



Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
THIRD SESSION
1999

LEGISLATIVE COUNCIL

Tuesday, 16 November 1999

Legislative Council

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

BILLS (2) - ASSENT

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

1. Water Services Coordination Amendment Bill 1999.
2. Midland Redevelopment Bill 1999.

NUCLEAR WASTE DUMP

Petition

Hon Norm Kelly presented a petition, by delivery to the Clerk, from 210 persons opposing the proposal to locate a high level nuclear waste dump in Western Australia.

[See paper No 398.]

SEX INDUSTRY STREET WORKERS

Urgency Motion

THE PRESIDENT (Hon George Cash): I have received the following letter addressed to me and dated 16 November 1999.

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House, at its rising, adjourn until 9.00am on 25 December 1999 for the purpose of discussing the current problems related to sex industry street workers, the Government's failure to introduce promised reforms to prostitution legislation, and related matters.

Yours sincerely

Norm Kelly MLC

Under standing order No 72 it is necessary that at least four members stand in their places to indicate their support for the motion.

[At least four members rose in their places.]

HON NORM KELLY (East Metropolitan) [3.35 pm]: I move -

That the House at its rising adjourn until 9.00 am on Saturday, 25 December.

In moving this motion I want to highlight some of the concerns about the impact that street prostitution has on residents of primarily the Northbridge, East Perth and Perth areas. It is an ongoing problem that is receiving attention from the police but not much attention from the Government. About a year ago major problems were experienced by residents in primarily Palmerston and Glendower Streets relating to traffic problems because of the large number of kerb crawlers using those small streets. Problems have also been experienced by the residents because of the activities of those workers in providing their services in back lanes of the area and in people's private yards, syringes being found in people's gardens, used condoms being thrown over their back fences and residents even being confronted by kerb crawlers. One resident told me that she was pushing her child down the street in a stroller when even she was confronted by a kerb crawler asking her for sex. At that time I received comments from more than 100 residents in that area. The vast majority of those comments indicated support for a regulated form of street prostitution. However, the residents' difficulties relate to the impact that street prostitution is having on their lives and the fact that it is prevalent in their residential area.

The Australian Democrats believe if street work is to continue - perhaps there is a need for it to continue - it should be transferred away from residential areas. However, if that were to occur, we must address other safety concerns of having these people working in areas that are not frequented by other people at a time when there are serious safety issues about working in isolated areas.

More recently problems have cropped up in another part of the Northbridge-Perth area. In January of this year the police cracked down on the street work occurring in the Glendower Street area and the workers were moved on to the area between Newcastle and Bulwer Streets. That is not a dense residential area, but a good number of residents still live in that area. A by-product of moving the workers to Stirling Street is that kerb crawlers go around the block and quickly realise that they have a better chance of finding a sex industry worker in Pier Street, a quieter and darker street not so much under the glare of surveillance or scrutiny.

The focus of street workers has shifted to an area that does not have a lot of residents, but nevertheless there are residents. The problem is quite serious, as I am sure a number of members are aware. A number of members received a letter from Trish Milburn, a resident in that area who relayed her concerns. One of the most serious incidents concerned her 13-year-old daughter. Her letter reads -

The more recent and frightening occurrence happened on 2 August, again involving my 13 year old daughter, again walking home from school (4.10 pm). She was approached by a kerb crawler (married with a family) who harassed her to get into his car.

This was reported to the police. The girl had the foresight to make note of the registration number. However, no charges were laid because it is difficult for police to lay charges in these incidents. This is nothing new. The problem has occurred before. The Government has failed to take action on these incidents. Some simple legislative change could have gone through Parliament long before now to address specific concerns about street workers and kerb crawlers - that is, if we wanted to forget for the moment the wider concerns about regulating the sex industry.

Hon B.M. Scott: How?

Hon NORM KELLY: I will come to that in a moment. I want to look at the Government's track record, and I will refer to one newspaper quote, although I could pick from numerous quotes which say pretty much the same thing. An article in *The West Australian* of 2 April 1997 refers to the then Minister for Police. The article reads -

He said he had a new target - the end of this month - to take a submission to Cabinet and attributed the delay to the need to consult Cabinet colleagues. Proposals then would be open for public discussion.

That was two and a half years ago, but this matter has only now come before Cabinet and we have not had that public discussion which the minister referred to at that time.

In answer to a question which I asked in March this year, and which was again confirmed by the Attorney General last week in answer to another question asked in this place by Hon John Halden, the Attorney General admitted that the Court Government had not conducted any consultation between 1993 and 1999.

Hon N.D. Griffiths: I thought I asked the question.

Hon NORM KELLY: Hon Nick Griffiths is mistaken; it was a question asked by Hon John Halden. I refer to a question asked on Thursday, 11 November by Hon John Halden to Hon Norman Moore representing the Minister for Police; I think the Attorney General was away last week. The Attorney General answered a question that I had asked in March, and the Leader of the House answered a similar question last Thursday. It is clear that, prior to the past six months, over which time it appears that some consultation has occurred with the various groups involved with or relevant to sex industry workers in this State, there was no consultation for six years.

Hon Derrick Tomlinson: That is palpably untrue.

Hon NORM KELLY: I will not go into the detail because the facts are in *Hansard* to show it is a true statement. The minor legislative changes to which I referred in regard to street workers relate to section 76G(1)(b) of the Police Act, which states that every person who, in any public place, persistently solicits or importunes for immoral purposes, shall be deemed to have committed an offence. The police have real problems with that section, because it is virtually impossible to show a court that a person has persistently solicited.

Hon Peter Foss: For sexual purposes?

Hon NORM KELLY: The wording is "for immoral purposes". It is virtually impossible to succeed in any prosecution under that section. This was highlighted in a court case about three years ago in which there was a successful defence against that charge. The Government received advice from the Crown Solicitor that there was no point in the police pursuing charges under that section because they would not succeed. My understanding is that the police now do not pursue those types of charges.

Hon Peter Foss: The solution is to change the onus of proof. Would you support that?

Hon NORM KELLY: We will certainly look at the matter. I cannot give the Attorney General an answer on that straightaway, but I am happy to get back to him on that.

Hon Peter Foss: You cannot criticise if you do not support that.

The PRESIDENT: Order! Hon Norm Kelly has limited time, so let us hear from him.

Hon NORM KELLY: The Australian Democrats say that outlawing street prostitution, an idea suggested by the ALP, is not necessarily the answer, because simply to put that prohibition in place does not solve the problems which underlie the reasons that street prostitution is prevalent. We have the underlying issues of drug dependency, homelessness, poverty, domestic violence and the like. Hon Greg Smith might laugh about the people who are heavily addicted to drugs that cause them to go into this line of work to support their habits, but it is essential that those issues be dealt with in a holistic way to address this problem.

About three months ago I released a discussion paper on prostitution that was circulated to relevant ministers, widely throughout the sex industry and also interstate to try to get people to look at the best ways to reform prostitution law in this State. One idea put forward in that paper - although it is not Democrats policy at this stage; it is simply a suggestion that we should seriously look at - is the provision of safe houses where street workers can take their clients to provide services. This would provide workers with a greater degree of security and protection and also could be self-funding. It occurs in other States, and members could do some research to look at how it works in those States. It also facilitates the ability for outreach services to access people in this line of work, so they can receive the help they need. This system has worked in places like Sydney, in both a regulated and non-regulated sense, in the past few decades.

As to whether street prostitution should be prohibited, I refer to the second reading speech of the then Attorney General of Victoria on the Prostitution Control Bill of 1994 in which she said -

. . . the government also recognises that a great many of the problems associated with street prostitution are caused by the clients of prostitutes, and by sightseers, rather than by the prostitutes themselves.

Under that legislation the penalties for clients attempting to gain the services of street prostitutes are higher than those for prostitutes who solicit. To continue -

The clients and sightseers cause noise and traffic disruption, and some passers-by seem to enjoy harassing and intimidating the prostitutes on the street. It will be an offence to act in an offensive manner with the intention of intimidating a prostitute in a public place.

The Australian Democrats would like to see a shift in emphasis towards the client rather than the worker for penalties in this area. I commend the work of the police who work in this area. They are hampered by the inadequacy of the current laws. However, from all reports I have received from residents, the response of the police to their calls about problems they are experiencing has been speedy, and in large part effective, given the limitations on the police, who are hamstrung by insufficient resources; and that is probably a familiar story no matter at what area of police work we look. I encourage the Minister for Police and coalition members to support the introduction of this prostitution law reform, because this matter needs to get into the public arena for a proper, rational and responsible debate so that the current impact on these residents is not allowed to continue. I would like to hear the Attorney General's comments about what can be done for these residents in the next three months.

HON N.D. GRIFFITHS (East Metropolitan) [3.50 pm]: I delayed in getting to my feet to speak on this very urgent matter because I thought it was appropriate that Her Majesty's loyal Opposition hear what the Government had to say first. However, it seems that the Government was prepared to let this debate drop without making any comment. This motion is in three parts. I trust Hon Norm Kelly is paying some attention to what the Opposition has to say, as we paid attention to what he had to say. This is a crucial and urgent issue. It is about young people in Western Australia prostituting themselves on the streets of Perth. The Attorney General may think this is a laughing matter, but I assure him that most people in Western Australia think it is one of the most serious issues facing our society today. It is serious because of those people who are the victims of what is taking place. The first group of victims is, for the most part, these young people who are prostituting themselves. The second group of victims is the residents who live in the areas where these acts are taking place. The third group of victims is the wider community.

The young people who are prostituting themselves are, by reference to the reported syringes and the like, at great risk. A few months ago, there were reports about a young prostitute who had gone missing. She is still missing and is now presumed to have been murdered. Hon Derrick Tomlinson gestures to me that two young prostitutes are presumed to have been murdered. This is an issue about which everyone in our community, particularly legislators, should be very concerned. It is about time the Government got off its backside and spoke about this matter in this debate, and, more importantly, got on with job that it was elected to do. This problem has a number of solutions, and while none of those solutions can in itself deal with this problem completely, one aspect of it that can be dealt with very quickly is the issue of young people prostituting themselves on the streets of Perth. It seems to me from reports I have read that some of these young people are under-age. I think that is very serious, and I believe that anyone who has given this matter any consideration will think that is very serious. The Government must get its act together and bring before this Parliament the legislation that the police say they need to deal with the problem of streetwalking. As far as I am concerned, the most important aspect of dealing with this problem is to ensure that these young people who are at risk are no longer at risk.

The immediate solution is three-pronged. Firstly, the legislation we have heard that the Government was told some three years ago was needed, and on which it has been sitting for some time, should be brought before the Parliament immediately. Forget about so-called backlogs. I remember that in late June we dispensed with the requirement to wait and that four Bills which dealt for the most part with matters of high finance were progressed through this Parliament very quickly. However, when it comes to the real problems affecting people, the Government collectively sits on its backside and does nothing. It does not get even up and speak in this debate. It wants the debate to lapse.

Secondly, following on from that legislation, we should have effective policing. The Government should listen to what the police commissioner says and get on with the job of ensuring that the police have the necessary resources to clean up this matter once and for all.

Thirdly, the Government should take action with regard to Family and Children's Services. What has the Minister for Family and Children's Services, the member for Ballajura, done about introducing and implementing programs in her portfolio to ensure that these young people who are at risk by prostituting themselves on the streets of Perth are taken care of? That minister is guilty of serious neglect, as are her colleagues. We all know that these issues stem from a mix of social and economic factors which unfortunately are prevalent in our society and are evident in the widespread use of drugs. Unfortunately, many of these young people at risk are drug users. It is about time the Minister for Family and Children's Services, who has some responsibility for the Government's drugs policy, did something to deal with that issue rather than hand out glossy papers from time to time to make herself and those who read them feel good. The minister believes that the problem may go away if enough money is spent on advertising. If I have done nothing else, I hope my words have at least prompted the Attorney General to get to his feet to try to defend his Government for its gross inactivity.

HON PETER FOSS (East Metropolitan - Attorney General) [3.57 pm]: In order for this urgency motion to come on for debate, four people had to stand in support. I noticed that the Labor Party stood in support, and I assumed it had some useful

contribution to make. I had hoped to hear what useful contribution it had to make so that I could reply to it, and that is why I allowed the Labor Party to speak first. I was curious to know what it would say about what has been done with regard to prostitution, because, interestingly, the matter of prostitution has engaged this House since 1850. It is probably fair to say that not a great deal of prostitution legislation has passed this House since that time and that all around Australia, people have grappled with the problem and have brought in legislation that has often had unintended effects. Hon Norm Kelly quoted from the Victorian legislation. One of the immediate effects of the Victorian legislation was that it threw a large number of women onto the streets as streetwalkers because there were so few licensed brothels, and it allowed the introduction of organised crime. That was a matter of considerable concern that was expressed by a large number of people, and that is a matter that we are concerned about also. One of the standard things we find in any prostitution legislation that has been introduced in Australia is that it has had to be amended shortly afterwards because of its inadequacies or unintended effects. I am not for one moment suggesting that prostitution legislation is easy or that there is a model of prostitution legislation that plainly works or that solves the problem.

We do have legislation, and, as Hon Norm Kelly recognises, a Bill is currently being considered by Cabinet and the party room, and all members will have the opportunity shortly to look at it. I hope in view of the remarks made by the Democrats and the Labor Opposition that they will deal with that Bill urgently, and I hope they will support its measures, because it is very clear that the difficulty with the current prostitution legislation is not so much the offence but the proof of that offence. One of the things that members will need to look at in that prostitution legislation is the evidentiary provisions, because that is the only way satisfactory prosecutions can take place. One of the difficulties members opposite will have, and one of the difficulties we will have, is the fact that there will be provisions which cast the burden of proof on the other side once certain matters have been shown. Members will find by talking to the police that the difficulty in satisfying magistrates is that what used to be considered to be appropriate evidence is no longer considered to be so. We will see whether members are prepared to put in place the measures necessary to deal with the matters raised. This will be a real test.

Interestingly, the suggestion was made that a holistic solution is needed, and I agree entirely - I would love a holistic solution. Anyone who can present a simplistic holistic solution in a short period of time will do remarkably well. However, Parliament's record indicates that this cannot be done. It has been 150 years since we had any substantial change to our prostitution legislation. Let us consider what has happened. Hon Justice Norris chaired a Royal Commission into Matters Surrounding the Administration of the Law Relating to Prostitution in 1975. He said that "the containment policy was not set down in writing, and nor was it known to the public". However, he endorsed the use of the policy, albeit with reservations. Mr O. E. Dixon reported in 1982 on matters relating to the Western Australia Police Force, and his final report also supported the containment policy. What did Labor do? Various inquiries were carried out by Labor. Dr Judy Edwards, the current member for Maylands, undertook a study of the containment policy for the Council of Civil Liberties in 1984-85. Ms Jill Toohey of the women's interests division under the Labor Government undertook a further study of the prostitution issue. The Minister for Police in 1990, Hon Graham Edwards, MLC, appointed a community panel on prostitution which was chaired by Ms Beryl Grant, and which reported to the minister in September 1990. That report was used by this Government.

The coalition Government established a ministerial working group in 1997 comprising me as Attorney General and the Ministers for Police, Local Government, Health, and Family and Children's Services. The working party reported to Cabinet in November 1997 with recommendations, which then went for drafting. Importantly, I do not suggest for one moment that it has been easy.

Hon N.D. Griffiths: You've had eight goes!

Hon PETER FOSS: At least we have had a few goes at it! What happened under Labor? Report after report was released, and inquiry after inquiry was conducted. At least we have acted on those reports - members opposite did not even try!

Hon Tom Stephens: We asked for bipartisan support!

The PRESIDENT: Order! The Leader of the Opposition can have his turn in a moment.

Hon PETER FOSS: The Labor Party produced no legislation. Members opposite criticise us, but at least we have drafted legislation. I do not suggest for one moment that we have the beat-all solution. Anyone who made such a claim would have rocks in his or her head. No-one has dared make that claim anywhere in the world. This is the oldest profession for good reason. I suspect that it will not go away, and that all the problems will not be solved no matter what legislation is introduced. One may address some of the problems, but not solve them all. At least we have made an attempt.

Labor members, who are being vociferous, did not even start drafting legislation when in government. The Leader of the Opposition said that the Labor Party asked for bipartisan support, but for what? Nothing! Interestingly, the Government will introduce legislation which addresses the major points -

Hon N.D. Griffiths: When?

Hon PETER FOSS: It is currently before Cabinet and the party room. I assure the member that it will be here very soon. It will be interesting to hear what opposition members have to say about the measure. No legislation is introduced without someone being upset by it. Some people will say this Bill goes too far, some will say it is not liberal enough and others will say it does not go far enough. I can utterly guarantee that a large number of people will not like whatever legislation we introduce. It will be interesting to see whether the Labor Party, the Australian Democrats and the Greens (WA) have the guts to address the problems identified by the police. This legislation will address those police concerns. I do not know whether one could call it a holistic solution, but, frankly, there is no simple holistic solution. It will certainly address the matters raised by Hon Norm Kelly. It will deal with the problems confronted by the police. The question will then be asked:

Will the Opposition, the Democrats and the Greens be prepared to support that measure? Will they address the concerns of the neighbourhoods and the community at large? This legislation will address those concerns.

I was interested to see that the Labor Party, despite supporting the motion, was not prepared to vote for it. It wants an opportunity to snipe from behind. Why? The record of members opposite is abysmal. They had 10 years in office without producing draft one of legislation. They complain because we have managed to produce eight drafts, but this indicates the seriousness of our approach to this issue and how hard we have worked on it. I do not apologise for producing eight drafts.

Hon N.D. Griffiths: You should apologise. This is 1999!

Hon PETER FOSS: What did members opposite do in 10 years?

Hon N.D. Griffiths: What did you do for the nine years before that? So what! It is an empty argument. You're in government now, and you need to do something.

Hon PETER FOSS: Yes, and we have done something worthwhile. I would like Hon Nick Griffiths to support our measure. In 10 years in government, we saw one inquiry after another under Labor, yet members opposite did nothing. The coalition Government has worked hard to produce a solution. I will be interested to see whether members opposite will criticise or support it. The acid will be on members shortly when the Bill is introduced. I will be interested to see the reaction.

Hon Tom Stephens: Give us a copy of the draft and we will tell you what we think.

Hon PETER FOSS: The Leader of the Opposition will get his copy of the Bill at the appropriate time.

