He had three convictions for driving without a licence; the second time he tried to escape from the police and gave a false name. One thinks about what has got into these people.

I agree that there seem to be some very harsh sentences. They arise out of judicial discretion. Sometimes the criticism arises because people do not understand and sometimes it is because even if they do understand, judges get it wrong. Judges are ordinary people like us and they can get it wrong and they do get it wrong. The suggestion that it will all be corrected by the Court of Appeal is a little disingenuous. Not everybody has the capacity either to afford a lawyer or to defend themselves. One of the chronically difficult things about this issue is that the most disadvantaged are the ones least likely to be able to have their sentences corrected by appeal. Sure, people like Alan Bond can appeal, but what about those same people we are talking about, the ones who have never had an education, who have never had a job and who cannot string two words together? Will they be able to appeal? No. Often they will not get legal aid and will not be able to defend themselves.

This Bill states the three stages of the matrix. The first one is purely a reporting stage. I was interested when the Chief Justice told me that judges are obliged to tell people what the sentence means. They do but nobody knows what it means. The judges tell the lawyers and all the lawyers fully understand; however, the convicted person must have a lawyer there to explain the effect of the sentence. We are conducting video remands at Canning Vale Prison and the most important factor in that is having a lawyer out there afterwards to tell people what it was all about because they do not know, they have no idea.

Hon B.K. Donaldson: Even the lawyers get it wrong.

Hon PETER FOSS: That is quite true too. The interesting thing is that the Supreme Court is now putting out potted versions of its sentences. The President of the Law Society said that people can find out by sitting at the back of the court. Who has time to sit at the back of a court and wait for a judgment to be handed down? That issue has been addressed by the Supreme Court. It is putting out these one-page versions of its sentences, and I think they are magnificent. They are, for a lawyer, an excellent, potted version of what the sentence is all about. However, they still do not tell the ordinary people in the street a thing. That perhaps is not correct for members of this House as they probably have a bit more experience in perusing and going through these things.

We are trying to introduce something very simple. We just want to ask judges to say what are the factors. It may be a person's youth or the fact that he has no past record or was under financial constraints. We are not telling them what the factors are; we are just asking them to tell us what they are talking about and to just write it down in a simple form. We are asking judges to tell us how extreme the mitigating or aggravating factors are. What we found in the experiment is that the number of aggravating and mitigating factors are pretty small. There will be the occasional one outside the general area. Youth, the age of the victim, the degree of injury and so on can all be aggravating factors, which can be severe, medium or mild. It is very simple and the public will understand it. The biggest single problem with sentencing in this State is that members of the public do not understand it. They criticise it because they do not understand what it is all about. How can

they ever know what it is all about? Generally the only information they get is from a sensational news report when something goes wrong. They do not see the thousands of cases every day that go right. They get a totally distorted view of what goes on.

I believe that generally speaking the judiciary does it well. The judges get it right; they are sympathetic; they understand the frailties of human nature and the need for not only justice but also fairness and some sense of mercy. Most people get a fairly predictable and reasonable sentence. Most of the criticism is ill-informed. It is a very important point to make: The system generally works well but it is not working in informing the public about itself. The potted version on sentencing which comes from the Supreme Court is still a lawyer's document. We are looking for the sort of document that we prepared during our experiment, a simple version that the public can understand, one giving just the factors and the severity of a sentence. We would like to be able to report that on the Internet. That is all we are asking for.

When we say that an offence comes under the first part of the matrix, that just says to the judge to tell us. In a statement in the report made by Chief Justice Malcolm, the District Court judges said that they thought it would take an awful lot of extra administrative time. I assure the House that that will not be the case. We have introduced a new computer sensing information system for which, quite rightly, the judges say they have been asking for some time. It looks like being very good indeed. This type of reporting could be easily done using that system without any extra work at all; in fact, there will be less work than judges currently must do. That is the first part. I would bring that in by regulation, which could be disallowed, but all it does is to tell them to report. One might ask why they should have to report because they are already reporting. My experience is that when I asked them to report on the three-strikes legislation, I was told that the judiciary does not report and that it is not its role. I found out some other way and we put it in the Act.

The second stage of the matrix is not a change; all it does is take the information given by the judges under stage one, put it into the matrix and produce results. The only thing that judges need to do, if they do not fall into the matrix we derive empirically from the judges, is to say why. No discretion is removed. If a person had been through that system and did not fall within that bell curve, he would want to know why. It is not unreasonable for the judge to have the obligation to say why that person's case is different. It does not stop the judge taking into account other mitigating and aggravating factors. All it produces is a predicted model from what judges actually do. That again is useful for the public. People would be able to put in figures and say what is the predicted sentence. That is useful information which should be given to the public.

Quite frankly, I do not think there will be a great need for stage 3 because stages 1 and 2 will address most of the current problems. What we could then do is take the stage 2 matrix and make it compulsory, alter it up or down or take the bits off the end of the bell curve and put everybody in the middle section. There is a lot to be said for it because we are taking out the vagaries of sentencing by taking out the extremes of too weak and too strong a sentence. The third stage does not come into effect until both Houses of Parliament have passed a resolution approving the regulations. Hon Helen Hodgson said that we would not disallow it. That stage does not come into effect until it has been positively affirmed by both Houses of Parliament. That is a pretty important difference.

Why have the regulation at all? The first reason is an important governmental point; that is, if we do raise the penalties, there is a cost consequence for government. Government needs to initiate it because it is a cost measure. If we increase penalties, increased periods of time will be spent in jail. I raise that because, interestingly enough, in one of the States in the United States which had a citizen-initiated referendum process, not only did they alter the matrix by a CIR but they also passed another constitutional amendment at the same time preventing any increase in taxes. Having imposed a financial obligation on the State to lock people up for longer, they said that the State was not allowed to raise any more taxes. Somewhere along the line our system, which says that government must initiate things that have an effect on spending, is important. If there are to be increases, government must take responsibility. The second reason is that if there is a mistake - there is always a possibility; I am not for one moment saying it is not possible - there is the capacity to repeal it by regulation, which takes effect immediately. It is important to have the capacity to pull something if we think we have made a mistake and then go back to the ordinary system.

This type of legislation is not highly prescriptive. The three parts dealing with the matrix are very much a framework. How the matrix will operate, and in particular the third part of the matrix, will very much be determined by the legislation that comes before this Parliament. That was done on purpose. If we had built everything into the legislation and said, "This is the matrix and this is how it will work", it would have faced severe possibilities of not being functional. This process has the capacity to bring in each bit gradually. The first part is the reporting, which we need in order to develop the second part, which is the empirical reflection of the reporting in the first part. We do not want to have the third part until we have had some experimentation with the second part and we can see how well the matrix model works and whether it is leading to a bringing in of sentences from the edges and whether all the factors are in there. Even when we go through all this, the third part of the matrix still allows the judges to say, "I do not care. I will impose a different sentence." Unless we have excluded a particular mitigating or aggravating factor, the judge can always take that into account as a reason for departing from the model anyway. Even if all the factors are in the matrix already, the judge can say, "For this reason I think it is unfair and unjust. I will impose a greater or lesser sentence."

I understand where the origin of the whole issue of appeal has come from. The suggestion that the Bill will increase the number of appeals is extraordinary. It deals with the situation only when there has been a departure from the matrix. Let us take the possibilities: It will either be more than the matrix or less. If it is in the matrix it does not change the rule, and the ordinary laws of appeal apply. If one applies for any other reason the rules do not change; it is only an issue when it is more than or less than the matrix. If it is more than the matrix, who will appeal?

Debate adjourned, pursuant to standing orders.

ADJOURNMENT OF THE HOUSE

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [10.00 pm]: I move -

That the House do now adjourn.

Minerals Exploration Industry - Adjournment Debate

HON TOM HELM (Mining and Pastoral) [10.00 pm]: I wish to sort out a few matters in relation to a question I asked the Minister for Mines this afternoon and the circumstances surrounding my perspective of the ministerial statement he made yesterday.

I will deal first with the statement and the fact that the minister advised the Opposition that we had been warned there would be a ministerial statement. That is true. We received that warning a couple of minutes before the House sat yesterday. I looked in the *Hansard* for any remark by the minister in which he suggested, if not said outright, that he intended to bring a statement to the House which would alleviate some difficulties that prospectors, miners and explorers were experiencing with lease exemptions in effect in the eastern goldfields. I honestly thought that the minister's statement would contain some ideas to alleviate those problems, which is what the Opposition had been seeking. I was surprised when the Leader of the House made his statement that it contained nothing that would give comfort to the 14 per cent of unemployed people in the goldfields who are waiting for an opportunity to work some of the alluvial gold in that area which is a resource that is not necessarily required, wanted or needed by major mining companies.

I wanted to deal with this issue yesterday and I owe the Chair an apology for putting the President in the position of making a ruling that was subsequently proved to be incorrect. I sincerely apologise for putting the President in that position and I am sure the President knows that I did not do it intentionally.

I asked the Minister for Mines whether he could advise the House what area of ground was taken up by mining leases that had been granted exemptions, given the difficulties that exist in the goldfields. I believe that the minister said he would advise the House of the amount of ground under mining lease that had been exempted. I may be wrong, in which case the *Hansard* will show the minister's response. I have searched through the *Hansard* and I do not believe that I have ever said that native title was not an issue in the development of resource projects in Western Australia, particularly in the goldfields. I am sure it is an issue in the goldfields and I am sure that resource developers would rather not deal with it, just as they would rather not deal with the heat in the summer and the remoteness of minesites or negotiate with pastoral leaseholders to develop a resource.

Hon Barry House: Native title is stopping farmers in the south west putting down bores.

Hon TOM HELM: I am not resiling from my comments, or saying that native title does not add to the difficulties of developing a resource. I have listened to the arguments, and the issues of native title are also the issues of mining exemptions that are causing problems. To the extent that they are causing problems and without being able to confirm this because the data has not been supplied to me and I do not have the resources of the mines department or those at the hands of the minister, I would say that mining leases specifically, because they have already dealt with the native title issue and maybe they were issued before Wik and Mabo - I do not know that but I would suspect some of them were - are no longer affected by native title issues. Those leases represent an amount of ground that is no longer available for further mining and exploration of the alluvial resource. I am not pursuing an argument that native title does not give rise to additional problems. We must learn to accept those problems in the same way that we accept the other problems associated with the mining industry. We should be advised on the exemption issue. I ask the minister to use his resources to advise me if that is not the case. I am willing to say I am wrong. That is what I thought the minister would have done in his statement. He might have told the House that he would take steps to correct the issue of exemptions. I will read a letter that came into my possession today addressed to Mrs Olden which reads -

> Thank you for your letter of the 13th November . . . concerning the effect the Mining Bill will have on prospectors and particularly your son's lease at Coolgardie.
>
> Firstly, let me reassure you that the Western Australian Government has nothing but the highest regard for the prospectors of our State and appreciates the tremendous influence they have had over the industry for many years.
>
> Contrary to the thoughts expressed by you, the Mining Bill will not disadvantage these men, but will assist them by restricting the operations of speculative or "real estate" peggers who seek to take up large areas of ground to the exclusion of the genuine prospector and, under the terms of the Bill, your son may continue to work and hold the ground just as he does now under the Mining Act, 1904.
>
> The prospectors reluctance to accept new legislation after being used to the Mining Act, which has served the industry for nearly 75 years, is understood. However, the basic principles of the Bill are the same as the 1904 Act with, of course, obsolete provisions being replaced by legislation to cater for modern day mining methods.
>
> The Government is absolutely certain that in the long term the proposed new legislation will be beneficial to all participants in the industry, both small and large and to the State as a whole.
>
> Finally, if your son has any further worries concerning the Bill, he should contact the Under Secretary for Mines, Mr. B.M. Rogers who would certainly be able to answer any queries he may have.
>
> Thank you for your interest in this matter.

The letter is signed, "Charles Court Premier" and is dated 8 December 1978. The letter is written to the mother of a prospector telling her that her son need have no worries about the operations of speculative or real estate peggers who seek to take up large areas of ground to the exclusion of the genuine prospector. That is exactly what has happened, and that is the thrust of what I have been saying in this place. Areas of ground are unable to be used by anybody else because this minister grants exemptions at the drop of a hat and those exemptions exclude others from working that ground and doing what they have a legitimate right to do. The minister does that for no other reason in many cases than to satisfy the needs his department or perhaps to collect the revenue that he gets from the $100 it takes to put in a request for an exemption.

Sorry Day - Adjournment Debate

HON HELEN HODGSON (North Metropolitan) [10.10 pm]: I have had a very busy day today because in addition to my responsibilities in this Chamber I was privileged to be able to attend two other events. I do not intend to dwell on one of them because most people here are aware that today is the anniversary of the proclamation of the abortion law reforms. I was fortunate enough during the dinner break to meet with some of the people involved.

The event that I raise specifically is in the context of some of the comments that arose in a previous debate that today is the first anniversary of Sorry Day. This year it has been given a different title and a different purpose: The journey of healing. The Attorney General in his comments on the previous matter made some references to the social status of our Aboriginal population and some of the issues with which our Aboriginal people are dealing. I thought it appropriate to remind this House that today is a day that we are supposed to be remembering the issues involved in the matters of social justice in its broadest context for our Aboriginal people. We all acknowledge that we have questions of Aboriginal health, education, employment, training, and of course the justice system whereby Aboriginal people are often disadvantaged. Much of this stems from the socioeconomic reality of their existence. We must focus on how we can work together to change some of these matters.

It is unfortunate that so many of the issues arise from the separation of people from their families in previous generations, and to some extent - I know we are trying not to - that still happens today. Much of the issues to do with justice, lack of parenting skills and many of the issues that come from a family environment or the lack thereof can be traced directly to the policies of separation of children from their families. That is a historical fact of what happened in the past in this country. We must now accept that that is a fact. This Parliament addressed this matter last year - I believe a resolution was passed in the other place, and I remember debating the matter in this Chamber - and we acknowledged that it is a part of our history and that this policy was adopted by Governments. The churches participated in this policy, and most of the population, if they knew about it, accepted it, but much of the population did not know about it. We need now to say it happened and walk on and start working side by side with Aboriginal people and finding ways to address some of the fundamental issues that we have not yet addressed in the context of some of the socioeconomic problems that Aboriginal people now face. I know that this all sounds very much pie in the sky. Much work is to be done, but we cannot do it if it comes from only one side.