Hon Tom Stephens: So there is to be no bipartisan approach to this drafting?

Hon PETER FOSS: The Leader of the Opposition will get his copy of the Bill in time.

Hon Tom Stephens: When?

Hon PETER FOSS: When it is introduced to Parliament. I am not the minister in charge of the Bill. I will listen to members opposite when the Bill is introduced. If they oppose it, it will follow their doing nothing for 10 years apart from holding one little inquiry after another. All members opposite do is pass the buck. I am proud that we have worked hard in a determined fashion on this matter. If it were left to members opposite, another committee would be formed and another person would inquire into the matter. A Labor member, Dr Judy Edwards, conducted an inquiry, but what came from it? What have we heard from members opposite? Absolutely nothing. Labor members, who have the worst possible record, criticise this Government. Wait until the Bill arrives. We will then see what they will do. I suspect that members opposite will run away, as they always do, because it is too difficult. The Bill will contain some elements which will be too hard for the Labor Party to comprehend.

HON TOM STEPHENS (Mining and Pastoral - Leader of the Opposition) [4.08 pm]: It is painfully obvious that the Government, when faced with a crisis in the area of prostitution, did nothing until the Labor Opposition announced that it would introduce legislation this week into the other House. This Labor measure will ensure that street prostitution is tackled seriously, and will give police the powers to tackle an activity which is not acceptable to the community of Western Australia. Street prostitution operates where the ordinary men and women of Western Australia live. Children walk up the street and find themselves accosted by kerb crawlers. This Government has done nothing about this problem. When Mrs Roberts, the member for Midland, announced yesterday that she would introduce legislation into the lower House, the Government finally told us that it has legislation before Cabinet and the party room. Nevertheless, the Government still has not committed to introduce it into Parliament, or to share the legislation with the Opposition to try to win for it the bipartisan support it will desperately need for its passage through Parliament. This Bill is not on the priority list of measures to be dealt with in this session of Parliament before Christmas. That is how seriously the Government regards the legitimate concerns of the people of Western Australia. What happens to people in their homes and in the streets in which they live, where children are subject to this type of kerb crawling?

While in office, this Government has given to local government and the police the powers to stop illegal hot dog vendors. They have succeeded in making Mr Whippy vans which have no health approval or street vendor licence unplug their *Greensleeves* song as they drive through the streets of Perth. However, the Government has not been able to tackle issues of greater concern to ordinary men and women and their families in the streets of Perth, such as Pier Street, East Perth, where people are experiencing real difficulties.

This Government has no overwhelming desire to stop illegal street vendors selling sex or drug-peddling pimps pushing under-age girls into this trade. If it had, it would have responded immediately to the expectations of the Commissioner of Police and introduced legislation. The Government would have unlocked the memorial safe of Bob Falconer in which all good things apparently lay, including the eight drafts of the legislation to tackle prostitution. Instead, the Government has done nothing. Nothing has appeared before this Parliament or before the Opposition. The Government has done no more than systematically create in this State a viable career option for young girls and boys of peddling sex on the streets of Perth. That is unacceptable to the people of Western Australia, and the Government should produce a response to that reality. The Government knows damn well that a prostitution industry is flourishing on the streets of Perth. Those people do not require health checks; and they are not required to show identification proving they are over the age of 18 years or to be free of drugs. These are the youngsters involved in the sex industry on the streets of Perth, and it is utterly appropriate that that sort of activity be attacked by the Police Service. These people should be pushed off the streets so that the industry does not flourish. The containment policy allows the industry to operate in other areas on the basis of a wink-wink and nudge-nudge, but at least that is better than allowing the situation to flourish on the streets where it is not subjected to the containment

policy which restricts the activity to adults. That policy at least insists that the people involved in the sex industry not be caught up in drugs and be subject to regular health checks.

This Government has presided over a situation in which street prostitution is flourishing and those involved in the industry are mingling on the streets near the homes of ordinary, law-abiding citizens who have a right to expect a better response than the Government is delivering. The Commissioner of Police is demanding the legislation.

Hon Peter Foss: Do you support the legislation?

Hon TOM STEPHENS: The Government has not given the Opposition a copy of the legislation. The Attorney General should not talk tripe. If he will give us a copy, we tell him whether we support it. Every day the Government turns a blind eye to the situation and ignores a problem that is ever growing. It has chased the Mr Whippy vans and the hot dog vendors, but it will not chase those peddling sex on the streets among the residences of Perth people. More under-age kids are attracted into prostitution, and more kerb-crawling sickos are encouraged to trawl our suburban streets by virtue of the Government's inaction on this issue. The police are ridiculed because they are effectively wasting their time, in the absence of legislation that can enforce a policy that will free the streets of those soliciting and those seeking sex. It is unacceptable by any standard.

This Attorney General seems to think street prostitution is a reasonable multiskilling of the young people of Perth. I do not accept that.

Hon Derrick Tomlinson: That is an appalling statement.

Hon TOM STEPHENS: Unfortunately, it fits this Attorney General. He has the capacity to deliver legislation to get these youngsters off the streets. Instead he has chosen to sit on the eight drafts of this legislation, none of which has been shared with the Opposition. The Labor Party in the other place has moved to introduce a Bill to deal with street prostitution. Finally, the Government has announced in this place that it has legislation before the Cabinet and the party room. However, the Opposition has not seen that legislation. The Government should reveal that draft legislation to the people, the Opposition and this Parliament. How much police time, how much more local government time and how much more time of the Parliament is to be wasted? The Government is losing the opportunity to advance legislation that will tackle this serious issue. If the Government eventually decides to advance the eighth draft and allow elected parliamentarians to debate it, the Commissioner of Police might be able to find the Bob Falconer memorial safe, open it and release the draft legislation. It was allegedly an unwritten policy but, given the revelations in other documents found in that safe, God knows what is in the policy. What Government can govern effectively in this area with a nod, a wink and some unwritten laws? We should have been debating the merits of this legislation six months ago. Instead, the Labor Party must put forward the legislation to tackle and resolve this issue.

What are the Government's priorities? Regrettably, it continues to whizz through the approval for a belltower project, but it cannot tackle the serious issues of concern to the ordinary mums and dads and their children in Western Australia. The issue of prostitution has been put on the backburner and only now that the acid has been put on the Government by the actions of the Labor Party will the Government produce its legislation.

As 2000 rapidly comes closer, Western Australia will have a legacy of inaction from this Government. The Government will be remembered for what it has not done. It has not tackled the issues of concern to the people of Western Australia. Among those issues of concern, and ranking very highly indeed, is the presence on our streets of youngsters peddling sex. A self-respecting Government would not treat this debate in the light-hearted manner the Attorney General has adopted. Instead of seriously making available to the Parliament legislation that could legitimately be responded to by parliamentarians doing their job, the Attorney General has tried to taunt members. Instead of delivering the legislation and subjecting it to the scrutiny of this Parliament, he has done nothing but chuck abuse. This has come from a Government that took office nearly nine years ago.

HON B.M. SCOTT (South Metropolitan) [4.17 pm]: I find it quite outrageous that this debate has come before the House in this manner, when it is common knowledge that the Government has been working for some time to resolve the complex issue of prostitution.

Several members interjected.

The PRESIDENT: Order! I do not want to hear any interjections. The last speech was laced with interjections but obviously it was for some reason of which the Leader of the Opposition and the Attorney General were aware, and I was not. Hon Barbara Scott certainly was not interjecting, and she has the floor.

Hon B.M. SCOTT: The accusations of the Labor Party, suggesting that nothing was done until it took the lead, are quite ludicrous. I refer to some of the remarks made by Hon Norm Kelly. I have read a copy of the discussion paper by the Australian Democrats. It has some good work in it, and I congratulate the Democrats on that.

The first issue Hon Norm Kelly raised was that the street walkers have moved from Palmerston Street to Pier Street. No solution is offered for that. While all the talk in the Chamber today has revolved around accusations, there do not seem to be any positive solutions. I guarantee that 75 per cent of the people in Western Australia would thank us not for criticising each other, but for looking at practical solutions to this very complex issue which many people have not been confronted with or do not wish to confront. Certain issues are urgent and need to be addressed by the Government and this Parliament. However, the Opposition must acknowledge that there are no simple solutions. In January this year I received telephone calls and letters from a person I know who lives in Highgate. She spoke about her daughters being hassled by people who propositioned them for sex. People worry that when their children walk past Highgate Primary School they will be witnesses

to pimps and the exchange of money. I wrote to the Minister for Police. I have had discussions with the Government, not only in the past week or three weeks but over the past 18 months at least. I have on record the letter I wrote to the Minister for Police and the Premier in January 1999. They are very aware of my concern. I acknowledge that Trish Milburn is sitting in the President's gallery. I met with Trish last week. Her concern is that street walking has now moved from the Palmerston Street area to the Pier Street area. The concerns raised in the letters sent to me are similar to those raised by a number of people. What is the answer? If the police move the girls and young men - the prostitutes and their clients - from one area, to where do they go? How do we put in place legislation that will stop that activity?

A very important issue is the concern that organised crime is connected to prostitution. Another issue of grave concern is that the current containment policy is not written down; there is no written policy. This makes it very difficult for the police. On the issue of age, at the age of 18 years, which is the age of adulthood, it is acceptable for a woman to work in a brothel, but most people running brothels prefer the minimum age to be 21 years. The age of consent is 16 years. At 18 years of age people can do what they like. Those issues of age need to be resolved.

Hon Tom Stephens' comment that we are creating a situation for young women in which prostitution is a viable career option was appalling. I am sure the Labor Party and the people of Western Australia would consider it objectionable, if we were to regulate totally the prostitution industry and register prostitutes, to find very young girls turning to prostitution to cope with drug addictions and then later at 21 or 22 years of age having on their curriculum vitae a note indicating that they had once been registered prostitutes. I do not agree with Hon Tom Stephens that we are offering this as a career option; it is certainly not a career option that the majority of young women would want. What is the Labor Party's answer to the question? At least the Australian Democrats have put something down on paper. All the Labor Party has done is to come in here and criticise the fact that this Government has done nothing on a very complex issue which cannot be resolved easily.

My view and the views of a number of women to whom I have spoken is that we should address the issues of street walking and kerb crawling and of very young women operating as prostitutes. Colleagues of mine in this Chamber will not be strangers to the fact that generally when I stand in this Chamber I speak in defence of children. In some instances, the mothers of very young children depend in the main on prostitution for the care and welfare of their children. Do we look seriously - I believe we need to - at the places where prostitution is allowed to take place? Do we make sure that young children are not able to witness it? The next group of children about whom I am very concerned is that of young girls between 12 and 16 years of age who are prostituting themselves on the street in order to maintain their drug habits.

The Democrats have come up with the issue of safe houses. I have only read about this in their booklet and discussion paper. I am not sure that it is the way to go, but it is something we can look at further. However, I cannot see that the organised brothel madams would countenance opposition of that nature - a free bed and a free room - when they are already in an organised situation. This is one of the issues that I find very difficult to resolve.

A certain number of people are operating within an unwritten policy, with no rules or guidelines for the police, local government, the prostitutes or their clients to follow. It is very difficult to take charge. I am reluctant to give the police more power to move into other areas because the situation then becomes a little hypocritical. If the police do not go into Hay Street or well-known brothels, why should they go into someone's home and accuse somebody of prostitution? At this stage I do not believe that either side of politics has the answers. I believe we need to address some urgent matters, including those of very young women, children and girls, and young mothers working in the business so that they can keep their children. For some it is a career path, and probably a very enjoyable career path. People have made it known that they have made that choice. However, my concern is for the young women who are in the industry because of poverty or deprivation or for other reasons. I believe we need to address those issues, but no Government will be able to address all of the issues at once.

HON GIZ WATSON (North Metropolitan) [4.27 pm]: It is fair to say that both major parties have been reluctant to engage in legislation in this area. I accept the Government's criticism of the Labor Party for not having introduced legislation in the 10 years during which it had the opportunity to do so. The number of people involved in sex work in this State has gone through the roof. It is estimated that it has increased by five times since 1990 and that at least 3 000 people are involved. I totally agree with the urgency of the matter and the need to address the situation. I reiterate that the concerns of the Greens (WA) are to do with the health and safety of sex workers and the antisocial behaviour that is associated with prostitution, especially when it is on the streets. There is also an ongoing problem with corruption and the question of inequity with a semi-regulated system and a so-called containment policy.

Hon Derrick Tomlinson: Container policy.

Hon GIZ WATSON: Container policy?

Hon Derrick Tomlinson: They carry it around from place to place.

Hon GIZ WATSON: I reiterate that our concerns are to do with the dangers associated with operating on the streets. When we do have some legislation to tackle in this place, that is where we would like to see the emphasis. If the debate over the past hour has been any kind of indication, I am looking forward to debating such legislation. I see the role of Parliament as tackling these important social issues. There is an expectation in the community that, as members of Parliament, we will debate these issues. There was a reluctance to debate abortion. Although I look forward to the debate on prostitution, it does not necessarily mean that the answers will be easy. It is an area that requires urgent attention. The issue has certainly been raised in my office on many occasions.

I am aware of the need also to address the underlying issues. We have talked a little today about young people becoming involved in prostitution. Some young people feel they do not have enough money to put themselves through university. I

am aware of young women saying that the reason they decided to become sex workers was that they could not live on Austudy. Whether it is true, it puts an interesting slant on the question.

However, I believe that very few people engage in prostitution if they have other choices; certainly some people will choose it as a mode of work. However, as a community we must also consider the provision of better opportunities and tackle the drugs issue so that people are not forced into this industry through desperation.

Motion lapsed, pursuant to standing orders.

LIQUOR LICENSING AMENDMENT BILL 1998

Restoration to Notice Paper in Legislative Assembly

HON N.F. MOORE (Mining and Pastoral - Leader of the House) [4.31 pm]: I move -

That the Legislative Assembly be requested to restore the Liquor Licensing Amendment Bill 1998 to the stage it had reached in the previous session.

This Bill was passed by this Chamber prior to prorogation. It has not been restored to the Legislative Assembly Notice Paper and in order for the Assembly to deal with it, this motion needs to be passed by this House.

Question put and passed.

IRON AND STEEL (MID WEST) AGREEMENT VARIATION AGREEMENT - DISALLOWANCE

Notice Discharged

HON GIZ WATSON (North Metropolitan) [4.32 pm]: I move -

That notice of motion No 16, standing in my name, be discharged from the Notice Paper.

By way of explanation, this motion had a use-by date which has now passed. The issue of the disallowance had to be resolved within 12 sitting days and, as the motion has not come on for debate, there is little point in leaving it on the Notice Paper.

Question put and passed.

TITLES (VALIDATION) AND NATIVE TITLE (EFFECT OF PAST ACTS) AMENDMENT BILL 1999

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon N.F. Moore (Leader of the House) in charge of the Bill.

Clause 1: Short title -

Hon TOM STEPHENS: I take this opportunity to alert the Leader of the House, who is handling the Bill, to some questions I have about the operation of the Bill, should it be agreed to as a whole or with amendment by this Committee, and its impact on the operation of the parent legislation. We have moved into committee and the Government will advance the clauses of the Bill, and we are aware that the Supplementary Notice Paper indicates amendments to be moved by Hon Mark Nevill. Some points were raised by the Leader of the House during his reply to the second reading debate which leave me with some questions. The Australian Labor Party recognises that the Chamber has now agreed to the policy of the Bill and we will be dealing with the individual clauses. However, the questions I want answered deal in part with the impact on the successful Miriuwung-Gajerrong claim delivered in a judgment by Justice Lee, albeit that the judgment is subject to appeal. However, when the Leader of the House said I should not be concerned about the operation of the clauses of the Bill, which we will consider soon, as it will have a minimal impact on the outcome of the Miriuwung-Gajerrong case as currently determined, he indicated that the amount of relevant land to be impacted upon was several hundred hectares in a claim area of 4 500 square kilometres. Will the Leader of the House make available to the Committee any documentation to support that suggestion; that is, that the claim will have a minimal and not a more substantial impact than that which I fear? The Leader of the House and Hon Mark Nevill have indicated that they do not accept the judgment of Justice Lee and believe it will be -

Hon Mark Nevill: Some of it.

Hon TOM STEPHENS: Some of the judgment, yes. We all understand that the judgment is subject to appeal. It is strange that both the Government and Hon Mark Nevill say that it is appropriate to proceed with the Bill on the assumption that one's assessment of the court's determination of this question -

Hon Mark Nevill: You cannot support the judgments of both Justice Olney and Justice Lee on certain issues because they are different.

Hon TOM STEPHENS: Hon Mark Nevill expressed confidence that Justice Lee's decision on the successful native title claimants in the Miriuwung-Gajerrong case would not be upheld through the appeals process. My view is that, in recognition of the appeal proceeding, nothing will stop that appeals process. Hon Mark Nevill presented his case more eloquently and accurately than did the Leader of the House. Hon Mark Nevill revealed, through the expressions he used, a knowledge of the impact of the Bill, which language, I regret to say, the Leader of the House did not use to reveal that insight.

Hon N.F. Moore: I have been listening to you for too long; that is my problem.

Hon TOM STEPHENS: That may well be the case.

Hon N.F. Moore: You should take a Dale Carnegie course sometime, Mr Stephens; it would do you the world of good.

Hon TOM STEPHENS: The Leader of the House has used words that reveal he does not understand what the Bill will do. Hon Mark Nevill has used words that indicate he at least understands what the Bill will do, and is pursuing it anyway. Why is the Government rushing to advance the legislation to confirm the extinguishment that it believes the courts will find has occurred in advance of those court decisions, which we know will come because they must settle the questions of compensation? In reference to the Miriuwung-Gajerrong claim, I am interested to know the size of area that will effectively be extinguished if this legislation is passed unamended. I hope that the Leader of the House will clear up this point. I do not suggest that the Bill will wipe out the Miriuwung-Gajerrong decision. However, it will wipe out native title on some of the land over which native title has been found by Justice Lee to have survived.

I have a specific interest in whether a reserve created and vested in the Minister for Works for the purposes of government requirements is a reserve that falls within the ambit of the schedule in the national legislation, and whether the legislation now before us will have the effect of extinguishing native title in reference to any such reserve, whether the lands are associated with the Miriuwung-Gajerrong people or otherwise. I am particularly keen for the Leader of the House to detail how he has come up with the figure of several hundred hectares. I would be delighted if he would provide a list of the affected leases that comprise the several hundred hectares over which native title will be extinguished by virtue of this legislation. I would also like to know whether the Government has consulted in any way with the successful applicants over the extinguishment of these leases? Has there been any consultation or discussions with the Miriuwung-Gajerrong people about the extinguishment of native title in these areas? What will be the impact of this extinguishment on the preparedness of the Miriuwung-Gajerrong people to willingly participate in the approval process for Ord stage 3 as a result of this legislation, and will it impact on their attitudes to negotiate in good faith on these questions? Given that only several hundred hectares in a claim of 4 500 square kilometres will be affected by this Bill, it should not only be appropriate but also not too much hardship to consult the Miriuwung-Gajerrong in reference to that area. If it is only a small area that will be extinguished, perhaps discussion could take place with the Miriuwung-Gajerrong people. Perhaps it has taken place and approval has been obtained and I have not been alerted. I would be interested if the Leader of the House could assure me in that regard.

Does this legislation extinguish the native title rights over reserve 43196, which is the water supply and electricity reserve for the Argyle dam that was created in 1984 and is now vested in the Water Corporation? That area is approximately 234 hectares and contains the footprint of the main dam and the hydroelectric power station, the water outlets and the access roads near the dam. Does this legislation effectively deliver the extinguishment of native title on that 234 hectare reserve and how much of that reserve will have native title extinguished over it? Justice Lee found that the act of the Crown in carrying out the works on the land had the effect of excising the land from the pastoral lease for the purpose of the project, and the construction of work of a permanent nature had the effect of extinguishing native title in respect of that part of the land utilised by the Crown.

Justice Lee stated that the reserve is substantially larger than the land on which the works were constructed and the adjacent land acquired for the purpose of the works in respect of the balance of land in the reserve, particularly the land on the banks of the Ord River downstream from there, much of which is undisturbed bushland, and that no further intention to extinguish native title is demonstrated by the creation of the reserve and no further use of the land of the reserve has occurred that demonstrates extinguishment of native title by adverse dominion. Consequently, I would like to know whether this area is part of the several hundred hectares that will be affected by this Bill, and, if it is, what is the need or justification for doing so. I would also like an acknowledgement by the Government that this Bill is, in this case, extinguishing native title and not merely confirming the extinguishment of native title.

I would also like to know whether the areas covered by the creation of Lakes Kununurra and Argyle will similarly be experiencing extinguishment by virtue of this legislation. Justice Lee stated that the creation of these lakes, although altering the landscape and putting flooded lands beyond the reach of the holders of native title, did not extinguish native title. Justice Lee stated that the exercise of rights dependent upon native title may be regulated or controlled and that native title may apply to waters and land rather than to land and waters. He found that the public rights created by the flooding of these lands were minimal and that there was no fundamental incompatibility between the continuation of native title and the exercise of public rights in respect of the area of water by the acts of damming the water course. He said that attachment to the land for Aboriginal people remains through spiritual belief, notwithstanding that the landscape has changed.

For example, Bilbajim - that is, Mt Misery - has great significance to the Miriuwung-Gajerrong people through the dreaming of the grasshopper but is now effectively beneath the water. The top of that mountain is now effectively an island in Lake Argyle and of great importance to Aboriginal culture. One of the first things I experienced after arriving in this State was to be grabbed by a traditional man and told to take a speed boat to Bilbajim to rescue sacred objects that were located on this mountain. The waters were rising on this spot, and I went there to try to rescue these ritual objects only to find that they were covered. This effectively testified to the traditional significance of that mountain and to the grasshopper dreaming story and corroborees associated with that country. Although substantially beneath water, with only the top of the mountain now evident as an island, it is nonetheless important to the Aboriginal culture.

I want also to ask either Hon Mark Nevill or the Leader of the House about public works issues. Hon Mark Nevill has indicated that he is endeavouring to protect Aboriginal interests by ensuring that scheduled interests or leases must have been in existence as at 23 December 1996 - the date of the Wik decision - in order to extinguish native title. That was the effect of the Opposition's amendment to the Bill the last time the issue was before this Chamber. The Labor Party, with Hon Mark

Nevill's support, successfully protected the native title interests over land of historic tenure. Now, Hon Mark Nevill has indicated he proposes to do that again. Why has neither Hon Mark Nevill nor the Government extended this same protection to reserves and public works that were not in place as at 23 December 1996? Is Hon Mark Nevill or the Government prepared, even at this late stage, to favourably consider a further amendment that would improve the protection of the Aboriginal claimants in a consistent way, whether it be for a public works reserve or another form of land title? If it is important that defunct leases should not extinguish native title, presumably non-existent public works or non-existent or cancelled reserves could appropriately be dealt with and covered by the sort of amendment that Hon Mark Nevill has proposed, and to which the Government will apparently agree, with regard to other forms of land title. The Government needs to define what is meant by "public work" and whether the area that is covered with regard to the Argyle dam is merely the dam and the other infrastructure, or the whole lake. Other issues will arise in the course of the committee stage, but those issues are of particular interest to me, and if the Leader of the House could throw some light on any of those issues, it would reduce the number of questions I will need to ask later.

Hon N.F. MOORE: It is a pity the Leader of the Opposition decided to get personal about this matter. I do not profess to be an absolute expert on native title; in fact, I am representing another minister. However, at least the ignorance I have takes less time to display than does the ignorance of the Leader of the Opposition, who seems to spend most of his time talking about things that have no relevance to the issues at stake and then claims to be some sort of expert, which I do not claim to be. I will do my best to answer the questions raised by the Leader of the Opposition, and if he is not satisfied, he can keep asking questions and I will endeavour to provide the answers.

I hope, like most Australians, that the appeal against the Miriuwung-Gajerrong decision is successful, because what that decision does, if members are not aware, is give Aboriginal native title holders extraordinary rights to over 4 500 square kilometres of the Kimberley in a way which may have significant ramifications for how we carry out our lives in Australia. Members who do not know about this decision should spend a bit of time finding out what it says. Fortunately, a number of other decisions, particularly one made at about the same time by Justice Olney - who is, incidentally, a former member of this place - in the Yorta Yorta case, demonstrate that at least one Federal Court judge has a reasonably good understanding of the meaning of the Native Title Act. Justice Olney made a similar determination in his recent decision in the case of *Hayes v Northern Territory*.

The Leader of the Opposition has asked about the effect of this legislation on the Miriuwung-Gajerrong decision. I will outline the leases that are involved. Justice Lee said that native title had not been extinguished on two leases for grazing purposes, four leases for cultivation and grazing, three leases for market garden, four leases for canning and preserving works, one lease for tourist resort, one lease for jetty and boat launching facilities, and two leases for Aboriginal hostel and intercultural centre. Justice Lee said that native title had been extinguished on one lease for concrete production.

With regard to leases of reserves under section 41A of the Land Act, Justice Lee said that native title had not been extinguished on part of reserve 1059 for public utility; part of reserve 1600 for public purpose; part of reserves 1061 and 1064 for public utility and part of reserve 18810 for tropical agriculture; reserve 2049 for resting place for stock; and on two leases to reserve 16729 for use and requirements of the Government of the State in connection with the Wyndham freezing, canning and meat export works. With regard to leases of reserves under section 33 of the Land Act, Justice Lee said that native title had not been extinguished on part of reserve 31165 for government requirements.

The reason that native title had not been extinguished on a number of those leases is that the leases had not been validly granted. One of the grazing leases had not been validly granted, two of the cultivation and grazing leases had not been validly granted, two of the three market garden leases had not been validly granted, all four of the canning and preserving works leases had not been validly granted, and the leases to reserves 1059 and 1600 had not been validly granted. All the other leases had been validly granted.

Quite a number of those leases had expired as at December 1996, and if Hon Mark Nevill's amendment were to succeed, the only two leases covered by the Miriuwung-Gajerrong decision which would be scheduled interests in the context of what is left in the Bill would be one cultivation and grazing lease held by a Mr P. McGinty, who I understand is deceased, and part of reserves 1061, 1064 and 18810. Therefore, they are the only leases that would be affected. I am happy to make that list of leases available.

The reason that we debated this matter at some length the other day is that after listening to the Leader of the Opposition speak about the Miriuwung-Gajerrong decision and this Bill, one could be forgiven for believing that this Bill would wipe out the entire Miriuwung-Gajerrong decision. I made the point, based upon the fact that I had a very short time in which to respond last week, that most of the leases were not validly granted and covered only a few hundred hectares out of a large area of land. I will find out the exact number of hectares covered by each of those leases so that the member can get some idea of what we are talking about. That is the situation in respect of that matter.

The member thinks we are rushing this legislation. If this is rushing it, I would hate to see what would happen if we were to go slowly! We would all freeze on the spot and disappear! This is our third attempt to pass this legislation, and any suggestion that somehow the Government is rushing it is ludicrous in the extreme. There has been no consultation with regard to these matters, but as I have indicated to the Chamber, the area of land involved is quite small. One of the leases involved is a cultivation and grazing lease, which I understand was owned by an Aboriginal person in the Kimberley area. The other lease is part of a reserve, as I have indicated. There is no great need for further consultation with regard to that matter.

The Leader of the Opposition raised a number of issues about public works and the Argyle dam. I refer the member to the definition of "public work" in the federal native title legislation. It is important that members understand this, because they

seem to have the view that if a toilet were built in a national park, that public work would somehow extinguish native title throughout that national park. "Public work" is defined in the Native Title Act as -

- (a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities :
 - (i) a building, or other structure (including a memorial), that is a fixture; or
 - (ii) a road, railway or bridge; or
 - (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2 - a stock-route; or
 - (iii) a well, or bore, for obtaining water; or
 - (iv) any major earthworks; or
- (b) a building that is constructed with the authority of the Crown, other than on a lease.

In respect of the land involved, as opposed to the actual building, the Native Title Act provides -

In this Act, a reference to land or waters on which a public work is constructed, established or situated includes a reference to any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

[Questions without notice taken.]

Hon N.F. MOORE: Prior to question time I was explaining to the Leader of the Opposition what the Native Title Act definition of land and waters associated with public works relates to and what it means. Clearly, the land or the water must be necessary for or incidental to the construction, establishment or operation of the work. Simply building a toilet in a national park does not make the national park an area of land that is part of a public work. Obviously it is not incidental to or necessary for the operation, construction or establishment of that facility. The leader should read the definition in its proper context. Clearly, car parks, playgrounds and so on are necessary for and incidental to the operation of a school or a hospital. Therefore, it is feasible that native title should be extinguished over land on which those facilities are built in the same way that it is with regard to the land under the building itself.

The leader referred to the Ord Dam. He should look at the definition. Any area of land around the dam that is or was necessary for or incidental to the construction, establishment or operation of the work would come within the definition of a public work and, therefore, native title would be extinguished. The waters of Lake Argyle and Lake Kununurra would not satisfy that definition, and it would be up to the various tribunals to decide whether native title exists under those waters. I would not argue that they would be covered by the definition of a public work in native title legislation.

I have handed out the sheet referring to the Miriwung-Gajerrong decision. I will endeavour to answer any other questions that might arise at any time.

Hon MARK NEVILL: I will make some general comments. I said by interjection while Hon Tom Stephens was speaking that there are aspects of the Miriwung-Gajerrong decision with which I do not agree. Members should not find that surprising because in his decisions on Hayes v the Northern Territory, the Yorta Yorta and Croker Island, Justice Olney made rulings that are completely contrary to those of Justice Lee. One cannot support both; if one is to take a position, one must support one side or the other. There is nothing strange in that.

I have always understood native title rights to be usufructuary rights, or rights to hunt, gather, fish, pass across the land for ceremonial reasons and so on. That has been the general finding in High Court and Federal Court judgments. Justice Lee goes off on a tangent and talks about full beneficial ownership of the land.

Hon Giz Watson, Hon Helen Hodgson and Hon Tom Stephens referred to Aboriginal property rights during the second reading debate. Property rights are not mentioned in the Native Title Act; it refers to rights and interests, not property rights. Native title is not necessarily a property right. I do not believe that the majority of High Court judges in Mabo No 2 contemplated it in that sense. One can recognise native title rights as one recognises the law of another country, but they are not necessarily the same thing as property rights. According to Justice Lee they would be. I suppose that if one says something often enough and for long enough, it gets stuck in the psyche of the Press, which will make it part of people's thinking. I warn members that they are using the term "property rights" very loosely.

I do not agree with Justice Lee's determination that native title has been vested in the Miriwung-Gajerrong peoples; that is, in two Aboriginal tribes. That is a strange notion when one considers the High Court judgment. I have always thought of native title being vested in family groups or estate groups, particularly where it survives. If members travelled to the area south of Balgo and told some of the Aboriginal people that the land does not belong to the Njamme family or the Sunfly family, that it belongs to everyone, they would be very upset. That is what Justice Lee has done in the Miriwung-Gajerrong case. He said it belonged to everyone. That is contrary to the submissions made by Aboriginal people on the Northern Territory side of that claim. I cannot see how a judgment could be brought down in those terms. I think Justice Lee's decision on leases is contrary to the Native Title Act. The Act overrules common law and, as I will demonstrate in a minute, the Act is crystal clear. However, members in this House are either in a state of denial or they do not understand the provisions with which they are dealing.

I have not received one letter on this Bill from a lawyer in Western Australia. Not one lawyer has been prepared to challenge

the interpretation of the Act that I put to the House during debate on the second reading speech. I have not received a letter from Professor Richard Bartlett, Michael Hunt or Greg McIntyre, lawyers whose opinions I respect. I have heard from Pat Dodson. I think he has got the law wrong. He referred to non-exclusive possession leases. None of the leases on which we have confirmed extinguishment of native title is one of those leases. I am not sure whether he understands the law. However, no reputable lawyer has been prepared to put his argument on the public record. I do not think such an argument would stand even rudimentary scrutiny; the Act is that clear.

I also found Justice Lee's comments on resources bewildering. I have always understood that petroleum rights were resumed to the Crown under the Petroleum Act 1937 and that the vast majority of mineral rights were resumed to the Crown long before the Racial Discrimination Act was passed. Without any argument in the body of his judgment on resources, at the very last page he refers to ownership of resources almost as an afterthought. The only conclusion I can draw is that Justice Lee rushed his judgment in order to get it into the public domain before this Parliament voted on the Bills last year.

When resources are included in debate on native title surely, in a State such as this, there is an onus on the judge to back it up with legal argument, but he did not do that.

Hon Greg Smith: He also mentioned access for everybody.

Hon MARK NEVILL: They were just a couple of the major points. I have no argument with much of the judgment.

A suggestion was made that there was no rush to pass this legislation. It has been drafted for 12 months. It is not a matter of whether the provisions are vague. The issue is crystal clear. As I said during debate on the second reading, exclusive possession leases completely extinguish native title under section 23A(2), which reads -

If the acts were *previous exclusive possession* . . . the acts will have completely extinguished native title.

The definition of exclusive possession acts includes - they are all listed - any valid lease granted before the Wik judgment that consists of a scheduled interest, a freehold estate, a commercial lease, a residential lease, a community purpose lease, plus a few others. All the 1 300 leases clearly fall into those categories and the definition of "extinguish" in relation to native title means permanently extinguish native title. To avoid any doubt, that means that after extinguishment the native title rights and interests cannot be revived even if the act that caused the extinguishment ceases to have effect.

My amendment will seek to exclude all those leases that have ceased to have effect due to the confirmation of extinguishment of native title, even though the Act says the direct opposite. I am convinced that the courts will find as the Act provides. I cannot see the courts overruling an Act. They will be making a finding at common law. The courts will find that the expired leases will be exclusive possession acts and will completely extinguish native title. It is the granting of the act that extinguishes native title. The State will confirm that extinguishment; it has already been extinguished.

Hon TOM STEPHENS: I am keen to hear more from Hon Mark Nevill who will rise again. I hope he will also tackle public works.

Hon MARK NEVILL: I was just about to do that. Public works is dealt with under section 23B(7) of the Native Title Act, in the definition of an exclusive possession act, which reads -

An act is a *previous exclusive possession act* if:

- (a) it is valid . . . ; and
- (b) it consists of the construction or establishment of any public work that commenced to be constructed or established before 23 December 1996.

I could have included expired public works leases in my amendment. I have not done so because under section 23C(2) commonwealth public works acts also come into play in this situation. I cannot see how that can be done for the State and not for the Commonwealth. There is not just one form of public works lease under this Act; there are two, commonwealth and state. To be equitable we would have to include both. I do not think it will make any difference at the end of the day because of the way it will be interpreted by the courts. However, I cannot do anything about the commonwealth law. All we can change here is how it applies to state public works acts. Section 23C headed "Confirmation of extinguishment of native title by previous exclusive possession acts of Commonwealth", and subsection (2) reads -

If an act is a previous exclusive possession act under subsection 23B(7) (which deals with public works) and is attributable to the Commonwealth:

- (a) the act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and
- (b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

That covers the main issues raised by Hon Tom Stephens. I was going to read the definition of a public work into the record, but that was done by the Leader of the House, as he did with the definition of adjacent land. With reference to the Alice Springs decision on public works, using those sections of the Act, Justice Olney found that an explosive reserve was an exclusive possession lease and the land in and around the explosive dumps was adjacent land under section 251D and native title was extinguished. He goes through at least 12 leases in great detail. He looks at a railway line and a communication tower and finds that the adjacent land is also part of an exclusive possession lease and, therefore, native title has been extinguished. I will address the question of the amendment later during the committee stage.

Hon HELEN HODGSON: I did not intend to speak on the short title, but having heard some of the opinions that are being

exchanged by bush lawyers in this Chamber at the moment, I felt that I needed to make a couple of comments. First, I appreciate the table which lists the leases, although the information basically mirrors that which is in my notes, and to which I referred extensively in the last stage of the debate. It is convenient to have it set out in tabular form, and I find that quite useful. In that context, I also acknowledge that many of the leases with which we are concerned in the Miriuwung-Gajerrong decision will be picked up by the amendment that is foreshadowed by Hon Mark Nevill in respect of the fact that the lease must be in existence at the date on which the Wik decision was handed down. In one sense, by focusing on Miriuwung-Gajerrong in definitional issues, we are in danger of narrowing the debate to just the Miriuwung-Gajerrong-type claims. That is a useful example, because we have an analysis of the land tenure affected in that claim. In that sense it is very handy to have that as a guideline. However, we must remember that this covers the whole State, not just the Miriuwung-Gajerrong claim, to the extent that there are scheduled leases in various parts of the State. I acknowledge that a lot of the State is not affected because there are not scheduled interests in those parts of the State. If we were to look at the schedule and say that simply because Miriuwung-Gajerrong ends up with about three or four leases over which extinguishment will occur, which has not been picked up by the amendment that is foreshadowed, at the same time there might be other claims in other parts of the State in which there is a different result. For those reasons, I caution members not to think that the amendment fixes the whole problem.