One of the things that the National Sorry Day Committee did this year as part of the journey of healing was to send message sticks to various places. The message sticks came in pairs, indicating the need for both the indigenous population and the white population of Australia to be working together on these issues. It is not something that can be dealt with by one side without the other side taking an equal part.

The other event that I attended on Sunday afternoon as part of the journey of healing was also very moving. That was an interfaith service held at Trinity College. Eight of the major religions in Australia were participants in stating how we need to move on together and recognise what has happened as part of our history, and find ways of ensuring that future generations are aware of and incorporate the lessons that we have learnt.

I will not dwell on this issue much longer, but I thought it was appropriate that today be marked in this place at least by a few comments in the adjournment debate so that we are all aware that some people still believe that we can work together and address some of these issues. There is a very long road to go yet and I hope we can travel it.

HON J.A. SCOTT (South Metropolitan) [10.15 pm]: I will speak on the same matter on behalf of my colleague Hon Christine Sharp, whose sentiments I agree with but who is unable to be here today. She has sent me this speech. Today is the launch of the journey of healing which has been organised by the National Sorry Day Committee and marks the first anniversary of Sorry Day. This is not a one-day journey; it is a journey for the year ahead.

The PRESIDENT: Order! On an earlier occasion I picked up another member, who just happens to have glanced at me, for reading a speech that was prepared for him outside the House by another person. Hon Jim Scott has just said that this is in fact someone else's speech that he is reading to the House. That would be a breach of the standing orders. If it is the case that Hon Christine Sharp has raised issues with you which you want to put to the House, then as long as you do not read the speech, I cannot see that that would be breaching the standing orders. I obviously draw that to your attention because I think someone might be about to take a point of order.

Hon J.A. SCOTT: Hon Christine Sharp has pointed out to me that this not is a one-day event but something which should run for the year ahead and be a continuation of the healing process which will bring Australians together. She has said that as community leaders, we in this place should be committing ourselves to this process because we should be providing leadership to the community in this matter and should be looking at the three key points of the healing process: Recognition, commitment and unity.

In order to make this process properly achievable, we must recognise the effects of assimilation on the Aboriginal and Torres Strait Islander people and, if possible, to read entirely the document "Bringing Them Home", which was the report of the national inquiry on the effects of the stolen generations. She said this was not an easy read, and could be unpleasant in

places. However, it is an essential part of our learning curve in properly moving past our ignorance of the past, and truly accepting what happened.

She said another part of the healing process was commitment, without which we would get nowhere. We should be committed beyond the ordinary level of commitment of the community because of our role as parliamentarians and we should be looking at preserving the cultures of Aboriginal and Torres Strait Islander peoples and guaranteeing the financial support needed to enable them to maintain their cultures and their endeavours to have implemented the recommendations in the "Bringing Them Home" document. That information should also be available in some form in the curriculum in our schools so young people can learn of this history and understand the background that Aboriginal people are coming from. As Hon Helen Hodgson and the Attorney General have pointed out, this is very important for the health of our society in the future because it has impacts across the spectrum, from health issues to justice issues and to the wellbeing and the safety of us all.

The third element, unity, is what Hon Christine Sharp suggested is the only way we can guarantee a common future for the people of this nation. The things that are keeping this unity apart are racism, prejudice and a denial of the past hurts that have been suffered by Aboriginal people in this country. However, she pointed out that Australia is a country made up of a very diverse group of people coming from many nationalities. We have a great deal of goodwill in the community to break down those barriers because of the history of the people in this nation and to move to properly unify our society.

Hon Christine Sharp also hoped that we would think about what Sorry Day stood for and what the journey of healing is all about and take those feelings with us when we are dealing with indigenous people in the community and in this place, and be able to move forward to a real position of conciliation and not lose sight of where we are going until that process is complete.

Many times in this place we have very intense arguments about the Aboriginal land rights question. We have had examples in this House tonight whereby a considerable debate has taken place between the Leader of the House and Hon Tom Helm over the effects of native title or land rights claims versus a whole range of other matters such as the tying up of large areas of land by exploration companies and the current prices of resources. In that debate, I suggested, as I am sure Hon Christine Sharp will suggest, that Aboriginal people deserve to be treated with respect. In our dealings, irrespective of our views, we do not need to act in a racist way. We should also think about the need to bring together the different sides of this debate, even on diverse issues. I concur with the remarks of Hon Christine Sharp.

Minerals Exploration Industry - Adjournment Debate

HON N.F. MOORE (Mining and Pastoral - Minister for Mines) [10.24 pm]: I will make one final attempt to put to rest the silly nonsense Hon Tom Helm went on with a little earlier. I will give him a brief history lesson. He was not here in 1978, as I was, when amendments to the Mining Act were put through this Parliament. There was a very acrimonious debate and considerable public dispute about it. The main opponents to it were the prospectors. The Labor Party vowed and declared that the moment it got into office it would repeal that legislation. The main amendment to the 1904 parent Act related to changing labour conditions into expenditure conditions. It sought to reflect modern mining activities which involved the expenditure of large sums of money on exploration and mining activities, rather than having people working on tenements. As I said, that Bill went through with a lot of debate. It became the law and the Labor Party became the Government in 1982, or thereabouts. I waited for the legislation to be repealed. It never happened. It did not happen over 10 years. It has transpired that there is a general acceptance, with some minor modifications to the Act over time; that it is a very good piece of legislation. It is considered by many to be the best mining legislation in the world.

I suggest that Hon Tom Helm should read that debate and get a feel for the issues which were around at the time and which led to the creation of the 1978 Mining Act. He will come to understand that, since those days, things have changed. Today he read out a letter, dated 1978, from Sir Charles Court to a prospector's mother. That letter responded to a concern raised by the prospectors at the time. He mentioned real estate peggers. One reason for the amendments to the Act was to try to get rid of real estate peggers. People had to expend money in a certain period, otherwise they faced the prospect of losing their tenements.

The Act also provides for exemptions in the event of certain circumstances, which I have read out to the member several times. It also provides ministerial discretion. The Mining Act provides for a great deal of ministerial discretion, and it has been used very sparingly by ministers. The member says that I use it at the drop of a hat. In my ministerial statement I said that I have very rarely used it, perhaps twice, in my time as minister, and I gave an example and explained the circumstances behind that. It is not being used indiscriminately. I provided advice that 80 per cent of the reasons for exemptions relates to companies seeking to determine their future expenditure programs, and the other 20 per cent relates to instances where a number of tenements are bought together to create a project. In a sense the expenditure is averaged over the tenements. Any other exemptions that are granted are for the other reasons I listed in the Act for exemptions.

The intent of the Act was to try to eliminate real estate peggers, but to allow some capacity for people to be given exemptions. I will not go into the Paddington issue. If ever the member wants to debate the rights of prospectors, I will tell him about that issue and what the minister of the day, David Parker, did. He brought legislation into this Parliament to take away the rights of a prospector. I will tell the member about that when he has a spare hour or two. It is a very interesting issue. Today the member said that I was encouraging real estate peggers. The company about which he has been talking for the past couple of weeks is Sons of Gwalia Ltd. Is Hon Tom Helm telling me in this House that that organisation is a real estate pegger?

Hon Tom Helm: It has the same effect.