Secondly, in respect of Hon Mark Nevill's interpretation of section 23A of the Native Title Act, during the second reading debate I referred to the fact that constitutionally commonwealth Acts cannot cover acts done by the State in respect of land. The sections to which the member is referring relate to acts of the Commonwealth in accordance with the schedule to extinguish native title. It then gives permission to the State to act in the same way. Extinguishment is not effected by the commonwealth Act over leases granted by the State. I do not think members will find that there is any constitutional lawyer, or even a bush lawyer, who would argue that it is.

Hon Barry House interjected.

Hon HELEN HODGSON: At least I have studied some property law. In terms of what we are doing now, that would not be necessary if this extinguishment had been effected by the commonwealth Act. To turn around and say that extinguishment has been effected and that all we are doing is confirming it, is to confer upon the commonwealth Act a power that it does not have; that is, to legislate in respect of leases issued by the State. It is binding only in respect of acts that the Commonwealth has undertaken, and the minister agreed with that when he wrapped up the second reading stage of the debate.

Hon TOM STEPHENS: A couple of issues have come up which are worth further teasing out in the process of this short title debate. Hon Mark Nevill, in his assessment of the law, confidently put the view that the native title rights of Aboriginal people are usufructuary rights and he listed those usufructuary rights. For the purposes of this debate, let us accept that the member's assessment of those rights is correct. For what reason would one want to extinguish those usufructuary rights in reference to these lands on which native title has been found? I agree with the point made by Hon Helen Hodgson that we do not want to focus on Miriuwung-Gajerrong as though this Bill deals only with Miriuwung-Gajerrong. However, the Miriuwung-Gajerrong decision gives us the opportunity to refer to specifics. In reference to lands on which Justice Lee has found native title has survived, if we are dealing with simply usufructuary rights, why extinguish? What is the need to extinguish? For the purposes of the debate on this Bill, I am prepared to concede that Hon Mark Nevill is right and I will bow to his greater wisdom. Can he construct for me the case by which it is necessary to extinguish native title rights for those land-holdings that have now been found to have native title surviving in reference to them? Secondly, I want to make sure that I have not misunderstood Hon Mark Nevill as to the intent of his amendment that will be dealt with later by the Chamber.

Hon N.F. Moore: Can we do it then, otherwise we will be here for the next three weeks?

Hon TOM STEPHENS: I will not give members a protracted debate on these issues. We all know where we are up to in terms of the calendar and the lay of the land. Am I summarising the member correctly when I say that he remains convinced that native title has effectively been extinguished on those historical leases and will be found to have been so extinguished by the courts and, therefore, nothing hangs on this question?

Hon MARK NEVILL: On the question of usufructuary rights, I said that that was my understanding of the Native Title Act. Justice Lee has said that native title is full beneficial ownership of the land, akin to a European title with rights to minerals, petroleum and everything. I do not know where the courts will draw the line. He may be right; they may support him, but I would be very surprised if they did.

On the second question, I do not particularly like the Native Title Act. I think it is a dreadful piece of legislation. However, as I read the Native Title Act, quite clearly it appears to me that the courts would interpret all those leases - I read the definition of "extinguishment" - to have extinguished native title. What I am doing by this amendment is in deference to Justice Lee's judgment. If, by some reason that I do not understand, he is correct, and he may well be, and as Hon Helen Hodgson gratuitously referred to me as a bush lawyer, I could be wrong. Returning to the question at hand, my interpretation of the Act is that native title is extinguished. If I am wrong, they will survive and be available for claim. I am just interpreting the Act as I see it in black and white. The courts will decide whether native title exists on those leases, not me.

Sitting suspended from 6.00 to 7.30 pm

Hon TOM STEPHENS: I am still a little uncertain about the tabled list of extinguished native title leases on the land over which Justice Lee made his determinations. Does that list include all the community purpose leases and public works reserves on which native title has survived according to Justice Lee but which will be extinguished by virtue of this Bill?

With regard to Lake Argyle, which is contained within reserve 31 165, is it the Government's intention to specifically avoid legislating to extinguish native title on that reserve and to leave native title to survive intact?

Hon N.F. MOORE: The list that I have provided to the Leader of the Opposition describes the leases that are covered by the Miriuwung-Gajerrong decision. It does not cover the public works that are covered by that decision, so I do not know whether any of those need to be looked at. However, I do not know whether that is relevant in the context of what we are doing today. The Leader of the Opposition wants to have a debate about the outcome of the Miriuwung-Gajerrong decision. I am trying to bring us back to this Bill, which deals with 1 300 leases. I have a map of Western Australia on which the leases that we are talking about are shown in green. I suspect that if I were to open that map and show it to members, they would see a big white area that is Western Australia, but they would not see any of the green areas, because the amount of land that we are talking about is negligible. Mr Chairman, you would be able to see the names of the towns, but you would not be able to see the green bits which represent the leases that we are talking about.

Hon Mark Nevill: I can see one.

Hon N.F. MOORE: I can see one from here too, but most of them I cannot see. We get the impression from listening to the Leader of the Opposition that what we are seeking to do tonight is extinguish native title over most of Western Australia. We are not doing that at all. We are dealing with leases and people's expectation of being able to maintain those leases. We are seeking to legislate on the basis of the rights conferred upon us by the federal native title legislation. I will not sit here all night and go through every question that the Leader of the Opposition wants to raise, because that will delay the decision of this Chamber in this matter. If the Opposition wants to delay this Bill, it should say that is what it wants to do instead of doing it in a de facto way by continually raising questions -

Hon Tom Stephens: We do not want to delay it, but will you take a question? We see when we get to clause 4 that this is effectively ensuring that native title is extinguished by a relevant act, and we have referred to -

Hon N.F. MOORE: We could easily deal with this when we get to clause 4.

Hon Tom Stephens: I am not trying to delay the -

Hon N.F. MOORE: The Leader of the Opposition wants to have a debate on -

Hon Tom Stephens: So long as you do not mind my raising it in clause 4 -

Hon N.F. MOORE: The Leader of the Opposition will do that anyway. I have no doubt that what the Leader of the Opposition intends to do, which is not what his colleagues want him to do, is to delay the passage of this Bill. If that is what he wants to do, he should tell the world that he will not support this Bill and will delay it. As I have already argued with the Leader of the Opposition, there has been no rush with this Bill. It has taken a long time to get to this point. The Leader of the Opposition knows the Government's position. It has been made very clear to him that we are seeking to proceed with this Bill, and that we are asking the Chamber to make a decision.

Hon Tom Stephens: Does the list that you have supplied include all the community purpose leases?

Hon N.F. MOORE: I am told it does.

Hon Tom Stephens: Does it include all the public works reserves?

Hon N.F. MOORE: I have told the Leader of the Opposition that it does not include the public works reserves.

Hon Tom Stephens: Is that list available?

Hon N.F. MOORE: I do not have it with me at the moment. I brought the other list with me, because I thought it would give the Leader of the Opposition some idea of the areas that we are talking about and would put some reality back into this matter. We are not talking about 90 per cent of Western Australia. We are talking about very small portions of land. As I said, one can only hope and pray that Justice Lee's decision will be overturned because, as has already been mentioned by a number of members, some of the consequences of that decision will be horrendous for the State of Western Australia.

With regard to Lake Argyle, I have read out the definition of "public work" in the federal native title legislation. It talks about buildings and adjacent land and water, and it presumably includes a public work. I do not know whether Lake Argyle in its entirety falls within that definition; I suspect it does not. However, I am sure the dam does, and probably also the parking areas around it and the ancillary activity areas associated with the dam. I understand that Justice Lee has already determined that native title exists over the dam itself, and the appeal will determine whether that decision stands. I find it difficult to understand how native title could exist under a lake which did not exist before, but that is for other people to judge.

Hon MARK NEVILL: I caution the Leader of the House about doubting the motives of Hon Tom Stephens. I do not doubt his motives - I just think he is misguided.

Hon N.F. Moore: You're more generous than I am.

Hon MARK NEVILL: He has a very emotional approach to these matters, which is fine; however, we must negotiate the law of the land as well, no matter how inconvenient that may be.

The area of land on which we are confirming extinguishment of native title is one-twentieth of 1 per cent of Western Australia. The green spot on the map which the Leader of the House produced and displayed to the Chamber was a lease

on Frazier Downs south of Broome. That is not a grazing lease. No grazing leases are included in the list of scheduled interests in the Native Title Act. Any lease which is a multiple purpose lease, including grazing, is included in the scheduled list. Grazing and cultivation, grazing and cropping, and grazing and horticulture are included in the list of scheduled leases, as they are in most other States. Justice Olney found that mixed farming and grazing leases in central Australia, although not a scheduled interest, also were exclusive possession leases. Therefore, native title was completely extinguished on these leases.

The area to be excluded by my amendment and to be left for determination by the courts is five times the area upon which we are confirming extinguishment; that is, 0.2 per cent, or one-fifth of 1 per cent of Western Australia. Premier Beattie extinguished native title on 22 per cent of Queensland, which is a far larger area than anything contemplated in Western Australia. Whatever one does, one must have consistency across Australia with this national legislation and its delegation to the States. By any measure, this action in confirming extinguishment in this State is not racist. It is an absolute exaggeration to claim it is racist, and no real defence of that claim was made by members. Hon Helen Hodgson attempted to do so. However, she must realise that the commonwealth legislation and the state legislation are complementary measures. That commonwealth Act applies to the state legislation. Everything we do in Western Australia must be consistent with the federal Act. If another Bill to come before us is consistent with the commonwealth Act, it should pass the Senate. If it is not passed, I will take on the federal Leader of the Opposition in his own electorate. I will do so if I feel he is being unreasonable, but I will leave that to future events.

I make no apologies for confirming extinguishment to the 1 300 leaseholders in this State upon whose leases native title is extinguished by the provision of the Native Title Act. This measure will remove doubt from their minds and will mean that they need not appear before the Federal Court. It will remove uncertainty. If members think that is not a significant matter, I suggest they talk to the people concerned. I have very close links with many Aboriginal people, and I have not met one Aboriginal person in Kalgoorlie-Boulder who covets those leases. They have told me straight out, "We're not interested in those leases." In many cases, they have excised them from their native title claims. In some cases they have not been excised, and people still find that they must appear in the Federal Court. Some of the commercial leases have deliberately not been excised from native title claims when they are clearly exclusive possession leases. I make no apologies for giving certainty to 1 300 leaseholders. There is nothing racist about that intention. It is a reasonable decision on my part in consideration of the Act with which we must all live whether or not we like it, as we must be consistent with the law of the land.

I find it very difficult to get my mind around the following concept, and this is where the law is an ass: The Super Pit in Kalgoorlie, which is a mining lease that will leave a hole 500 metres deep and God knows how many metres long and wide, will not extinguish native title, yet a dunny on some lease in Kununurra will extinguish native title. If that can be explained to me, members will do me a favour. I cannot get my mind around such legal humbug.

Hon TOM STEPHENS: We hear slogans constantly repeated by my former colleague and the Leader of the House about this legislation which clearly do not correspond to the facts and the reality. This legislation does nothing to allay any uncertainty about the rights of 1 300 leaseholders across this State. All rights pertaining to those leases and licences on land are intact and are supported by the strength of statutes and the decisions of the courts. Nothing people are entitled to do with their land holdings is restrained in any way by the fact that native title is considered to have survived; that is the case in reference to some lands which are not judged to be exclusive possession acts. When one extrapolates Justice Lee's finding in the Miriuwung-Gajerrong case, one must try to establish the bone fides of the Government and the evidence upon which the State relies. I refer to the claim that leases are scheduled interests and should have extinguished native title by being exclusive possession acts, yet the assessment of a court in this State found that a number of such leases were not exclusive possession acts under the Native Title Act and the operations of common law. In those circumstances, native title has therefore effectively survived.

Hon Mark Nevill: You're relying on the Native Title Act.

Hon TOM STEPHENS: I rely on the Act, Justice Lee's interpretation of the Act and Justice Lee's interpretation of what can be an exclusive possession act. In response to that reality, and in the absence of the Government's view being supported by a court determination to override Justice Lee's interpretation of an exclusive possession act, the Government and the Parliament seem intent on legislating away native title on a range of a land tenures in this State. The Opposition believes that this is unacceptable. Members looked at a large map of Western Australia held up by the minister, which had small green markings on it.

Hon N.F. Moore: I was going to bring the one with all the claims marked so that you could get some idea of the difference.

Hon TOM STEPHENS: Those areas are clearly small sections of the State, but if they are areas in which people have a native title interest they are of particular significance to them. The land I own in Shenton Park is a small block of land; nonetheless, it happens to be my right and entitlement.

Hon Mark Nevill: You have exclusive possession.

Hon TOM STEPHENS: Yes. The member should not miss the point; he is missing many points.

Hon N.F. Moore: You are arguing against yourself.

Hon TOM STEPHENS: Not at all. My point is that the land in which I have an interest would be very tiny if marked on a map of Western Australia. It is an exclusive possession act and no-one has lodged a native title claim over it. However, the fact that this Parliament is extinguishing native title interest by this legislation is of desperate interest to the native title claimants, even though it is only a small block of land.

Hon N.F. Moore: How do you know? You did not know where it was until I gave you this list.

Hon TOM STEPHENS: I know only too well. I know the Miriuwung-Gajerrong area extremely well.

Hon N.F. Moore: Do you know this piece of land?

Hon TOM STEPHENS: I refer, for instance, to the land used for cultivation and grazing. It is the piece of land referred to in Justice Lee's decision.

Hon Mark Nevill: That is clearly a scheduled interest. If it was granted under the Land Act of 1933, it is clearly a scheduled interest and, therefore, native title is extinguished. Game, set and match.

Hon TOM STEPHENS: No. It means there is an opportunity to extinguish it; it is not extinguished by virtue of the federal legislation. Hon Helen Hodgson has taken Hon Mark Nevill through that point of law. Just because it is in the legislation, it does not mean native title is extinguished. Hon Helen Hodgson understands this extremely well and has explained it. Hon Mark Nevill is choosing not to understand. Native title can be extinguished only by virtue of a decision by this Parliament.

Hon Mark Nevill: No, it is confirmed. It is extinguished already and we are confirming it.

Hon TOM STEPHENS: No. Let us listen to what Justice Lee said in regard to special leases for cultivation and grazing. Justice Lee made a decision about the land leased to Mr McGinty, who is now deceased. Members may be interested in this or they may not care at all that Mr McGinty was a Miriuwung man. Is the minister suggesting I am wrong? I understood this was a packsaddle block leased to Paddy McGinty. The land was the subject of a prior special lease. Justice Lee says that no lease document has been prepared. The lease was cancelled.

Hon Mark Nevill: Was it validly granted?

Hon TOM STEPHENS: Yes.

Hon N.F. Moore: Can we get on with this?

Hon TOM STEPHENS: I am intrigued by the indication from the Table that I am wrong about this block. I understood it was the Paddy McGinty block, and he was a Miriuwung man who held land on a packsaddle block.

Hon N.F. Moore: It was suggested that Mr McGinty was not a Miriuwung man.

Hon TOM STEPHENS: I am telling the minister that I have no doubt about where Mr McGinty fits into the families.

Hon N.F. Moore: If you know about it, that is fine. Let us get on with it.

Hon TOM STEPHENS: Mr McGinty was an Aboriginal man, a leaseholder, who made no objection to the Miriuwung-Gajerrong claim with respect to native title over his land. The land is still utilised by the extended Miriuwung-Gajerrong families who roam over it and use it with the approval of the leaseholder. Justice Lee found that the lease for cultivation and grazing did not, by virtue of the operations of that grant, in any way derogate from the survival of native title. What an odd thing for this Parliament to rush in and intrude over the survival of native title on that large block of land available for Aboriginal people and on which native title interests survive.

Hon Mark Nevill: Can they still do that?

Hon TOM STEPHENS: When those interests are extinguished by this legislation, those people will no longer have a native title right to that land. Justice Lee's decision will, for all intents and purposes, be overturned by the decision made in this Parliament tonight. It will leave the Miriuwung-Gajerrong people, presumably with the people who will take over that lease from the estate of Mr McGinty, with a compensation issue that goes against the Crown. It is not reasonable to sit by and defend that type of response to such a recently granted decision on this matter. I will cop what people will dish out to me in this debate, but I will query the honesty of the manner of the debate in the public domain.

A press release issued by my former colleague, with reference to his amendment to this legislation, indicated he would move to protect the Aboriginal interests in historical leases. However, in the process of this debate he has said that as far as he is concerned the lands which are the subject of those historical leases, for all intents and purposes, will ultimately be found to have had native title extinguished on them by virtue of those historical leases. Therefore, any amendment he moves is simply of -

Point of Order

Hon MARK NEVILL: The member is deliberately misconstruing what I have said. I have not said that at all. He is completely twisting what I have said and it is quite objectionable.

The CHAIRMAN: Hon Mark Nevill has corrected for *Hansard* what he considers to be a false perception.

Debate Resumed

Hon TOM STEPHENS: I am glad Hon Mark Nevill is of the view that somewhere there is inconsistency between my understanding of what he said and what he meant. Regrettably, he will find within the *Hansard* report an inconsistency between that which is contained within the claims made by Hon Mark Nevill with reference to the effect of his amendments on the legislation, and that which he has said in the process of this debate will be the actual effect of the operation of those amendments. I do not agree with the view expressed by the member that the extinguishment of native title has been achieved on those historical leases. For my view I can rely on the judgments of Justice Lee, which, again, are subject to appeal. I

am confident that we will not see the overturning of all Justice Lee's decisions, if the Government's success rate of its litigious approach to these questions is played out in the court.

Hon N.F. Moore: You support Aboriginal ownership of resources and control over entry to that land, do you?

Hon TOM STEPHENS: For the purposes of this discussion, we are dealing with whether native title has survived.

Hon N.F. Moore: You said that you expect, because of our record -

Hon TOM STEPHENS: The Government's record has been abysmal.

Hon N.F. Moore: You know and I know that you would have appealed the decision had you been in office.

The CHAIRMAN: Order! The Leader of the Opposition is trying to gather his thoughts to summarise his final comments on clause 1, the short title. Members should not interrupt the Leader of the Opposition as he tackles the task at hand, which is not another second reading speech.

Hon TOM STEPHENS: Mr Chairman, I shall be finishing fairly quickly. The distinguishing features of the ways these issues are being handled in this State, Queensland or any other State in the country, are not relevant for the purposes of considering this Bill. The effect of the Land Act and the incidents that occurred in this State in response to the legislative framework that governs the State are effectively peculiar to Western Australia in the majority of situations. In those circumstances it is clear, given Justice Lee's decision, that native title in this State has successfully survived the legislative regime that has operated in this State since colonisation. In the face of that, it is inevitable that we are arguing about different realities in Western Australia from those in Queensland. The Queensland legislative framework gives much more certainty in handling native title when much of native title in that State has been extinguished for all intents and purposes by previous exclusive possession acts. Even if that were not the case, Queensland has been able to tackle these issues with a Government that has been prepared to put together a total strategy in consultation with the Aboriginal community and that has earned the Government a considerable level of support for the strategies it has developed.

The recent debate that has arisen over the Leighton beach project at Cottesloe, and the response of Government to it -

Point of Order

Hon MARK NEVILL: Has this any relevance to the native title debate?

The CHAIRMAN: The Leader of the Opposition should address the relevance of this as an overview to the particular clause which is before us. I shall listen closely to the line of argument.

Debate Resumed

Hon TOM STEPHENS: The argument I wanted briefly to run is this: In response to the native title interest that is being extinguished on land throughout Western Australia, whether on these leases, public works reserves or community purpose leases, a native title interest is -

Hon Mark Nevill: Completely extinguished.

Hon TOM STEPHENS: By virtue of this legislation, yes.

Hon Mark Nevill: No, by virtue of the Native Title Act.

Hon TOM STEPHENS: The member can keep saying that mantra. I will ignore the interjection, but he is wrong. Hon Helen Hodgson has explained why he is wrong. I cannot do too much about invincible ignorance other than simply to say that the member is wrong.

The interests that native title claimants or holders have in pieces of land sometimes scattered throughout town reserves, as in the case of the Kununurra community, are their bargaining tool for getting Governments to take an interest in their view of the future development and planning of their towns. Governments of all persuasions throughout this State's history have not taken much notice of that reality. Those Aboriginal interests have been ignored in the pursuit of what is perceived to be the wider community interest. Interestingly enough by way of contrast, as the State Government tries to pursue those wider interests on questions of the Leighton beach area at Cottesloe, the Premier recently remarked that the Government will respond to that perceived community interest, that interest of people with no legal entitlement to those lands, and that that community interest will impact upon the planning strategies that will be adopted for Leighton beach. That is in response to a whole group of people scattered throughout the western suburbs and beyond who have an interest in the Leighton beach development area. The Government somehow considers that to be a legitimate interest. However, in the case of planning issues where Aboriginal people have little prospect of getting some real clout to influence the decision making process, other than by utilising their legal rights on native title, the State Government's response is not to negotiate but simply to bring forward legislation such as this.

In the Miriuwung-Gajerrong claim three leases for market gardening or a similar purpose were said to have been issued in the Goose Hill area under the land regulations of 1887 and the Land Act of 1898. Mr Justice Lee's decision found that part of the land was in the claim area but that no lease document was in evidence, nor was there any evidence that such a lease was granted and put to use for the purposes pursuant to the lease. In the absence of a finding of a lease issue, no question of extinguishment arises.

The Government is trying in this and in other instances to claim that native title had been extinguished by leases that the

court found to be issued. I would be delighted if the Government would give some assurance that other, similar leases will not be used as a basis for claiming that native title has been extinguished when a court may decide that the necessary evidence does not exist. The tropical agricultural lease on reserve 810 was created in 1924 and is approximately 4 645 hectares in area after the size of the reserve was increased in 1991. It was not suggested that the reserve was ever used for tropical agriculture. Justice Lee found that neither the issue of the lease nor the use of the reserve land for grazing purposes was inconsistent with the continuation of native title. I am left asking: Does this mean that the special leases issued under section 116 of the Land Act 1933 for grazing purposes, as set out in the scheduled interest, will extinguish native title where Justice Lee found the use of reserve land for grazing purposes was not inconsistent with the continuation of native title?

Hon Mark Nevill: What was the Act?

Hon TOM STEPHENS: The Land Act 1933, section 116. I am really referring this to the Leader of the House, whose response is of more importance to people who are trying to find their way through the meaning of the proposed legislation.

Hon Mark Nevill: There are no leases for grazing and no scheduled interests under the 1933 Land Act; it is as simple as that. It would not be an exclusive possession lease and, therefore, native title would continue to exist.

Hon TOM STEPHENS: I would be interested to hear whether that is the view of the minister.

I shall quote from Justice Lee's decision. In reference to the special leases for grazing purposes granted under the Land Act 1933, Justice Lee found that the limited nature of the interest created by statute and of the use of crown land permitted thereunder dictated the same conclusion as to the effect on native title of a special lease for the purposes of grazing as that set out earlier in respect of the effect of pastoral leases, namely that the grant of such a lease did not reflect a clear and plain intention to extinguish native title. In relation to the four special leases that were said to have been issued under the Land Act 1933 for use of crown land for cultivation and grazing, he found that it was apparent that the purpose for which the lease was granted and the defeasible nature of the interest was not inconsistent with the continued existence of native title. There was no evidence of any cultivation of the land the subject of the lease. The only structure put on the land by the lessee was a shed. Construction of a perimeter fence would not be contemplated by the Crown as an act giving effect to the intention of the Crown that native title be extinguished. I ask the minister whether any leases exist under similar conditions which will now extinguish native title by virtue of this Bill.

Justice Lee said that on a number of occasions the limited purpose for which a statutory interest of lease was created, and lack of permanence contemplated in the use of the land for the purpose, demonstrated no clear intention by the Crown to extinguish native title by issue of that lease. What will be the case by virtue of this Bill? Can we be certain that no leases will extinguish native title where common law currently finds that native title still exists?

I recognise the situation with which we are faced in this Chamber. Nonetheless, the whole strength of the legal argument is in favour of the propositions that I have been putting to the Chamber. It does not matter that the majority might be of a different view. It does not take away from the correctness of the arguments that are being pursued in this place by the honest and best attempts by members to assess the reality being presented by this Government as it moves into responding with this legislation in the face of the decisions of Justice Lee and their impact on the way native title questions will be resolved across the State.

Finally, I ask why the Government is rushing ahead of its appeal process with this legislation. I am not making the point that this has been a quick process; my point should not be misconstrued. All I am saying to the Government is if it is so certain about the likely success of its appeals of Justice Lee's decisions in these issues and it is so certain that it is not extinguishing native title on areas of land where native title would have survived, why not simply wait? Why rush the legislation in advance of those determinations?

Clause put and passed.

Clause 2: Commencement -

Hon TOM STEPHENS: For the purpose of making a rhetorical point, I would prefer that this Bill came into operation on the day that hell freezes over rather than on the day that it is designated for royal assent.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Section 12I amended -

Hon N.F. MOORE: Clause 4 is a very important clause and is basically the crux of the Bill in respect of the 1 300 leases. The next clause relates to the public work matter. As Hon Mark Nevill has an amendment to this clause, it is appropriate that he should speak to his amendment first and then I will respond.

Hon MARK NEVILL: I move -

Page 2, lines 10 to 13 - To delete the lines and substitute the following lines -

Section 12I(1) is repealed and the following subsections are inserted instead -

" (1) In this section -

“**relevant act**” means a previous exclusive possession act -

- (a) under section 23B(2)(a), (b) and (c)(ii) of the NTA (including because of Section 23B(3)); or
- (b) under section 23B(2)(a), (b) and (c)(i), (iii), (iv), (v), (vi), (vii) or (viii) of the NTA if the Scheduled interest or lease concerned was still in force on 23 December 1996.

(2) If a relevant act is attributable to the State -

".

I was detained outside the Chamber for a few minutes addressing some of the real problems of Aboriginal communities. I have just received a phone call from an Aboriginal community that I will be visiting tomorrow to deal with, I believe, more immediate problems. Before speaking directly to the amendment, I just wanted to make the observation that we sit here for inordinate lengths of time listening to people who have no limits on their speaking rights, waiting for a response, and that I received a phone call outside the Chamber while we were debating clause 1.

I found the comments of Hon Tom Stephens to be quite sly. He has been baiting me, obviously, a couple of times tonight to get on the record what he wants me to say and not what I believe. In respect of the amendment on excluding historical leases from the confirmation of extinguishment, he was trying to get me to say that I believed native title was extinguished and, therefore, this amendment was a phoney proposition. I am moving this amendment to acknowledge the Miriuwung-Gajerrong decision that some of these leases may not extinguish native title. I am saying that we should leave the question of those leases to be decided by the courts; I am not deciding them. My view is that the Native Title Act is clear. I will be very surprised if the Full Bench of the Federal Court finds that those exclusive possession leases which had completely extinguished native title forever cannot be revived and that the act that took place has ceased to have effect. If the Federal Court finds that they have not extinguished native title, that is fine; I will accept that. What I am doing by this amendment is quarantining those leases from the Bill so that the courts can decide their fate. I have a view and that view may be wrong. I am relying on the black letter of the law and nothing Hon Tom Stephens has said has changed my view. He relies tenuously on an interpretation of the Native Title Act by Hon Helen Hodgson. However, I ask this: Why would the Commonwealth Parliament put all those scheduled interests under state laws in the Native Title Act which, according to that Act, are exclusive possession leases which completely extinguish native title? If Hon Helen Hodgson's logic is correct, why is there a need to put them in the Act? Why does the Act need a schedule if there is an airy-fairy notion that somehow only the Federal Government can extinguish native title and the State cannot, should not or does not.

Hon Helen Hodgson: It's the other way around.

Hon MARK NEVILL: I cannot follow Hon Helen Hodgson's logic. Why do we need to schedule all these leases at the back of the Act?

Hon Helen Hodgson: I suggest you refer to the evidence given at the Select Committee on Native Title Rights in Western Australia, of which you were a member.

Hon MARK NEVILL: What is that evidence? I challenge Hon Helen Hodgson now.

Hon HELEN HODGSON: If Hon Mark Nevill refers to the evidence given before the committee by John Clarke, he will find that the discussions between the Federal and State Governments focused on what they believed the tests of exclusive possession were at that time, which predated the Miriuwung-Gajerrong case. In that sense, the schedule is what they believed were the leases which conferred exclusive possession. The federal Native Title Act can extinguish only the scheduled interests under a commonwealth Act. The State must then determine whether it will extinguish the scheduled interests where they are listed. It hinges largely on interpreting the law as it stood prior to the Miriuwung-Gajerrong decision. We believe that conferred exclusive possession. The Act cannot confer exclusive possession; it merely schedules it.

Hon MARK NEVILL: The Native Title Act overrules common law, and I can only ponder over how Justice Lee can overturn the Act.

Hon Tom Stephens baited me about my views on native title. I said clearly that I believed the Mabo 2 decision said that native title was a bundle of rights to hunt, to gather, to fish, and to traverse one's traditional land, and I do not see any reason to change my view. Justice Lee in Miriuwung-Gajerrong extended that to the full beneficial ownership of the land. Does Hon Tom Stephens think that native title is akin to the Torrens land title system? Does native title give title to land, to minerals, or to petroleum? How does Hon Tom Stephens interpret Justice Lee's remarks about resources? Hon Tom Stephens challenged me to say what I thought it meant; I challenge him to put on record what he thinks it means.

We have an ingratiating argument that is designed to build up people's expectations beyond what is reasonable. That is irresponsible. It is fine to build people's expectations where there is doubt or where there is a vacuum. However, when it is clear that these are exclusive possession leases, to build up those people's expectations when it is highly probable that they will be dashed is irresponsible and cruel. I challenge Hon Tom Stephens to tell the Chamber his views on Justice Lee's decision.

The CHAIRMAN: Order! The question before the Chamber is that at page 2, lines 10 to 13 "the words proposed to be deleted be deleted". I suggest to Hon Mark Nevill that a wide-ranging challenge to Hon Tom Stephens to discuss anything but the relevance of this amendment is not appropriate, and should not be invited and that line of debate should not be continued.

Hon MARK NEVILL: I will leave that invitation open, Mr Chairman. The amendment I moved will quarantine from this

confirmation of extinguishment all those historical leases. They will be left to the courts to decide. I will accept willingly whatever the courts decide. I have no doubt about the leases that are currently in force. The Miriuwung-Gajerrong judgment, which I do not find consistent or convincing, asks some questions about certain leases that expired prior to the Wik decision. That is the reason these leases are being excluded by this amendment. My view is that Justice Lee's judgment on this question is ultra vires the Native Title Act. That clearly indicates that even these expired leases are extinguished. The heavens only know what the Full Bench of the Federal Court may find and if that decision will be appealed. If leave is not granted by the High Court, well and good; it will stand, and it will bring that matter to a head. I understand that the Greens (WA) and the Australian Democrats will support this amendment. It will exclude an area five times larger than the area we are confirming extinguishment on. The courts will decide on that large area and I will accept the decision of the courts. At the moment two judges are sitting alone in the Federal Court with very different interpretations of the Native Title Act. They need to be reconciled, and that will happen in due course. I ask the Chamber to support this amendment.

Hon N.F. MOORE: The Government's intention throughout this Bill has been to ensure that the 1 300 leaseholders will not be subjected needlessly to native title claims. The member's amendment is not the Government's preferred position but in the circumstances we are happy to support it on this occasion.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 5 put and passed.

Title put and passed.

Bill reported, with an amendment.

PRISONS AMENDMENT BILL

Committee

Resumed from 9 November. The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Minister for Justice) in charge of the Bill.

Clause 1: Short title -

Progress was reported after the clause had been partly considered.

Hon TOM STEPHENS: I am sure that in double-quick time, the Chamber will be the beneficiary of a further contribution from my colleague Hon John Halden, whose presence is required in the Chamber if he would not mind obliging. I am not sure whether the Minister for Justice is of the view that all the arguments that should be put with regard to this clause have been put.

Hon PETER FOSS: I can probably answer Hon John Halden's question about contracts in the prison service. Some of the areas which have been outsourced are the provision of family support services at nearly all our prisons by people like Outcare and Kindred; learning modules for entry level training by both universities and TAFE colleges; apparel management for prison officer uniforms; blood-borne virus education to adult offenders by the AIDS Council of Western Australia and the Hepatitis C Council of Western Australia; blood-borne virus education for juvenile offenders; blood-borne virus education for offenders at the Eastern Goldfields Regional Prison by the public and community health unit in Kalgoorlie; general medical practitioner services for prisoners and juvenile detainees at Albany, Broome, Bunbury, Canning Vale, Eastern Goldfields, Greenough, Pardelup, Roebourne, Wooroloo, Banksia Hill and Rangeview; physiotherapy services at Wooroloo, Canning Vale and Casuarina; optical services at Bandyup, Canning Vale, Casuarina, Karnet Remand Centre, Wooroloo, Albany, Bunbury, Roebourne, Eastern Goldfields, Banksia Hill and Rangeview; psychiatric services at Bandyup and Greenough; X-ray support by Rockingham-Kwinana Health Service to Casuarina; and sexual assault referral at Bandyup, Canning Vale Remand Centre, Albany, Bunbury and Greenough.

Hon JOHN HALDEN: I am pleased the Minister took the opportunity of answering that question. I apologise for not being here, but I was on the phone to one of the minister's former colleagues in England.

I want to test in an oblique way the ability of the Ministry of Justice to administer this contract. I understand that there are significant problems with the total offender management system contract. If that is correct, and if the Ministry of Justice cannot administer that \$7m contract to achieve the appropriate outcomes on time, what confidence can we have in its ability to administer a contract with a private prison corporation for the running of a prison? I understand that some safeguards will be implemented in this process. However, I believe I have a reasonable knowledge of the problems with the TOMS contract, and I would like the minister to confirm that there are some problems in that area, and we may then have an interchange about the ability of the Ministry of Justice to achieve outcomes in a major contract where it will be entrusted with significantly greater responsibility, both financial and social, under this Bill.

Hon PETER FOSS: The difficulties with the TOMS contract have nothing to do with contract administration but are technical problems relating to computers. The original offender management system had a large number of problems and was unworkable for a number of reasons. Firstly, the equipment can no longer be serviced anywhere and we had to buy bits and pieces and salvage parts in order to keep it going. I do not think it is Y2K compliant either.

Hon John Halden: It is not.

Hon PETER FOSS: I was told that, and I have said in this place that it had to be replaced by 2000 otherwise it would stop. We then had to decide how we would replace it. One alternative was to find a system that was already in place and adapt

it to our needs. However, there was no off-the-shelf product that met our requirements. The second alternative was to try to write a program ourselves, but that would have been irresponsible and would have created technical problems. We are dealing with a different sort of problem with the TOMS contract. I do not know whether Hon John Halden has had anything to do with computer software contracts. I have, both as a person who has bought computer software and as a lawyer acting for people who have bought computer software. The technical difficulties we have had with the TOMS contract are far less than one would expect in a normal computer contract, and overall we have done extremely well with that contract. It has been a matter of the inherent technical difficulties in writing computer contracts. There has been no difficulty with regard to the contract administration. It is important to note that both the director general and the person who is immediately under him as executive director offender management are former Contract and Management Service people and have considerable experience in contract administration. That is a very good start, because there is an understanding of the process of contract administration at the highest level. An example of good administration which worked well and was supervised by the present director general was Banksia Hill, which was put in place with CAMS as the controlling contracting authority. I do not regard the technical difficulties with the TOMS contract as being in any way unusual for a computer contract.