Hon N.F. MOORE: It is one of the biggest mining companies in Western Australia. In each of the two years to which I referred in my ministerial statement, it spent about $150m on activities within the goldfields of Western Australia. If the member thinks Sons of Gwalia is a real estate pegger, he should talk to Mr Lalor, who will tell the member in no uncertain terms how wrong he is. The member reckons this is an issue; he is trying to make this into an issue. I have not had one complaint about my giving exemptions for expenditure conditions from anybody, other than Hon Tom Helm.

Hon Tom Helm: Really?

Hon N.F. MOORE: Yes.

Hon Tom Helm: I will bring the minister some letters.

Hon N.F. MOORE: This is not a problem, let alone an issue. The member is trying to create an issue to divert attention from the native title problem, and I said so earlier today.

Hon Tom Helm: What about the amalgamated prospectors?

Hon N.F. MOORE: The Amalgamated Prospectors & Leasehold Association - I also have a lot to do with that group - is not concerned about this, but rather about its capacity to get onto existing leases and to get alluvial gold. These prospectors believe they should have access to that under their miner's right. I have told Hon Tom Helm that I will give consideration to changing the law to allow them to go onto existing tenements to get alluvial gold. However, I also said, and the member must understand this, that the Mining Industry Liaison Committee, which is composed of various organisations in the mining industry, seeks to reach consensus on issues affecting the industry. It has been highly successful for many years. It has not reached agreement on this matter. I have sent it back to the committee for reconsideration and I will make a decision in due course on the basis of the merits of the argument.

Hon Tom Helm: You have had four years until now.

Hon N.F. MOORE: I have not had four years at all. The member also conveniently ignores the fact that the 230 000 square kilometres of Western Australia, which is currently quarantined from any exploration because of native title claims, is available to prospectors with a miner's right. They can go on any of that land and explore and take alluvial gold because there are no titles on that land. All that land which is quarantined or sterilised for mining companies to explore is available for prospectors to take alluvial gold. Why do I say that? It is a simple fact of life. Prospectors can get onto land that is being held up because of native title claims and, if I make the decision and the Parliament agrees, they will be given access to existing tenements. As I said to the member, I will not make a decision on that until the issues have been sorted out. The issues are not to do with going onto someone's tenement and taking the gold or other ore - it might be the mineral for which the lease is pegged - but are workers compensation, insurance, duty of care and other extraneous issues that must be sorted out. They have not yet been sorted out. I suggest that the member read the Mining Act of 1978 and the debates at that time, and consult with his colleagues from the goldfields who know about these things.

Hon Tom Helm: I have spoken to them.

Hon N.F. MOORE: They do not agree with the member. It is very simple to see what the member is doing; that is, he is trying to create an issue where one does not exist except in his mind.

Hon Tom Helm: And the prospectors.

Hon N.F. MOORE: The member is doing this for a very obvious political purpose; that is, to make sure he is No 2 on the Labor Party ticket at the next election and that Hon Mark Nevill is No 3. If Hon Tom Helm is No 2 on the ticket and his arch enemy Graeme Campbell is a candidate for the Mining and Pastoral Region, Hon Tom Helm will be the former member for the region. He knows as well as you and I know, Mr President, that he must eliminate Hon Mark Nevill from the second position on the Labor Party ticket because that is the only way he can survive. Hon Tom Helm has been to Kalgoorlie, met two or three people who have a particularly biased view of the world, spoken to some people in the prospectors association but not the association itself, has listened to the jaundiced views of a number of people, and is trying to create an issue that does not exist. I invite the member to talk to the Chamber of Minerals and Energy.

Hon Tom Helm: I have done that.

Hon N.F. MOORE: He should talk to the Association of Mining and Exploration Companies.

Hon Tom Helm: I have spoken to them.

Hon N.F. MOORE: He should talk to Chris and Peter Lalor at Sons of Gwalia, and any number of the mining companies around Western Australia and ask them whether the Minister for Mines gives too many exemptions from expenditure conditions.

Hon Tom Helm: They are the ones asking for it.

Hon N.F. MOORE: They are not, because the member does not understand another fact of life. Many companies would like to get onto the land that other companies have, and they would be happy for the exemptions not to be issued and for the grant to be taken from those companies. There is a nice balance and most people in the mining industry agree that that is how it should be. Hon Tom Helm should ask those people, instead of trotting out Mr Ray Kean's rubbish in this House.

Question put and passed.

House adjourned at 10.34 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

HOSPITALS, CONTRACT WORKERS

1011. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Health:

(1) Which hospitals in Western Australia utilise orderlies or hospital service assistants employed through contractors?

(2) For each hospital -

(a) which company has the contract;
(b) when was the contract awarded;
(c) on what date does the contract expire;
(d) what was the original contract cost of the contract; and
(e) what is the annual cost of the contract?

Hon MAX EVANS replied:

(1) As at 1 April 1999, only Swan Health Service utilised orderlies or hospital service assistants employed through contracts.

Note: Patient care assistants (not orderlies or hospital service assistants) are occasionally contracted by Fremantle Hospital in emergency situations.

(2) (a) SSL Hospital Services.
(b) March 1998
(c) March 2005
(d) $645,000 pa
(e) $645,000 pa

DEPARTMENT OF CONSERVATION AND LAND MANAGEMENT, EXPENDITURE ON CONSULTANTS

1410. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for the Environment:

With regard to the $114m worth of purchases made by the Department of Conservation and Land Management (CALM) through the State Supply Commission (SSC) in 1996/97 (see Figure 3, SSC Annual Report 1997/98, page 29), how much of this figure was spent on consultants?

Hon MAX EVANS replied:

$114 716.

AGED CARE BEDS, RURAL AREAS

1419. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) How many residential aged care beds have been approved for transfer to rural and remote communities as part of allocations to country multi-purpose services?

(2) To which rural and remote locations have these beds been transferred, and how many beds have been transferred in each case?

Hon MAX EVANS replied:

(1) A total of 140 bed approvals, together with 20 Community Aged Care Packages (CACP) have been approved for transfer to rural and remote communities, as part of allocations to country multi-purpose services. These places are additional to hostel and CACP places that were in communities prior to commencement of the MPS.

(2) Bed approvals transferred to MPS sites are as follows:

APPROVED MPS SITES - OPERATIONAL

	NEW/ADDITIONAL PLACES		
	NH	HOSTEL	CACP
Boyup Brook	6		2
Northampton / Kalbarri	4	4	
Dalwallinu	3	4	
Eastern Wheatbelt	25		6
Central Great Southern	24	8	5
Leonora / Laverton	4	8	
Murchison	3		1
York	7		3
Denmark	4	11	3
Ravensthorpe	3	4	

Norseman	3	4	
Kondinin / Kulin	4		
Lake Grace	3	4	
SUB TOTAL	93	47	20

COLLEGES OF TAFE, RECOGNITION OF PRIOR LEARNING APPLICATIONS

1497. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Employment and Training:

(1) How many people applied for Recognition of Prior Learning (RPL) through TAFE in -

(a) 1996/97;
(b) 1997/98; and
(c) between July 1 and December 31, 1998?

(2) How many people were granted RPL in -

(a) 1996/97;
(b) 1997/98; and
(c) between July 1 and December 31, 1998?

Hon N.F. MOORE replied:

(1) No figures are available for the number of people who applied for RPL. Data is not recorded at the college for applicants for RPL who are unsuccessful. Colleges only receive funding for those RPL applications which are successful and thus these are the only ones recorded on the CMISS

(2) (a) 4181
(b) 3378
(c) 6291

College student enrolment data is collected on a calendar year basis. The figures supplied are for the calendar year.

GNANGARA PARK

1541. Hon J.A. SCOTT to the Minister for Finance representing the Minister for the Environment:

(1) Does the Minister for the Environment recall that the Government promised, prior to the 1997 State Election, to establish a Gnangara Park to protect the vegetation and groundwater of the Gnangara Mound?

(2) What stage has the planning reached for this park?

(3) When will the draft plans for the Gnangara Park be released for public comment?

Hon MAX EVANS replied:

(1) The Department of Conservation and Land Management has been coordinating the planning for Gnangara Park. Many of the planning issues have been addressed and resolved through a Technical Working Group with key stakeholders.

(2) The Preliminary Concept Plan has been prepared for public comment.

(3) 20 May 1999.

NURSING HOMES, RURAL AND REMOTE COMMUNITIES

1582. Hon TOM STEPHENS to the Minister for Finance representing the Minister for Health:

(1) How many residential aged care beds have been approved for transfer to rural and remote communities as part of allocations to country multi-purpose services?

(2) To which rural and remote locations have these beds been transferred, and how many beds have been transferred in each case?

[See answer to question 1419 above.]

QUESTIONS WITHOUT NOTICE

JETTY FUNDING

1253. Hon TOM STEPHENS to the Minister for Transport:

On 18 July 1998 then Transport Minister Charlton wrote to the Carnarvon Heritage Group promising approximately $200 000 in the 1999-2000 financial year to further upgrade the Carnarvon jetty in addition to approximately $190 000 provided to the group last financial year and the extensive fundraising undertaken at a local community level by that group.

(1) Given that no allocation is in the state budget, is that promise by his predecessor being reneged on by the Court Government?

(2) Given that the communities of Carnarvon and Busselton must raise funds to build jetties, will the residents of Perth similarly be required to raise funds through cake stalls, etc to finance the building of the jetty to be attached to the Premier's belltower project at Barrack Street?

Point of Order

Hon PETER FOSS: The question plainly breaks all the rules relating to argumentative matter. The Leader of the Opposition is trying to make a statement.

Hon Ljiljanna Ravlich: You are not in charge.

The PRESIDENT: Order! I have said before that standing orders exist that provide for the content of questions. Some members will do themselves a favour if they read those standing orders. I am sure the Minister for Transport got the general purport of the question.

Questions Without Notice Resumed

Hon M.J. CRIDDLE replied:

I am not aware of promises made by my colleague previous to my being appointed to the position of Minister for Transport regarding the Carnarvon jetty. I will follow up the matter to see what arrangements were put in place. The exercise in Perth will be decided in the future.

SOUTHERN COAST TRANSIT

1254. Hon TOM STEPHENS to the Minister for Transport:

(1) Is the minister aware that Southern Coast Transit, one of Transperth's contracted private bus operators, is proposing to sell its operation to a British company.

(2) What control does the minister have over the assignment of this contract?

Hon M.J. CRIDDLE replied:

(1)-(2) I understand that there is a transaction in process for a major operator from the United Kingdom to take over the Southern Coast Transit operation. This is a sign of the confidence investors have in the system implemented by the Government and a clear indication that we have a good transport system in Perth. That is reinforced by the fact that people want to come here and invest.

LEGAL AID COMMISSION, OPERATING DEFICIT

1255. Hon N.D. GRIFFITHS to the Attorney General:

(1) Is the Attorney General aware that in its last annual report the Legal Aid Commission stated that it had experienced an operating deficit of $1.721m in attaining pre-existing levels of service for 1997-98?

(2) Is there an operating deficit for 1998-99?

(3) What levels of the commission's service are being affected by the fact that the Attorney General has failed to fully fund the commonwealth shortfall and to keep pace with demand?

Hon PETER FOSS replied:

(1)-(3) This is a fascinating question. I am criticised for trying to ensure that the Legal Aid Commission delivers value for money. It is sometimes suggested to me that the Legal Aid Commission is entirely independent. If that were the case members opposite could not ask a minister in this House any questions about it. I suggest they have a quick look at Erskine May. They should make up their minds about whether it is an independent corporation or about whether I have not only a right but also a strong interest in ensuring that it operates efficiently and delivers to the people of Western Australia value for taxpayers' money.

It has been assessed that this Government has more than adequately made up for the shortfall of commonwealth funds. They can be met by appropriate efficiencies within the Legal Aid Commission.

PORT KENNEDY RESORTS, COMPLIANCE WITH SALE OF LAND ACT

1256. Hon J.A. SCOTT to the minister representing the Minister for Lands:

I refer to question without notice 66 of 13 March 1997 in which the minister said he would investigate whether Port Kennedy Resorts had complied with the Sale of Land Act.

(1) Has the matter been investigated?

(2) Has the Minister for Lands received a copy of the results of this investigation?

(3) What is the result of these investigations?

(4) What action will the minister take in relation to this matter?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Yes; by the Department of Land Administration and the Ministry of Planning.

(2) Yes.

(3) The company was advised by DOLA that -

(a) DOLA's view was that advanced sales were in breach of the Sale of Land Act;

(b) investigations would continue; and

(c) the company was to refrain from making advanced sales.

(4) DOLA is monitoring this matter and will advise the minister on any further action if warranted.

SMOKING IN PUBLIC PLACES REGULATIONS

1257. Hon NORM KELLY to the minister representing the Minister for Health:

(1) What amount of funds has been allocated to provide for the enforcement of the smoking in public places regulations for 1998-99 and 1999-2000?

(2) What amount of these funds has been allocated for distribution to local government authorities?

(3) What amount of the allocated funds for 1998-99 have been used for advertising?

(4) What is the estimated cost for local government authorities to implement and enforce these regulations?

Hon MAX EVANS replied:

(1) None specifically. Enforcement of the regulations is the responsibility of local government and any prosecution resulting is the responsibility of the Health Department's executive director of public health.

(2) Not applicable.

(3) Approximately $170 000.

(4) It is expected that the enforcement of the regulations will generally be combined with the other activities of environmental health officers, and the minister is not aware of any specific allocations being made.

ALBANY, BUDGET ALLOCATIONS

1258. Hon MURIEL PATTERSON to the minister representing the Minister for Housing:

What provision has been made in the recent state budget for housing assistance, land development, and housing construction and maintenance in Albany, specifically within the Lockyer redevelopment?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

In 1999-2000 Homeswest has allocated $12.5m to the great southern region. This covers the entire region and consists of new construction, home ownership funding, land development, minor works and upgrade maintenance. The 1999-2000 budget will complement Homeswest's efforts for the 1998-99 financial year, during which Homeswest was extremely active in Albany with a number of projects.

In April 1998 Homeswest invited special expressions of interest for the joint venture developments of its Angove Road landholding in Albany. The joint venture land development will see the development of a 190-lot quality residential estate. The subject land is adjacent to the New Living area of Spencer Park. The subdivision approval for the first stage of the development has now been obtained, with construction of the first stage due to commence in the near future.