Hon JOHN HALDEN: I understand what the Minister for Justice has just said. However, I understand also that the reason the TOMS contract was awarded was that there were cost concessions in developing similar programs, particularly in New Zealand, and it was believed the programs that were under development in Tulsa and San Diego would be successful. All three of those projects, which were among the bases for this State's decision, have fallen over. Therefore, we stand alone with a program which has fallen over elsewhere. I may be wrong, and will be interested in the minister's comments. However, we are spending \$7m on a program which was proposed to be operating as a trial by June 1998, and to be running by November 1998 in Casuarina and Canning Vale Prisons. I understand that even the trial project has not eventuated. It is not in the prisons as considerable delays have arisen. Also, the old system is not Y2K compatible. It is 16 November and we have the odd problem or two with the new system, yet the old system, with all its faults, which everyone acknowledges, will not be Y2K compliant unless enormous amounts of money are spent on it.

Hon Peter Foss: I don't think that's possible.

Hon JOHN HALDEN: I use this as an example. The Government had an alternative; namely, the system developed in British Columbia and successfully implemented in 100 jurisdictions around the world. However, the Ministry of Justice chose a cheaper system which, based on the documents I have seen - I refer specifically to the footnotes - had to be evaluated. The advice given to the Ministry of Justice was that it would be workable, but it seems it is not workable. It may be workable ultimately, but I am not sufficiently technically competent to make that assessment. The Ministry of Justice was provided with two options, and it took the cheaper option, with which it has had enormous problems. It could have taken the more expensive option, which has a very good track record. It was developed in a prison system to suit a prison system, and has been implemented in 100 jurisdictions and seemingly is working well. For the sake of \$1.5m, the cheaper option was taken.

I hope the minister will not be offended by this comment, which relates to the competence of the Ministry of Justice to make appropriate decisions on such matters. I do not want to turn this into a protracted debate about the total offender management system. Nevertheless, it is indicative of decisions made in this area by the Ministry of Justice. If my understanding is correct about TOMS, the ministry, to be blunt, has made a botch of it. Although the minister can say that many technical problems are involved - these are on the record - this project is 18 months behind schedule. It is not up and running. Whether the Ministry of Justice is technically competent to administer contracts is drawn into question. If it cannot administer a \$7m contract, how can it administer the contract involved in the Bill before us?

Hon PETER FOSS: The member is oversimplifying many matters, and his statement of "fact" is not quite correct. The Ministry of Justice engaged in a similar process with a courts' computer program called Genisys, or computer court information system, which has been so successful that we are flogging it to everybody. We are not finished yet, and we intend to do more technically difficulty development work. It will be paid for by everyone except us. That was a matter of getting contractors to do the computing work for us. That example indicates that sometimes computer projects come out nicely, and sometimes they do not come out well.

Hon John Halden: You had a choice, minister.

Hon PETER FOSS: I am coming to that. I could easily say that we engaged in a radical program write in this case; that is, we went for the more expensive option and wrote Genisys ourselves, and it has been outrageously successful. We administered that contract and it worked out well. One cannot draw conclusions, particularly in the area of computers. Prisons cannot be equated with computers. Computer programs are notorious for sometimes working out easier than expected, and sometimes being more difficult than expected. Genisys worked out brilliantly. We sold it to the Federal Court, the Family Court and the Malaysian system. We are looking at another buyer at the moment, and are considering major developments. We went for the expensive option, but it worked out cheaper because everyone else will pay for it.

Hon John Halden: This is all justification for TOMS not going well.

Hon PETER FOSS: No. The member gave one example, and I give another example. The TOMS contract was entered into at a time of a different administration at the ministry. I must confess that I do not think the people in the administration at the time could have arranged anything properly. I had serious doubts about their capacity to take on the project. I had serious concerns about the previous administration's capacity to even let the contract, let alone administer it. That administration entered into the TOMS contract. Major changes have taken place. The last administration could not even produce a strategic plan, notwithstanding the number of times they were told to go back and do one. A major change has occurred, particularly in matters such as contract administration.

I give an example. A prison is now being built: If people were told previously that we could build a prison in the time span, and to the price involved, and to have it designed, built and completed in the manner of the new prison, most people would have said, "How could you possibly do that?" Casuarina took three years to build, and it was half the size of, and cost considerably more than, the new prison. The new prison has been well administered as a contract in a huge team effort. I give a great deal of credit to Alan Piper who, with his experience in contractual matters, got the team going. Alan Piper did not do it himself; however, he set up a large team of people who worked incredibly hard and well on the project. They reduced the request for proposal and got the whole thing going. TOMS is different, although it will be in place on time. The roll out has begun.

Hon John Halden: It is not on time.

Hon PETER FOSS: The roll out has started. We expect the new TOMS to be as usable as our current system, although not fully operational, by 2000. We will have something that is Y2K compliant by Y2K, but we may not have the full functionality. One of the reasons it was chosen is that we want considerably more functionality than some of the other systems have. The decision was made by an independent group of experts who made a recommendation. Many questions are asked in this Parliament about statistical information, but currently we have no capacity to provide that information. One of the functions in the system relates to Aboriginal prisoners. Under this system, when an Aboriginal person enters prison he will now be recorded not just as an Aboriginal, but according to a language group on the basis of where he lives. So far the system has not recognised different Aboriginal language groups; as far as it is concerned, they are all Aborigines. It is similar to describing people simply as Europeans or Asians, without specifying their countries or regions. As far as individuals are concerned, this is amazingly simplistic and wrong. That functionality has been added to the system, and it is very important because it will add to the system the expertise of people who know about Aboriginal language groups. It will not be a matter of a prison officer knowing the language groups; he will be prompted by an Aboriginal person about the language groups an Aboriginal person could belong to on the basis of where he comes from. A lot of functionality is being built into the system, that would not have come from any other system. We wanted it, and it will be only in Western Australia. It might be useful in other parts of Australia, but it will not have much application in other parts of the world.

First, computer contracts are totally different from prison contracts. Second, the Government has a good record in other areas where it has been very successful in computer contracts; Genisys is an example of that. Third, the department has a different administration which has shown its competence in contract administration in this prison matter. Fourth, there is a new IT director.

Hon JOHN HALDEN: The Minister for Justice has said this system will be as useful as the current system, but prior to that he said the current system was unusable and worthless. I agree with him. All the advice I have received is that it is a worthless system. When the minister goes through a process of justifying this decision because of its functionality and how it can do various things, he need look no further than the New South Wales system, which uses an alternative. This was available to the minister and could have been developed to do exactly the same things.

Hon Peter Foss: So what?

Hon JOHN HALDEN: I understand the minister's response. I understand the biggest significant benefit in the proposed system is in the area of medical information, which it can provide more simply with more clarity and detail. I recognise the need to do that. At the end of the day, the minister said this system will be up and running by the turn of the millennium.

Hon Peter Foss: We will have a usable management system by the new millennium but not a full function.

Hon JOHN HALDEN: That is the point. There will be a management system but the department contracted for a system to be up and running in prisons by now. I understand there may be technical difficulties with prisons in the north of the State, but the system should have been in service at least in Casuarina and Canning Vale. It is not, and the minister knows it is not. I go back to the first point I made. The minister can put all the gloss he likes on it.

Hon Peter Foss: I am not putting gloss on it; but I do not think it is relevant.

Hon JOHN HALDEN: It is a fair interchange in which we are both putting our perspectives, but in essence this contract has been botched. The technical requirements of the contract have not been delivered on time. Has the trial planned for June 1998 been delivered? Second, is this system fully operational in Casuarina and Canning Vale by now, as originally proposed?

Hon PETER FOSS: I have already indicated why I do not think that is relevant. There can be difficulties with computer contracts. If the department had done it, it would have had the same difficulties. It is not a matter of contract management. The member may be interested in TOMS, and that is perfectly legitimate. We are dealing with our capacity to manage a contract and, had we done it ourselves, there is nothing to say we would not have had exactly the same problems. In fact, the problems are occurring in the bits the department has specified and is adding on. Contract management is the excuse for getting into this area, but there is nothing to say our contract management is not appropriate. It may be that better decisions could have been made. Everyone can say after the event that things could have been done better. If it had gone through without any technical problems, everyone would be saying it was their idea. As soon as there is a difficulty, no-one is around.

Hon John Halden interjected.

Hon PETER FOSS: I have not claimed success for Genisys. I have said it has been an outrageous success. I bet people have not come to Hon John Halden, as opposition spokesperson, and said Genisys is wonderful and what a success it is. They do not ask him to ask questions about that in Parliament. They have come to him because there are problems with the

proposed system. It is not a problem of contract management. It may be that better decisions could have been made, but I cannot say that for certain. It is much easier to say that with the benefit of hindsight. That does not necessarily mean any alternative would have been better. Perhaps we did not have the opportunity to do what we wanted to do. It will be judged by the result when it is finished.

As far as whether we can do things competently in computers is concerned, Genisys shows that it can work. One system may go well and the other may not, but unfortunately that is the way with computers. As a lawyer who has dealt with computer contracts, I know that is a fairly frequent occurrence. No-one has said there is anything wrong with the contract management. More importantly, the people involved in the selection of TOMS have gone. One of the reasons they went is that they were not doing much good at anything.

Hon John Halden: Perhaps that is because they were sold a dud.

Hon PETER FOSS: They were not doing much at all.

Hon John Halden: It was a dud system.

Hon PETER FOSS: I am not talking about TOMS. I am talking about the people at the top at that time who were not doing very much at all. If they did not succeed with this one as they did with the other one, it would be par for the course for that particular administration. The new administration has shown itself to have the ability to manage such things. It is managing this. I am hopeful that we will meet our requirements and that we will have full functionality and a better system.

Hon John Halden: When will that be?

Hon PETER FOSS: What I have said is that the important thing for us is to have a Y2 compliant management system by Y2K.

Hon John Halden: You hope so, otherwise you will have a real problem.

Hon PETER FOSS: Exactly.

Hon John Halden: You have six weeks. You had two years, and the system was a disgrace.

Hon PETER FOSS: The member is starting to talk far beyond what is justified. I am quite happy to talk about things that are relevant to the Bill. We can talk about TOMS, if the member wishes, but it has nothing to do with the Bill. He asked whether we could manage contracts. My answer is yes, we can manage contracts. I do not think the member's particular example has anything to do with contract management whatsoever. Furthermore, the people involved in that example are not there any more. The people who are there have shown themselves to be highly competent at managing contracts.

Hon JOHN HALDEN: I will not pursue this any longer than is absolutely required, except to say this: I do not agree with the minister's concluding comments that there is not a symmetry about contract management in this. No doubt he is right when he says that management at senior levels has left. We would hope for an improvement.

Hon Peter Foss: You have seen an improvement.

Hon JOHN HALDEN: I will concede that. However, and I do not mean this offensively and have said it in this place before, the minister is a great snake oil salesman.

Hon Peter Foss: Thank you.

Hon JOHN HALDEN: I say that with great sincerity. The minister could sell ice to Eskimos and no doubt radiators to people living on the equator. However, that does not get away from the issue here, which is that no matter what the minister may say, this area of contracting out has not been terribly successful.

Hon Peter Foss: You raised the question of whether we have the capacity to administer contracts. Sure, things can go wrong; they can also go wrong when we do them in-house. The question was that by virtue of the fact we are doing it outside and we are administering the contract, can we administer contracts. The answer is yes. Is everything we do inside correct? The answer is no. Is everything we do outside correct? The answer is no. The important question you asked was whether we can administer contracts. My answer is yes.

Hon JOHN HALDEN: I do not agree with the minister but that does not matter. I wanted to encourage this response on the record by virtue of the fact that it is fair to say that TOMS has had considerable problems.

Hon Peter Foss: Who has said otherwise?

Hon JOHN HALDEN: No-one.

Hon Peter Foss: I did not say that it did not have; I said it was not a matter of contract administration.

Hon JOHN HALDEN: The minister should not be touchy.

Hon Peter Foss: There is a difference.

Hon JOHN HALDEN: I am trying to conclude, Mr Deputy Chairman. Here is an example of a minor contract which has clearly got problems. We have been asked to believe that the department under new administration can do contract management better. We have now been assured that it can. All I wanted on the public record was the assurance that it could. That assurance was given to us by the minister. One would hope that in future days that will be lived up to as these contracts

go through their working phase and inevitably to their finality. I thank the minister for doing that. I wanted to do no more than to achieve that. I am quite happy to go to the inevitable conclusion of the clause 1 debate at this moment, but that lies in the hands of the minister.

Hon PETER FOSS: We must understand two different propositions. Things can go wrong whether they are done in-house or contracted out. CTOS is probably one of those in-house areas. It is a hopeless system which never did what a proper offender management system should do. One has only to listen to all of the complaints we have had from members in this Chamber. It has been a disastrously inefficient machine. We have spent enormous amounts on CTOS for a useless result. If the member wanted to compare CTOS with TOMS and if he wanted to see a really useless expenditure of large amounts of money on a system that does not really work, he should look at CTOS, which is an in-house effort. Things can go wrong in-house and things can go wrong out-house. There is no guarantee, no matter whether it is done internally or externally, that one will have success every time. Would that one could say one could. Would that I could say that everything we have done within the department on our own has been perfect. It has not. Would that I could say that everything we have contracted out has been perfect. It has not. Nobody would believe me if I claimed that. All I am saying is that we believe we have a competent administration for administering contracts. We hope that we will get a better result than if we did it internally. I am not saying that things cannot go wrong, because life proves, whether they are contracted out or not, things can go wrong. We hope that we have a contract that protects us and a contract administration that, if things do go wrong, has the ability to deal with them. I never say that we have a perfect system internally or externally; all I am saying is that we have taken the appropriate steps to make sure we have an appropriate contract and that we can administer it. I am not giving any guarantees that nothing will go wrong either internally or externally. If I did, the member would not believe it. It is rubbish to expect that to be the case. All we can say is that we have the appropriate means in place to deal with it if it goes wrong. We have the means in place to do our best to ensure that things do not go wrong. I am not for one moment claiming that everything we do internally or externally is perfect. We all know that would be absolute nonsense. I certainly do not think TOMS had proved any worse than CTOS. In fact, if anything, TOMS has proved to be better than CTOS because CTOS has been an extremely expensive, very uninformative control system. The sooner we get rid of CTOS and get TOMS the better.

Clause put and a division taken with the following result -

Ayes (15)

Hon M.J. Criddle
Hon Dexter Davies
Hon B.K. Donaldson
Hon Max Evans

Hon Peter Foss
Hon Ray Halligan
Hon Helen Hodgson
Hon Barry House

Hon Norm Kelly
Hon N.F. Moore
Hon Simon O'Brien
Hon B.M. Scott

Hon W.N. Stretch
Hon Derrick Tomlinson
Hon Muriel Patterson (*Teller*)

Noes (12)

Hon Kim Chance
Hon J.A. Cowdell
Hon Cheryl Davenport

Hon N.D. Griffiths
Hon John Halden
Hon Mark Nevill

Hon Ljiljana Ravlich
Hon J.A. Scott
Hon Bob Thomas

Hon Ken Travers
Hon Giz Watson
Hon E.R.J. Dermer (*Teller*)

Pairs

Hon Murray Montgomery
Hon M.D. Nixon
Hon Greg Smith

Hon Tom Helm
Hon Christine Sharp
Hon Tom Stephens

Clause thus passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended -

Hon JOHN HALDEN: I refer specifically to the definition of prison services. I note from reading this part of the clause that it is a two-pronged definition meaning the management, control and security of a prison limb and the welfare of the prisoners at the prison limb. Can the minister provide a definition of the scope of the welfare that will be provided? Is it the intention that these limbs could be separated under the definition whereby the former is covered under one contract and the latter is covered under another contract, either in part or in whole, and perhaps involving different parties? If the answer is no, does that not occur currently in some prisons? Are not some welfare programs already administered in public prisons by a contract? Can the minister delineate what they are?

Hon PETER FOSS: That was the answer I gave when I read out some of the welfare contracts. The member is right, it does happen currently. It is not our intention to separate these aspects under this contract, but they can be separated. There is nothing to stop us contracting out anything, other than the use of force, even under the current Prisons Act. The only thing that requires authority under this amendment Bill is the use of force. Currently, we contract out various things which I read out when we debated clause 1, but we do not intend to make that difference. That does not mean that at some stage we might not contract out a particular aspect separately. For example, there is every possibility that blood-borne virus training or technical and further education training could be separately contracted out, but that is not our current intention.

Hon JOHN HALDEN: What would be the circumstances where there is a privately contracted prison and the provision of a new service is not contemplated in that contract and the contractor does not want to provide a new service? Is it available

to the Government to contract out a service that it wants to be provided in that prison and the contractor has to compete for it, bearing in mind that the contractor may not want to be involved in that separate contract for the production of that service?

Hon PETER FOSS: We are more likely to use our capacity to use a nominated subcontractor to provide that service. If the contractor did not want to provide it, we could say that we wanted a specific person to provide it by saying, "You have to take on this person as a nominated subcontractor and contract to them so that we are then just contracting with you." Our preference would be to have a nominated subcontractor.

Hon JOHN HALDEN: How will the increased cost, its implications and accountability be monitored by the Government to ensure that a nominated subcontractor is kept within reasonable parameters of government expenditure?

Hon PETER FOSS: For example, in this contract, although we have contracted that the contractor shall provide medical services, we have provided also that it must nominate a subcontractor to provide those medical services as we do not want the contractor to employ somebody, we want those services contracted out. However, the contract actually governs the cost of those services. I take it the member is now talking about a service that we do not provide for currently?

Hon John Halden: Yes.

Hon PETER FOSS: We might not even know what that service is.

Hon John Halden: Exactly. For instance, contemplating AIDS 20 years ago.

Hon PETER FOSS: For instance, protecting people from the hole in the ozone layer by providing everybody with sunscreen to protect against skin cancer. Under those circumstances that would be a contract variation and totally different from the contract. Let us take something totally different, such as proofing prisoners against the hole in the ozone layer. That would be a variation of the contract as currently we do not include that in the scope of the contract. The contractor would have the right to propose the performance of that particular service and suggest a price for it. If we do not accept that price, we can negotiate it and if we cannot reach agreement with the contractor, we can separately contract out that service.

Hon JOHN HALDEN: On the issue of the Ministry of Justice providing that service, having a separate contractor or having the contractor provide the service, I want to go to the obvious areas which have the potential for confusion; that is, when another contractor does it or the contractor provides the service. What mechanism will ensure that issues like security, clear lines of communication, etc, are in place? In the area of security the inevitable consequences when those sorts of problems occur in a prison can be significant and dangerous.