In the Albany area, Homeswest has sold 19 lots at Breaksea during the 1998-99 financial year.

Through the Mt Lockyer redevelopment, Homeswest has produced 51 small lots. To accelerate the redevelopment process at Mt Lockyer, the minister is pleased to advise that Homeswest will shortly be going to tender to encourage private sector interest in project-managing the project. The minister believes this will provide impetus to the project.

During 1999-2000, it is proposed that Homeswest will provide 29 units of accommodation in the greater Albany area, with 25 of these units being constructed in Lockyer. The following projects are proposed under community based programs -

2 three-bedroom units to the Great Southern Regional Housing Association under the community housing program in Albany.

5 two-bedroom units to the Great Southern Regional Housing Association under the community housing program in Lockyer.

4 two-bedroom units to the Activ Foundation under the community disability housing program in Albany.

2 two-bedroom units to Mills Grey House under the community disability housing program in Albany.

Homeswest will also provide $40 000 in infrastructure funding to the Great Southern Regional Housing Association under the community housing program and will assist the Albany Women's Refuge to upgrade its existing facilities.

CHIEF EXECUTIVE OFFICERS, PERFORMANCE AGREEMENTS

1259. Hon LJILJANNA RAVLICH to the minister representing the Minister for Public Sector Management:

I refer to the Minister's response to question without notice 415 with regard to the 13 chief executive officers who have failed to forward performance agreements for the second year in a row and thereby have breached the Public Sector Management Act. Given that six months have now passed and I still have not received an answer, I again ask -

(1) Will the minister identify the 13 CEOs concerned?

(2) What actions has the minister taken to ensure compliance?

(3) How many of these CEOs have never had a performance agreement?

Hon MAX EVANS replied:

I thank the member for some notice of this question. The question was asked some six months ago and was to be put on notice.

Hon Ljiljanna Ravlich: I still have not received an answer.

Hon MAX EVANS: It was not put on notice.

Hon Ljiljanna Ravlich: It was put on notice.

Hon N.D. Griffiths: Are you a schoolmaster?

The PRESIDENT: Order!

Hon MAX EVANS: I am getting too much help, Mr President.

(1)-(3) Yes. Dr Syd Shea, Mr Adrian Scott, Dr Leslie Farrant, Mr Robert Walster, Mr Peter Cook, Mr Alan Bansemer, Dr Peter Smith, Mr Jeff Gooding, Mr Ross Holt, Mr Wayne Morgan, Mr John Lloyd, Mr Jack Busch, Mr David Singe. Only three of these CEOs do not have current performance agreements. These are Mr A. Scott, Dairy Industry Authority; Dr L. Farrant, Office of Energy; and Mr D. Singe, Wheatbelt Development Commission. Further, Mr R. Walster is no longer employed, Dr P. Smith was not the substantive CEO during the full agreement cycle, and Mr J. Busch is no longer employed as a CEO. All CEOs and responsible authorities have had drawn to their attention their obligations under section 47 of the Public Sector Management Act. This requirement is made known on a regular basis.

POLICE OFFICERS, RELEASE FROM COURT SERVICES

1260. Hon TOM HELM to the Attorney General:

I refer to the recent announcement in the budget about the reduction from 200 to 100 in the number of police officers to be released from court services as part of the core functions project and ask -

(1) When was this figure revised, and who was responsible for the revision?

(2) Was the Attorney consulted?

(3) Why was this information not made available publicly prior to the release of the budget papers?

(4) In view of the set target for the release of police officers being reduced by 50 per cent, will the Attorney abandon the Court Security and Custodial Services Bill; and if not, why not?

Hon PETER FOSS replied:

(1)-(4) I am not sure whether it is appropriate for me to be asked this question, because it relates to the release of police, and I only represent -

Hon N.D. Griffiths: Have you read Orders of the Day Nos 8 and 9?

Hon PETER FOSS: Yes, but what has been made clear is that -

Hon Ken Travers: You are running scared!

Hon PETER FOSS: I am not running scared. I know exactly what it is.

Hon Tom Stephens: Tell the public! Be accountable!

The PRESIDENT: Order! Members, I already have problems with the question, because I am of half a mind to say that it belongs to the Minister for Police, but because it apparently relates to some agreement that has been struck to reduce the number of police officers in the courts, I assume that is what the Attorney General will discuss.

Hon PETER FOSS: It relates to an agreement which at present has not been entered into. It relates to predictions about the number of police full-time equivalents under the budget, and I do not believe it is appropriate for me, regardless of whether I believe I may be able to assist, to deal with this matter in my representative capacity. I can say, however, that I certainly will not be withdrawing the Court Security and Custodial Services Bill, because that Bill happens to be an important piece of legislation.

Hon Tom Helm: Were you consulted about this matter?

Hon PETER FOSS: I am consulted about things that relate to the core functions, but I am not consulted about the number of policemen, because that is a matter for the Minister for Police. I am fully aware -

Hon Ken Travers: Mr Jones made the recommendation when he was working under your portfolio.

Hon PETER FOSS: That is not correct. Mr Jones was originally employed by the Department of Premier and Cabinet, and under the Public Sector Management Act.

Hon Tom Helm: What are you afraid of?

Hon PETER FOSS: I am not afraid of anything.

Hon Tom Helm: Answer it, then!

Hon PETER FOSS: I do not have any problem with it. However, I do not believe it is appropriate for me to deal with a question about the number of police FTEs when I am the representative minister. I have considerable knowledge of the matter, but I do not believe it is appropriate for me, as the representative minister, to give an answer in this matter without consulting the minister whom I represent. The member can either put the question on notice or not have it answered.

NUCLEAR WASTE STORAGE

1261. Hon GREG SMITH to Hon Giz Watson:

I refer to motion No 7. Given that there is nuclear waste in the world that requires safe storage sites, where in the world have the Greens (WA) identified suitable sites for the storage of this material?

Several members interjected.

The PRESIDENT: Order! It is a serious question.

Hon GIZ WATSON replied:

No place has been identified as being safe to dispose of nuclear waste, including Western Australia.

SOUTHERN COAST TRANSPORT, FINES

1262. Hon HELEN HODGSON to the Minister for Transport:

(1) How many fines has Southern Coast Transport incurred in respect of its contract obligations with the Department of Transport?

(2) What is the amount of those fines?

(3) What amount, if any, is currently outstanding?

(4) What steps does the department take to recover outstanding fines where the fines result from a bus operator not meeting its contract obligations?

(5) Has any such action been taken against Southern Coast Transport?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1) 157.

(2) $47 100.

(3) None.

(4) All fines levied are automatically deducted from the contractor's monthly subsidy payment.

(5) No action is necessary.

People should understand that prior to these operations coming into place, no fines were implemented, and although we do not have a clear record, we have an indication that many trips were not taken under the previous operations.

TOURISM, MAUD'S LANDING

1263. Hon GIZ WATSON to the Minister for Tourism:

I refer to the minister's media statement of 30 April 1999 which discussed development of a tourism project at Maud's Landing in the north west.

(1) What is the "new set of guidelines under which a more modest development may proceed"?

(2) Who provided the new set of guidelines?

(3) Will the minister table these guidelines?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(2) Cabinet recently endorsed a new set of guidelines for a tourism development at Maud's Landing in order to have a sustainable tourism development facility, which should assist in relieving the pressure of unmanaged people-access into this area.

(3) The developer will be given an opportunity to resubmit a proposal against these guidelines. Once these guidelines have been formally presented to the developer, I will be happy to table them.

NORTHBRIDGE TUNNEL, COMPENSATION

1264. Hon TOM STEPHENS to the Minister for Transport:

(1) What is the total amount of money that Main Roads intends to pay out to 30 businesses affected by the Government's decision to build a tunnel through Northbridge?

(2) How many compensation non-disclosure forms has Main Roads asked complainants to sign relating to the Northbridge tunnel and other Main Roads constructions involving private contractors since the Government came into office in 1993?

(3) How many businesses and residences with cracked walls and other affected Western Australians have sought compensation from Main Roads and the Government over its inability to build the Northbridge tunnel responsibly and on budget?

Hon M.J. CRIDDLE replied:

(1) The final amount is yet to be determined.

(2) The Graham Farmer Freeway, nine; Servetus Street, one.

(3) I reject any suggestion that the construction of the Graham Farmer Freeway is being undertaken in anything but a responsible manner. The construction of any major infrastructure project through the centre of a heavily urbanised area is bound to result in impacts on adjacent properties. Main Roads and the project contractor are working closely with the community to minimise and address any impacts. Some compensation claims have been received from the public and businesses during the Graham Farmer Freeway project. Damage issues, including cracked walls, are dealt with by the contractor. There are 38 registered claims for payment by businesses for the Graham Farmer Freeway.

METROPOLITAN REGIONAL THEATRE COMPANIES, TOUR FUNDING

1265. Hon MARK NEVILL to the Minister for the Arts:

(1) Has there been a reduction of funding for Western Australian metropolitan regional theatre companies to tour regional Western Australia since the minister has been the Minister for the Arts?

(2) Has the minister approached his federal colleague Hon Peter McGauran for funding to facilitate such tours of regional Western Australia?

(3) Is the minister aware that his federal counterpart is funding three theatre companies to tour overseas?

Hon PETER FOSS replied:

(1)-(3) On the contrary, we have increased the funding. We have done it in a number of different ways. First of all, and probably the most significant one, was the Western Australian Symphony Orchestra - not a theatre company - because there were complaints from the country that the WASO was not touring anymore after it increased in size.

Hon J.A. Cowdell: It is touring a lot now.

Hon PETER FOSS: It is touring now. We were able to increase the WASO's funding by $250 000 against a commensurate $250 000 from the Commonwealth Government. We got rid of the concert bonus which meant that players, whether or not they were playing, were treated as being at a concert. We were able to divide the orchestra into two orchestras so that one could tour regional areas and the WASO is in fact touring a lot in regional areas.

With incentive funding, theatre companies receive a bonus for touring. Any dollar earned on touring is counted as $2 instead of $1 so that there is an incentive to do country touring.

As far as regional arts are concerned, there was a concern that money was being allocated in the city. We therefore set up Country Arts (WA). That was an amalgamation of the old Arts Council of Western Australia and the Performing Arts Touring Information Office which were involved with touring. We increased and devolved all the funding so that Country Arts had control over the expenditure of those funds in rural and regional Western Australia and with each of those

initiatives, the intent was to increase the likelihood of that money going there. The last thing we did was persuade the Federal Government to devolve the regional funding component to Country Arts so that the money is handed out by Country Arts rather than directly by the Federal Government. That regional arts funding from the Federal Government has been very well received in regional areas and the fact that it is being decided by Western Australian country and regional people themselves as opposed to the Federal Government has been very well received.

I am aware that there is funding for people to go overseas and I have requested funding, in this case again for WASO. Members might know that WASO has never toured overseas although most other Australian symphony orchestras have toured overseas, many of which are not of the quality of the Western Australian Symphony Orchestra. It is important that a company such as WASO gets overseas touring experience. We have had support from various Western Australian companies and I would like to see more support. However, the first thing we must do is submit a product and make the application to the Federal Government for that money.

HOME AND COMMUNITY CARE, SAFEGUARDS POLICY

1266. Hon CHERYL DAVENPORT to the minister representing the Minister for Health:

The home and community care safeguards policy forms part of a four year commonwealth initiative which commenced in 1996 and is due to conclude next year. Given that to date only two States, Tasmania and Victoria, have chosen to impose this unfair burden on aged and disabled Australians, is it guaranteed that the Commonwealth will choose to continue to pursue this initiative?

Hon MAX EVANS replied:

I thank the member for some notice of this question. According to the Commonwealth Department of Health and Aged Care, it is guaranteed that the Commonwealth will pursue the initiative to 1999-2000. Any change to this initiative would be announced in the 2000-01 budget. Commonwealth funding to the States is fixed through to 1999-2000 on the basis that additional fee revenue can be collected. Currently approximately $6m is collected through fees by home and community care agencies in Western Australia. This commonwealth initiative is a measure whereby people who can afford to pay contribute to the expansion of the program so that additional services can be provided.

MANDURAH AND COODANUP SENIOR HIGH SCHOOLS, AVAILABILITY OF SUBJECTS

1267. Hon J.A. COWDELL to the Leader of the House representing the Minister for Education:

(1) Will the minister table -

(a) the tertiary entrance examination subjects and non-TEE subjects that are currently available to years 11 and 12 students at Mandurah Senior High School; and

(b) Coodanup Senior High School?

(2) Will the minister table the TEE and non-TEE subjects that will be available at the new Mandurah Senior Campus?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) Yes. I seek leave to table the attached documents.

Leave granted. [See paper No 1083.]

(2) Courses undertaken by students at Mandurah and Coodanup Senior High Schools in 2000 will be offered as follow-on courses at the senior campus in 2001. Expanded courses available to students beyond this time will be dependent on -

(a) student choice;

(b) results of the post-compulsory review;

(c) opportunities created through the association with TAFE; and

(d) opportunities created through Fast Track entry to Murdoch University.

In any event, course provision will be broader for students attending the senior campus in all tertiary entrance scoring subjects, non-tertiary entrance scoring subjects and vocational education and training.

BUNBURY REGIONAL HOSPITAL, EXPANDED SERVICES

1268. Hon BOB THOMAS to the minister representing the Minister for Health:

The sum of $3.2m has been allocated in this year's budget for new and expanded services at the new Bunbury Regional Hospital. What are these new and expanded services?

Hon MAX EVANS replied:

The sum of $3.2m was allocated to the South West Health Campus and additional services to benefit the south west region. Services are emergency department; intensive care unit; aged and continuing care services; community and allied health

services; medical oncology; palliative care; prevention program for cardiovascular disease; renal dialysis; and staff training and development.

NORTHBRIDGE TUNNEL, COMMUNITY INPUT

1269. Hon KEN TRAVERS to the Attorney General representing the Minister for Planning:

(1) Is the minister aware that the past two meetings of the Northbridge Urban Renewal Committee have been cancelled?

(2) Does the minister condone the lack of community input into development decisions above the Northbridge tunnel, as evidenced by complaints that the minister has received from the Northbridge Business Action Group's representative, Mr Sam Rogers?

(3) Why has the minister reneged on promises to local government and Northbridge businesses that Newcastle Street would be beautified, reduced to a two-lane road to encourage urban living and powerlines undergrounded?