Hon PETER FOSS: An onsite general manager is responsible for the performance of all contracts. Whether it is a direct contract or a separate contract of the MOJ, it will be under the direction of the general manager. One of our obligations is to ensure that coordination between their contracts and any other contracts.

Hon JOHN HALDEN: I recall a tender that closed on 28 January 1999 for expressions of interest to supply prison health services to the MOJ for three years. Do the amendments to the definition of "medical officer" need to be in place to ensure that such a tender, when awarded, is valid?

Hon PETER FOSS: I do not think so. I am trying to think where the term "medical officer" is used in the Act and what rights medical officers have that other officers do not have. Under section 38(1) of the Prisons Act the CEO shall nominate for each prison a prison medical officer or a medical officer who shall be responsible for the medical care and treatment of every prisoner in that prison. Section 39 deals with the functions of a medical officer. The current Act refers to medical officers and prison medical officers. When the Act is amended we will have medical officers only and not prison medical officers and medical officers. Section 6(3) of the Act reads -

There may be appointed under and subject to Part 3 of the Public Sector Management Act 1994 such officers, other than prison officers -

This amendment will insert after that -

- including medical practitioners as medical officers.

Medical officers are appointed under section 6(3) or 6(4) of the Prisons Act. The difference is that at the moment someone can be a medical officer without being a prison medical officer. The Bill refers only to a medical officer, but medical officers can include people who are not engaged under part 3 of the Public Sector Management Act. A medical officer does not have to be engaged under part 3, but a prison medical officer does. Instead of having two different names for people who are engaged under the Act and those who are not, we will have one name and they can be engaged under the Act or not.

Hon JOHN HALDEN: I understand that. The minister did not respond to my question on whether it was correct that these amendments to the definition need to be in place to ensure that the tender, which I have referred to previously, is valid. Based on what the minister said, the answer to that is yes because they cannot be employed under the Public Sector Management Act.

Hon Peter Foss: No, I do not think it is. Section 6(4) of the Act allows us to appoint medical officers as well as prison medical officers.

Hon JOHN HALDEN: A prison medical officer must be employed under the same process as a prison officer, which is the same provision the Government must get around to allow for the contracting out of this private prison.

Hon PETER FOSS: Prison medical officers must be appointed under part 3, but a medical officer does not have to be

appointed under part 3. Instead of having two definitions - medical officer and prison medical officer - we will have one definition of "medical officer" and that will encompass both medical officers and prison medical officers under the previous definition. We will be able to appoint medical officers under any form and we will not get a different name or terminology under the Act by virtue that they are or are not "prison medical officers". They will be medical officers whether they are internal, external, part 3 or not. Does Hon John Halden have the clause notes?

Hon John Halden: No.

Hon PETER FOSS: It might help if he has a copy of the clause notes because they contain an explanation.

One of the reasons that it assists with the contract is that if a person is appointed as a medical officer, that person has those responsibilities personally. As well as having the obligation imposed on an individual - obviously that must be done under the contract of service - we hope that under the contract we can impose an obligation on the contractor and use that through the whole system. Therefore, it will be a general obligation to make sure that happens, and any number of people may be used to perform that obligation. Once a medical officer is appointed, that person has a personal obligation in respect of that prison.

I normally provide the clause notes to everybody, and I thought Hon John Halden would have had them months ago. I apologise if I did not give them to him.

Hon John Halden: I or my office may well have seen that document, but I do not recall it. However, I am not making an issue of it.

Clause put and passed.

Clause 5: Section 6 amended -

Hon JOHN HALDEN: What is the purpose of these amendments? What is the difference between appointment under a contract of service and engagement under a contract of service?

Hon PETER FOSS: As an example, at a place like, say, Albany, rather than engage X, a member of the Albany medical practice group, to be the person who provides the service, the Albany medical practice group may be engaged to provide services. We are saying that we do not necessarily want X to turn up every day, but as long as the practice provides the medical services we need, we are happy to have that practice provide that service.

Clause put and passed.

Clause 6 put and passed.

Clause 7: Part IIIA inserted -

Hon JOHN HALDEN: I will raise a number of queries as we plod through the various parts of this proposed definitions section. I do not want to use these queries to protract the debate on this Bill, but perhaps the minister could consider and answer them. Dealing with proposed section 15A, surely it would be simpler to have definitions within the one section. It seems that the arrangement in this Bill is haphazard. There are some definitions in this clause as well as in the interpretation section, section 3 of the Prisons Act, which was amended by clause 4. Definitions that one would expect to find in this clause are not included, such as the definition of "prison services" and "contract", which is what part IIIA is all about. One must look back to clause 4 to find those definitions. This is purely a question about the layout of the Bill as regards its simplicity and the ability to read it. These definitions will appear in proposed section 15A and in amended section 3 of the Act. Why can we not have it in a simpler form so that it can be read and understood by people in the future?

Hon PETER FOSS: In Western Australia we have probably been spoilt because we have a much easier system of statutory writing than, for instance, the Commonwealth, which has a system that is totally unfathomable. To some extent we leave it to parliamentary counsel to decide what is the best way to do it. It is fairly common to have part definitions. If one wants to make sure that definitions apply only to a particular part, one has a definitions section at the beginning of that part. However, if one wants them to apply to the whole Act, one has them at the beginning of the Act. There are different schemes under which this is done. The Commonwealth often has a little chart in which all the definitions are put and one is told to which parts they apply. I have not been through, for instance, the whole Prisons Act to ascertain when the word "function" might have another meaning when it may be used in other parts of the Act. I do not know where else the words "perform" and "other officer" may be used. It is very much a matter for the parliamentary draftsman to make the decision about what is the best way to do it. I accept that it may mean flipping between the two sections, but often it means the definitions that will be used most frequently are close to the place in which they will be used and are not separated by lots of other definitions. The definitions that we need - that is, "administrator", "contract worker", "function", "intervene", "other officer" and "perform" - are all neatly together. If they are put in the main Act, "administrator" will be separated from "contract worker" by the definitions of "Appeal Tribunal", "chief executive officer", "contract" and "contractor". Therefore, there are countervailing benefits from this in that all those definitions that will be used are together, whereas often it is a matter of looking all over the place to try to find them. It is particularly useful when one has cross-referencing even within the definitions. We have that situation here when it says -

"perform", in relation to a function, includes the exercise of a power, responsibility or authority.

One need only go back a couple of lines and "function" is there. I think it is clearer. I can see the point the member makes, but it is a trade-off, and I think parliamentary counsel has probably got it right.

Hon JOHN HALDEN: I accept the minister's answer on proposed section 15A. On looking at the Bill, clearly there are two options. Originally it was my view that it was cumbersome, but I understand and accept the minister's view that it has some benefits.

I turn now to proposed section 15B - contracts for prison services. Again, because of the breadth of the definition of "prison services", this clause could be seen as permitting or even inviting contracts for some aspects of prison services but not others. We always understood that we would have only two sorts of prisons - those run under contract and those in public hands. However, I presume from what has been said previously that there will be hybrids of this, if I can use that expression. They will be prisons which will be in public hands but will also contain bits which are contracted out. Will we reach the point where the vast majority of even public prisons will have an enormous number of their functions contracted out and we will end up with, to a large extent, just a contracted-out system with the facade of the basic functions being performed by people employed by the public purse but everything else being done by the private purse?

Hon PETER FOSS: Something we have looked at is what we can do under the Act as it currently stands. Our advice is that the only time we need people appointed under part 3 of the Public Sector Management Act is when we want to use force. Although this Bill regulates and regularises how we deal with contracting out and everything else, it is not necessary. If we wanted to do it now, we would have done so, but we have not. We have done it only where we think we can gain an advantage in terms of quality of service or ease of management by doing it. Health is a classic case where we have had considerable difficulties. This Government did not do that; it was the Labor Government which contracted-out care. There has never been any limitation to contracting out other than that we do not do it unless we think it is advantageous. This Bill simply gives us a more unified system, but there was never anything to stop us doing it anyway. The only reason we ever needed to appoint anybody under part 3 was to use force. We could have watched people; we could have locked them up and done anything. It would not be until we wanted to suppress a riot or forcibly pull somebody out of a cell that we needed part 3 and we probably do not even need it to suppress a riot. The general powers to suppress riots exist anyway. All one would need to do to suppress a riot would be to read the riot Act or the equivalent section of the Criminal Code. A cell extraction is the only thing for which we would need somebody appointed under part 3 of the Public Sector Management Act. This Bill is not changing anything; it perhaps just makes things more unified.

Hon JOHN HALDEN: I turn now to proposed section 15C(e), which states -

the submission of reports in relation to the contractor's obligations under the contract;

I had intended to suggest that the minister consider an amendment. I refer specifically to the Victorian private prison legislation, which is similar to this but requires periodic reports of the contractor's obligations under the contract. The concept of periodic reports rather than the more open-ended arrangement in this Bill could be of benefit both to the system and in instilling public confidence. I do not propose to try to suggest what period that could be -

Hon Peter Foss: It would vary with contracts.

Hon JOHN HALDEN: Absolutely, but from my reading of the Victorian legislation, the concept of "periodic" provides an incremental step in terms of being assured that the contractor's obligations are being met. However, I will not pursue this. I simply suggest it and look forward to the minister's comments.

Hon PETER FOSS: In the present contract we have monthly, quarterly and annual reports and event-driven reports, and we can call for another report at any stage. I do not think the word "periodic" adds anything because it excludes the idea of including ad hoc reports. It does not add anything if one does not specify what the period is, and specifying the period would not be sensible because in most cases one would like to vary the period depending on the situation.

Hon JOHN HALDEN: Of course, that is the existing contract. I accept what the minister has said; I concur totally. However, the difficulty is that this may not be the only contract.

Hon Peter Foss: At present there is nothing controlling us. The point about this is that we can enter into contracts and there is no minimum standard now.

Hon JOHN HALDEN: I understand that. I am saying that I agree with what the minister has said about this contract, which contains periodic reviews, but what if we go to another contract? For the sake of safety, in a second contract, which may not be drawn up by a Government of this political persuasion or not by the minister overseeing this contract in his own Government, the concept of periodic reviews seems to be a natural safeguard. I accept that it is one which is in this contract, but I believe it should be in legislation.

Hon PETER FOSS: I suppose the member and I might vary on how we see legislation. Adding the word "periodic" without specifying the period does not add anything - the period could be 10 or 20 years. At best, it is a checklist in general terms. At the moment we can enter into these contracts without doing this at all. It is arguable that we should not even include this provision. Under the rules I suggest for statutory drafting, one should not include anything which is not necessary. I was at a judicial conference on the weekend and a High Court judge said that something people must face as an inevitable part of modern life is that 2 000 pages of federal legislation are produced every year and some enormous number of Federal and High Court decisions. The law is pouring over people to a depth which is drowning them. Parliament will need to look seriously at a big change in the way we write our legislation. The public will not survive it otherwise. A policy has been adopted by parliamentary counsel and Cabinet to say that legislation should do what only legislation can do and leave everything else out before everybody gives up under the welter of words.

Hon JOHN HALDEN: I accept the minister's comments. However, as one who is fairly close to a new lawyer, I think she probably invites the opportunity for more legal practice. Never mind, I would now like to turn to proposed section 15C(d).

Hon Peter Foss: We are going backwards. I was waiting to see how much further forward we were going and we went back a subclause.

Hon JOHN HALDEN: Does proposed section 15C(d) merely amplify paragraph (a), or does it infer a requirement to comply with the standards established under proposed section 15D, but not the requirements of proposed subsections (h) and (i)?

Hon PETER FOSS: No. I think proposed section 15C(b) is intended to pick up the provisions in proposed subsection (d), which requires the chief executive officer to establish minimum standards applicable to the provision of prison services, and for those standards to be laid before the Parliament. Proposed subsection (e) provides that the contractors must comply with those standards, because that is a minimum matter to be included in the contract. Any contract entered into must say that the contractor will comply with the provisions in proposed section 15C(d). Proposed subsection (a) provides that there must be compliance with this legislation, any other written laws and the rules. As it is written, proposed subsection (d) merely sets standards; it does not say they must be complied with. They are complied with as a matter of contract which says that contractors must comply with the provisions in proposed section 15C(d). I do not think we can say that it supplements proposed subsection (a) because it says that there must be compliance with the legislation. Proposed section 15D does not say that there must be compliance with those requirements. That is picked up under proposed section 15C(d).

Hon JOHN HALDEN: Proposed section 15C(l) merely identifies a person; it does not say that the pieces of legislation will apply. Where does the Bill make it clear that these Acts will have application to the contract?

Hon PETER FOSS: The commencement of this Bill is dependent upon the commencement of the Court Security and Custodial Services (Consequential Provisions) Bill 1998. That contains the provisions that deal with the imposition of them.

Hon JOHN HALDEN: In terms of proposed section 15D, what benchmarks will apply to the process of setting in place the minimum standards? What will they cover? Must some matters be touched on?

Hon PETER FOSS: The current method by which we have built that provision into the contract is to take all the minimum standards provided in the request for proposal document and consolidate them into an annexure referred to as the operational and service requirements. We have the capacity, even without the current legislation, to adopt all the minimum standards in the RFP. That is the contractual basis; however, we can use the same ones for the purposes of proposed section 15D.

Progress reported and leave granted to sit again, pursuant to standing orders.

House adjourned at 9.56 pm

QUESTIONS ON NOTICE

Questions and answers are as supplied to Hansard.

MAIN ROADS WA, CONTRACTS IN EXCESS OF \$1M

22. Hon LJILJANNA RAVLICH to the Minister for Transport:

I refer to the awarding of a \$5.2m contract for construction of part of the Port Hedland to Marble Bar road which was awarded to Henry Walker without a tender process in line of the damages claim over the reduction in the Ripon Hills road contract and ask -

- (1) On how many occasions since 1993 has Main Roads awarded a contract worth in excess of \$1m without going through a formal tender process?
- (2) Will the Minister identify to whom the contracts were awarded and the value of those contracts?

Hon M.J. CRIDDLE replied:

- (1)-(2) Other than Contract 1003/97 awarded to Henry Walker Contracting Pty Ltd, one contract, awarded to ARRB Transport Research (WA) on 18 August 1998 for \$1 123 490. This contract was awarded on the basis of ARRB being a sole supplier of the required services and having been assessed as representing value for money for the services provided.

ROADS FUNDING

137. Hon KIM CHANCE to the Minister for Transport:

- (1) What was the actual expenditure of all Federally sourced funds on roads in Western Australia for the financial years -
 - (a) 1991/92;
 - (b) 1992/93;
 - (c) 1993/94;
 - (d) 1994/95;
 - (e) 1995/96;
 - (f) 1996/97;
 - (g) 1997/98; and
 - (h) 1998/99?
- (2) In which year did the "Fix Australia, Fix the Roads" campaign commence?
- (3) Will the Minister be continuing with the "Fix Australia, Fix the Roads" campaign?

Hon M.J. CRIDDLE replied:

- (1) Actual expenditures from funds available to Main Roads Western Australia from specific or tied Commonwealth sources, including Blackspot funds, in the years nominated were as follows:
 - (a) 1991/92 \$110 887 122.
 - (b) 1992/93 \$182 566 656.
 - (c) 1993/94 \$ 78 938 994.
 - (d) 1994/95 \$ 51 319 397.
 - (e) 1995/96 \$ 87 677 269.
 - (f) 1996/97 \$ 71 255 034.
 - (g) 1997/98 \$ 76 113 656.
 - (h) 1998/99 \$ 89 852 958.
- (2) End of 1993.
- (3) As the member would be aware, the broad aims of the campaign have always been to highlight the social and economic benefits to be gained through investment in our transport infrastructure, and the consequences of neglecting to do so. There is merit in continuing the work of the campaign and a review is currently underway to identify the most appropriate format for achieving these aims.

GOVERNMENT DEPARTMENTS AND AGENCIES, EXEMPTIONS FROM PURCHASING PROVISIONS OF THE ACT

190. Hon LJILJANNA RAVLICH to the Minister for Transport:

- (1) Which departments or agencies in the Minister for Transport's portfolio have been granted partial exemptions in -
 - (a) Class 1 - Autonomous purchasing up to \$50 000 per total contract value. Higher value purchasing to be arranged by a third party designated by the State Supply Commission;
 - (b) Class 2 - Autonomous purchasing up to \$250 000 per total contract value. Higher value purchasing to be arranged by a third party designated by the State Supply Commission;

- (c) Class 3 - Autonomous purchasing up to \$1m per total contract (or to a value as agreed by the Commission). Higher value purchasing to be arranged by a third party designated by the State Supply Commission; and
 - (d) Class 4 - Autonomous purchasing with no upper limit?
- (2) For each department and agency in the Minister's portfolio which have been granted partial exemptions from the operation of section 19(1) of the *State Supply Commission Act 1991*, which departments or agencies have reviewed their supply activities and assessed its risk in accordance with the commission's accreditation process each 12 months or at intervals determined by the commission?

Hon M.J. CRIDDLE replied:

- (1)-(2) The accreditation assessment process commenced in 1997 and due to the Review of the State Supply Commission Act, the process was put on hold in August 1998. In accordance with the Commission's ongoing compliance program, 48 agencies (as denoted in the attached table) were reviewed in 1999. This compliance review examined changes in procurement capability and improvements in systems, procedures and skills. The results showed a marked improvement in procurement practices and purchasing culture within agencies.

[See paper No 169.]

LANDFILL SITES, "LAND FARM" OIL WASTES

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

In relation to landfill sites which are licenced to "land farm" oil wastes -

- (1) What types of waste oils are permitted to be dumped at these sites?
- (2) For each of these oil products how long does it take for soil bacteria to break them down so they pose no threat to the environment?
- (3) Which soil bacteria are responsible for breaking down the oil products dumped at designated "land farm" landfill sites?

Hon MAX EVANS replied:

- (1) I am advised that no landfill sites are specifically licensed to "land farm" oil wastes. However, some landfills can accept oily wastes because they are licensed under the *Environmental Protection Act 1986* to receive, treat and dispose of oil contaminated materials by means other than land farming.
- (2) I am advised that the length of time it takes for oil products to break down to environmentally acceptable levels depends on variable physical and biological factors and can be a number of days, weeks or months.
- (3) I am advised that organisms responsible for the breaking down of oil products include species of *Arthrobacter*, *Corynebacterium*, *Flavobacterium*, *Mycobacterium*, *Nocardia* and *Pseudomonas*.