(4) If the minister is committed to Newcastle Street as a four-lane de facto highway, does this mean the minister accepts that the Northbridge tunnel has been a complete waste of money with no benefits to the people of Northbridge?

Hon PETER FOSS replied:

Mr President, as you will note from my answer, I will be ignoring all the argumentative and other parts and deal with such questions as were actually asked.

Several members interjected.

The PRESIDENT: Order! Other members have not asked a first question yet and members are making it very difficult for them.

Hon PETER FOSS: I thank the member for some notice of this question.

(1) I am told that the two meetings were postponed until the East Perth Redevelopment Authority has completed preparation of the Northbridge Urban Renewal Masterplan proposals. The committee has agreed to await completion of this document before its next meeting.

(2) The minister has been told that extensive consultation has taken place and that it will continue.

(3)-(4) Detailed planning for Newcastle Street is continuing.

METRO MEAT INTERNATIONAL KATANNING

1270. Hon KIM CHANCE to the minister representing the Minister for Primary Industry:

(1) Has the European Union accreditation for the Metro Meat International Katanning abattoir been surrendered?

(2) If so, does this surrender have the effect of decommissioning Katanning abattoir as an export works due to the fact that product from Katanning cannot be processed through the same cutting room as product from Linley Valley if it is not EU accredited?

(3) Does this effective decommissioning threaten the potential viability of the proposal for the producer cooperative to purchase and operate the two Metro facilities as export works?

(4) What action did the Government take to prevent the loss of Metro's Katanning EU accreditation?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

(1)-(4) The Interim Board of the Western Australian Meat Marketing Co-operative has been advised by Metro Meat International that it has voluntarily surrendered the licence at Katanning which would allow processing of product for EU listed countries. The preliminary sale agreement between WAMM Co-operative and Metro Meat International is still subject to a number of conditions being satisfied, including the capacity of Katanning to process product for EU listed countries.

MINISTER FOR PRIMARY INDUSTRY, SALE OF LAND

1271. Hon TOM STEPHENS to the minister representing the Minister for Lands:

Did the minister block the sale of land valued at 200 per cent lower than the price the Minister for Primary Industry wanted to pay to National Party associate Rob Ladyman?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The Minister for Lands received a letter from the Minister for Primary Industry and for Fisheries asking for approval to purchase a parcel of land in Katanning on behalf of Agriculture Western Australia to be used for a regional office site. In

reply to that request, the Minister for Lands advised the minister that the valuation provided by the Valuer General did not support the sale price being negotiated.

LAND "STERILISED" FROM MINING ACTIVITY

1272. Hon TOM HELM to the Minister for Mines:

In regard to the minister's ministerial statement yesterday, which was also without notice, he said that as a result of difficulties arising from the unworkable native title processes, we have almost 11 000 tenement applications backlogged in the system containing over 230 000 square kilometres of this State which is effectively sterilised from significant exploration activity. Will the minister tell the House how much land is effectively sterilised from significant exploration activity because of exempted mining leases?

Hon N.F. MOORE replied:

In respect of the ministerial statement being without notice yesterday, it is customary for ministerial statements to be made in this House on the basis of not giving notice. I indicate to the member that I told him, after he had raised the matter three times, that I would be making a statement to respond to the matters he had raised. He knew well in advance that I would be making a statement about the issues he raised. He raised the issues in the budget debate and during the adjournment debate on several occasions.

The de facto shadow Minister for Mines, who is taking the Labor Party down a particular course on the question of exemptions for mining leases, needs to understand that the course he is taking is not supported by industry, and I suspect is not supported by his own party. The member is trying to create an impression, with the assistance of the Goldfields Land Council, that native title is not a problem in the mining industry and it is all about the minister granting exemptions from expenditure conditions.

Hon Tom Helm: Why don't you answer the question?

Hon N.F. MOORE: I am answering the question. The member should be patient. Native title is a serious impediment to exploration in Western Australia - a very, very serious impediment indeed. The quicker the member learns that, the better for the country, not only for the mining industry but for the economy. As I said in my statement yesterday, 230 000 square kilometres of Western Australia are sterilised because the land is under native title claim. Native title claims are in the process of being negotiated, some more quickly than others fortunately, but some very slowly indeed. I also indicated in my statement yesterday that it is not possible for the Government to make people reach agreement. If they will not negotiate and will not reach agreement, it creates a situation where the land is effectively sterilised for exploration purposes.

Hon Tom Helm: Answer the question.

Hon N.F. MOORE: I am getting to that. The member should just hang on a minute.

Hon Tom Helm: I am not arguing with that aspect.

Hon N.F. MOORE: The member has argued with it. That is why he is taking that course of action. We know why he is doing it: He wants to be the shadow Minister for Mines; he wants to get rid of the present shadow Minister for Mines.

Several members interjected.

The PRESIDENT: Order! There is obviously some issue between Hon Tom Helm and the Minister for Mines, which I hope they will take up at a later date. In the meantime, I need the answer to this question so that I can get on with the orders of the day.

Hon N.F. MOORE: Thank you, Mr President. I have been answering the question, because it contains a number of insinuations which need to be responded to.

The PRESIDENT: I am not suggesting that the minister is not. The interjections are causing 30 other questions to be answered.

Hon N.F. MOORE: That is quite right, Mr President. To illustrate my desire to answer this question, at 5.30 pm I did not ask for the business of the House to be resumed because I was quite looking forward to the member's question.

We will now talk about the area of land he suggests is being sterilised where people have had exemptions from expenditure conditions. I do not know what the area of land is.

Hon Tom Helm: Will you tell us at some time?

Hon N.F. MOORE: I would not have the faintest clue. It would probably take 15 people 15 years to sit down and work it all out. We can have a look at that, but the fact of the matter is that the land is not sterilised; it is land held under various titles. Companies have been given an exemption from expenditure conditions for a period of time, usually about one year and usually based on the fact that they have already done a significant amount of work on a particular tenement and they need some time to decide what to do next. They make an economic, commercial decision. They seek our support to enable them to make a decision on the use of that land. If the member would simply take notice of what I said yesterday in my ministerial statement, he would know that some of those companies which have been given expenditure exemptions - I gave an example of Sons of Gwalia - are spending 13 to 15 times the amount of money that expenditure commitments require them to spend, but they are spending it on projects involving a number of tenements joined together to form a project. The

money is in a sense averaged over all of the tenements, even though technically some tenements are not having any money spent on them. It is not sterilised land but land which, fortunately in many cases, has a title on it, unlike all the land the member's refusal to support our legislation is seriously sterilising.

Hon J.A. Scott: You do not know how much there is.

The PRESIDENT: Order!

Hon N.F. MOORE: There are 230 000 square kilometres of land sterilised by native title. It is as simple as that. The quicker the member gets that through his thick head, the quicker he might understand the situation and the quicker we might get some commonsense in this debate. People who suggest - as Hon Tom Helm and the Goldfields Land Council do, and as I read in the newspaper today - that native title is a red herring and is not affecting anybody should do me the favour of talking not to Mr Kean but to the mining companies. They should ask Sons of Gwalia -

Hon Tom Helm: Ross Atkins?

Hon N.F. MOORE: Yes, ask Ross Atkins or anybody in the mining industry. They will tell the member in no uncertain terms, as I was seeking to do, that he has it all wrong.