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

251. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Commerce and Trade:

For each department or agency in the Minister for Commerce and Trade's portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
 - (a) Chief Executive Officers;
 - (b) Senior Executive Service; and
 - (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon N.F. MOORE replied:

Department of Commerce and Trade

- (1) (a) Recruitment of Chief Executive Officers is managed by Public Sector Management. Please refer to the response given to Question on Notice 52.
- (b) Four - 1997-98
Two - 1998-99
- (c) Fifty - 1997-98
Nineteen - 1998-99

- (2) Senior Executive Services: All were recruited through an external recruitment agency
 Level 1-8 staff: Forty-two - Internally
 Twenty-seven - Externally
- (3) Morgan and Banks Ltd
 Clements Consulting Group
 Dunhill Management Services (WA) Pty Ltd
- (4) 1997-98 - \$137 475.04 (Morgan & Banks Ltd)
 1998-99 - \$48 080.32 (\$20 676.70 - Morgan & Banks Ltd; \$23 903.62 - Clements Consulting Group; \$3 500 - Dunhill Management Services)

International Centre for Application of Solar Energy

- (1) CASE does not employ public servants.
 Personnel are employed on short term contracts, and public sector classifications are not used.
 All other staff appointments on short term casual arrangements.
- (2) One.
- (3) Pannell Kerr Forster Chartered Accountants who utilise the services of Morgan & Banks.
- (4) 1997-98 \$nil
 1998-99 \$2 850

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

252. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Regional Development:

For each department or agency in the Minister for Regional Development's portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
- (a) Chief Executive Officers;
 (b) Senior Executive Service; and
 (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon N.F. MOORE replied:

- (1) (a) All Regional Development Commissions
 Recruitment of Chief Executive Officers is managed by Public Sector Management. Please refer to the response given to Question on Notice 52.

Gascoyne Development Commission

- (1) (b) Nil
 (c) Two - 1997-98
 Three - 1998-99
- (2) Apart from Chief Executive Officer, all staff were recruited internally.
- (3)-(4) Not applicable.

Goldfields-Esperance Development Commission

- (1) (b) Nil
 (c) Four - 1997-98
 Seven - 1998-99
- (2) All internally.
- (3)-(4) Not applicable.

Great Southern Development Commission

- (1) (b) Nil
 (c) Nil - 1997-98
 Four - 1998-99
- (2) All internally.

(3)-(4) Not applicable.

Kimberley Development Commission

- (1) (b) Nil
 (c) One - 1997-98
 Six - 1998-99

(2) All internally.

(3)-(4) Not applicable.

Mid West Development Commission

- (1) (b) Nil
 (c) Twenty - 1997-98
 Twenty-two - 1998-99

(2) All internally.

(3)-(4) Not applicable.

Peel Development Commission

- (1) (b) Nil
 (c) Three contract staff for 1997-98.
 Two permanent staff and four contract for 1998-99.

(2) One via recruitment agency.
 Eight internally.

(3) Taskforce.

(4) Nil - 1997-98
 \$730 approximately - 1998-99

Pilbara Development Commission

- (1) (b) Nil
 (c) Eight - 1997-98
 Eighteen - 1998-99

(2) 1997-98 Four internally
 Four externally
 1998-99 Six internally
 Twelve externally

(3) Drake Overload and Adecco

(4) \$5 870.55 - 1997-98
 \$24 963.30 - 1998-99

Please note: the costs shown are inclusive of salary paid to the office temps. Drake Overload and Adecco charge a set hourly rate, which does not break down the cost of the office temp and the cost of utilising the service.

South West Development Commission

- (1) (b) Nil
 (c) One - 1997-98
 Two - 1998-99

(2) Three internally.

(3)-(4) Not applicable.

Wheatbelt Development Commission

- (1) (b) Nil
 (c) Two - 1997-98
 Six - 1998-99

(2) Eight - Internally.

(3)-(4) Not applicable.

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

253. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Small Business:

For each department or agency in the Minister for Small Business' portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
 - (a) Chief Executive Officers;
 - (b) Senior Executive Service; and
 - (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon N.F. MOORE replied:

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management. Please refer to the response given to Question on Notice 52.
 - (b) Nil.
 - (c) 27 in 1997-98.
10 in 1998-99
- (2) 1997-98 – 10 recruited internally, 17 recruited externally.
1998-99 – 5 recruited internally, 5 recruited externally.
- (3) 1997-98
 - Clements Human Resource Consultants
 - Workplace Agreements Development Service
 - Lynne McLeod Consultancy
 - Mason Personnel Recruitment and Temporary Staff
 - Dillinger Group Development Pty Ltd
 - Lefroy Employment Group
 1998-99
 - Career People
 - Select Appointments
 - Morgan and Banks Ltd
 - Helen Gryzb and Associates
 - Lynne McLeod Consultancy
 - Dillinger Group Development Pty Ltd
 - Masons Personnel Recruitment and Temporary Staff
- (4) 1997-98 - \$21 097
1998-99 - \$13 777

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

254. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Resources Development:

For each department or agency in the Minister for Resources Development's portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
 - (a) Chief Executive Officers;
 - (b) Senior Executive Service; and
 - (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon N.F. MOORE replied:

Department of Resources Development

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to Question on Notice 52.

- (b) 1997/98, Nil
1998/99, Nil
- (c) 1997/98, 21
1998/99, 23
- (2) (Internally) 1997/98, 18
1998/99, 18
(Externally) 1997/98, 3
1998/99, 5
- (3) Gerard Daniels, Morgan & Banks and Anson Accounting.
- (4) 1997/98 \$12,188
1998/99 \$21,685

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

255. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Energy:

For each department or agency in the Minister for Energy's portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
 - (a) Chief Executive Officers;
 - (b) Senior Executive Service; and
 - (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon N.F. MOORE replied:

Office of Energy

- (1) (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to Question on Notice 52.
- (b) 1997/98, Nil
1998/99, 1
- (c) 1997/98, 10
1998/99, 12
- (2) (Internally) 1997/98, 9
1998/99, 11
(Externally) 1997/98, 1
1998/99, 1
- (3) Morgan & Banks Ltd.
- (4) 1997/98 \$2,080.00
1998/99 \$6,233.60

Office of Gas Access Regulation

- (1) (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to Question on Notice 52.
- (b) 1997/98, Nil
1998/99, 1
- (c) 1997/98, Nil
1998/99, 3
- (2) (Externally) 1998/99, 1
- (3) Morgan & Banks Ltd.
- (4) 1998/99 \$15,764.58

GOVERNMENT DEPARTMENTS AND AGENCIES, STAFF RECRUITMENT

275. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Local Government:

For each department or agency in the Minister for Local Government's portfolio can the Minister provide the following information -

- (1) How many staff were recruited to each department or agency in the Minister's portfolio in each of the following categories in 1997/98 and 1998/99 -
 - (a) Chief Executive Officers;
 - (b) Senior Executive Service; and
 - (c) Level 1-8?
- (2) Of those staff how many were recruited internally and how many were recruited by, or with the aid of, external recruitment agencies?
- (3) What are the names of the external agencies that were utilised?
- (4) What was the cost of using external recruitment agencies in 1997/98 and 1998/99?

Hon M.J. CRIDDLE replied:

DEPARTMENT OF LOCAL GOVERNMENT

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to question on notice 52.
 - (b) Nil
 - (c) 1997/98 – 16 staff 1998/99 – 17 staff
- (2) None of the staff were recruited using external recruitment agencies.
- (3)-(4) Not applicable.

KEEP AUSTRALIA BEAUTIFUL COUNCIL

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to question on notice 52.
 - (b) Senior Executive Officers None in 1997/98, None in 1998/99
 - (c) Level 1-8 5 in 1997/98, 8 in 1998/99
- (2)

Internally	5 in 1997/98, 8 in 1998/99
Externally	None in 1997/98, None in 1998/99
- (3)-(4) Not applicable.

METROPOLITAN CEMETERY BOARD

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to question on notice 52.
 - (b) Nil.
 - (c) 16 in 1997/98; 14 in 1998/99.
- (2) Nil in 1997/98; 1 in 1998/99.
- (3) Choice Personnel Group.
- (4) Nil in 1997/98; \$1,000 in 1998/99.

FREMANTLE CEMETERY BOARD

- (1)
 - (a) Recruitment of Chief Executive Officers is managed by Public Sector Management – Please refer to the answer given in response to question on notice 52.
 - (b) One.
 - (c) Two.
- (2) All listed in Item (1) were recruited without the use of recruitment agencies.
- (3) Not applicable.
- (4) Nil.

GOVERNMENT DEPARTMENTS AND AGENCIES, LEAVE LIABILITY

289. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Labour Relations:

In an effort to reduce leave liability, Circular to Ministers No 5/98 required all agencies to reduce their leave liability by 10 per cent by no later than June 30, 1999 -

- (1) What was the average cost of leave liability per FTE in each department or agency in the Minister for Labour Relations' portfolio as of June 30, 1999?
- (2) Does this represent a 10 per cent reduction from June 30, 1998?
- (3) If not, what percentage reduction in leave liability was achieved in each department or agency in the Minister's portfolio between June 30, 1998 and June 30, 1999?
- (4) When will each department or agency in the Minister's portfolio be able to meet the required leave liability reduction?

- (5) How much does a 10 per cent reduction in leave liability equate to in number of days, for each FTE employed in each department or agency in the Minister's portfolio, that will have to be taken to reach the desired reduction?
- (6) How much of this will be paid out in money in lieu of leave?
- (7) Is any department or agency, or any section of it, in the Minister's portfolio considering closing down at any period in the next 12 months in an attempt to reduce leave liability?

Hon PETER FOSS replied:

- (1)-(7) Please refer to the answer given in response to question on notice 288 of 19/8/99.

GOVERNMENT DEPARTMENTS AND AGENCIES, LEAVE LIABILITY

296. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Regional Development:

In an effort to reduce leave liability, Circular to Ministers No 5/98 required all agencies to reduce their leave liability by 10 per cent by no later than June 30, 1999 -

- (1) What was the average cost of leave liability per FTE in each department or agency in the Minister for Regional Development's portfolio as of June 30, 1999?
- (2) Does this represent a 10 per cent reduction from June 30, 1998?
- (3) If not, what percentage reduction in leave liability was achieved in each department or agency in the Minister's portfolio between June 30, 1998 and June 30, 1999?
- (4) When will each department or agency in the Minister's portfolio be able to meet the required leave liability reduction?
- (5) How much does a 10 per cent reduction in leave liability equate to in number of days, for each FTE employed in each department or agency in the Minister's portfolio, that will have to be taken to reach the desired reduction?
- (6) How much of this will be paid out in money in lieu of leave?
- (7) Is any department or agency, or any section of it, in the Minister's portfolio considering closing down at any period in the next 12 months in an attempt to reduce leave liability?

Hon N.F. MOORE replied:

- (1)-(5) Circular to Minister No 5/98 requires all agencies to reduce their leave liability by 10 per cent *compared to the figure published in the 1998/99 budget papers* by no later than 30 June 1999. To make an accurate comparison it will be necessary to compare the actual employee entitlement figures for 1998-99 for each agency, as stated in their annual reports, which are currently being audited. The audited annual reports for each agency are tabled in Parliament in accordance with the *Financial Administration and Audit Act 1985* and provide the relevant details. These figures can be compared with the estimated employee entitlement liabilities for 1998-99 that appeared in the 1998-99 Budget Papers. It is the responsibility of each agency to monitor its leave liabilities in accordance with this policy.
- (6)-(7) The strategy outlined in Circular to Minister No 5/98 is aimed at reducing leave liability that has been incurred by the Government over many years, and is designed not to adversely affect the service delivery of agencies.

GOVERNMENT DEPARTMENTS AND AGENCIES, LEAVE LIABILITY

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

In an effort to reduce leave liability, Circular to Ministers No 5/98 required all agencies to reduce their leave liability by 10 per cent by no later than June 30, 1999 -

- (1) What was the average cost of leave liability per FTE in each department or agency in the Minister for the Environment's portfolio as of June 30, 1999?
- (2) Does this represent a 10 per cent reduction from June 30, 1998?
- (3) If not, what percentage reduction in leave liability was achieved in each department or agency in the Minister's portfolio between June 30, 1998 and June 30, 1999?
- (4) When will each department or agency in the Minister's portfolio be able to meet the required leave liability reduction?
- (5) How much does a 10 per cent reduction in leave liability equate to in number of days, for each FTE employed in each department or agency in the Minister's portfolio, that will have to be taken to reach the desired reduction?
- (6) How much of this will be paid out in money in lieu of leave?
- (7) Is any department or agency, or any section of it, in the Minister's portfolio considering closing down at any period in the next 12 months in an attempt to reduce leave liability?

Hon MAX EVANS replied:

(1)-(7) Please refer to the answer given in response to question on notice 288 of 19/8/99.

GOVERNMENT DEPARTMENTS AND AGENCIES, LEAVE LIABILITY

317. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Primary Industry:

In an effort to reduce leave liability, Circular to Ministers No 5/98 required all agencies to reduce their leave liability by 10 per cent by no later than June 30, 1999 -

- (1) What was the average cost of leave liability per FTE in each department or agency in the Minister for Primary Industry's portfolio as of June 30, 1999?
- (2) Does this represent a 10 per cent reduction from June 30, 1998?
- (3) If not, what percentage reduction in leave liability was achieved in each department or agency in the Minister's portfolio between June 30, 1998 and June 30, 1999?
- (4) When will each department or agency in the Minister's portfolio be able to meet the required leave liability reduction?
- (5) How much does a 10 per cent reduction in leave liability equate to in number of days, for each FTE employed in each department or agency in the Minister's portfolio, that will have to be taken to reach the desired reduction?
- (6) How much of this will be paid out in money in lieu of leave?
- (7) Is any department or agency, or any section of it, in the Minister's portfolio considering closing down at any period in the next 12 months in an attempt to reduce leave liability?

Hon M.J. CRIDDLE replied:

(1)-(7) Please refer to the answer given in response to Question on Notice 288, of 19 August 1999.

GOVERNMENT DEPARTMENTS AND AGENCIES, LEAVE LIABILITY

318. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Fisheries:

In an effort to reduce leave liability, Circular to Ministers No 5/98 required all agencies to reduce their leave liability by 10 per cent by no later than June 30, 1999 -

- (1) What was the average cost of leave liability per FTE in each department or agency in the Minister for Fisheries' portfolio as of June 30, 1999?
- (2) Does this represent a 10 per cent reduction from June 30, 1998?
- (3) If not, what percentage reduction in leave liability was achieved in each department or agency in the Minister's portfolio between June 30, 1998 and June 30, 1999?
- (4) When will each department or agency in the Minister's portfolio be able to meet the required leave liability reduction?
- (5) How much does a 10 per cent reduction in leave liability equate to in number of days, for each FTE employed in each department or agency in the Minister's portfolio, that will have to be taken to reach the desired reduction?
- (6) How much of this will be paid out in money in lieu of leave?
- (7) Is any department or agency, or any section of it, in the Minister's portfolio considering closing down at any period in the next 12 months in an attempt to reduce leave liability?

Hon M.J. CRIDDLE replied:

(1)-(7) Please refer to the answer given in response to Question on Notice 288, of 19 August 1999.

GOVERNMENT CONTRACTS, CANCELLATION

340. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for Women's Interests:

For all Government departments and agencies under the Minister for Women's Interests' control -

- (1) How many contracts were cancelled in -
 - (a) 1996/97; and
 - (b) 1997/98?
- (2) What project was the contract awarded for?
- (3) What was the value of the cancelled contract?
- (4) Who was/were the contractor/s?

- (5) Were any costs incurred by the department or agency as a result of the contract cancellation?
- (6) If yes, what was the cost?
- (7) Has the contract been re-awarded?
- (8) If yes, to whom?
- (9) If no to (7) above, when will it be awarded?

Hon MAX EVANS replied:

- (1)-(9) I refer the Member to the answer to Legislative Council Question on Notice No 339 asked on August 19, 1999.

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

369. Hon LJILJANNA RAVLICH to the Minister for Transport:

- (1) For all Government departments and agencies under the Minister for Transport's control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
 - (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
 - (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon M.J. CRIDDLE replied:

- (1)-(4) This question was previously asked as question on notice 1319. The following answer was correct as at 6 August 1999, when it was forwarded to your Electorate Office.

The answer was tabled. [See paper No 239.]

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

376. Hon LJILJANNA RAVLICH to the Attorney General representing the Minister for Labour Relations:

- (1) For all Government departments and agencies under the Minister for Labour Relations' control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
 - (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
 - (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon PETER FOSS replied:

- (1)-(4) Please refer to the answer given in response to question on notice 381 of 7/9/99

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

382. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Commerce and Trade:
- (1) For all Government departments and agencies under the Minister for Commerce and Trade's control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon N.F. MOORE replied:

- (1)-(4) This question was previously asked as question on notice 1319. The following answer was correct as at 6 August 1999, when it was forwarded to your Electorate Office.

The answer was tabled. [See paper No 239.]

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

383. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Regional Development:
- (1) For all Government departments and agencies under the Minister for Regional Development's control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon N.F. MOORE replied:

- (1)-(4) This question was previously asked as question on notice 1319. The following answer was correct as at 6 August 1999, when it was forwarded to your Electorate Office.

The answer was tabled. [See paper No 239.]

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

384. Hon LJILJANNA RAVLICH to the Leader of the House representing the Minister for Small Business:
- (1) For all Government departments and agencies under the Minister for Small Business' control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -

- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon N.F. MOORE replied:

- (1)-(4) This question was previously asked as question on notice 1319. The following answer was correct as at 6 August 1999, when it was forwarded to your Electorate Office.

The answer was tabled. [See paper No 239.]

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

392. Hon LJILJANNA RAVLICH to the Minister for Finance representing the Minister for the Environment:
- (1) For all Government departments and agencies under the Minister for the Environment's control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon MAX EVANS replied:

- (1)-(4) Please refer to the answer given in response to question on notice 381 of 7 September 1999.

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH
SPEAKING BACKGROUNDS

404. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Primary Industry:
- (1) For all Government departments and agencies under the Minister for Primary Industry's control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?

- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon M.J. CRIDDLE replied:

- (1)-(4) Please refer to the answer given in response to Question on Notice 381 of 7 September 1999.

GOVERNMENT DEPARTMENTS AND AGENCIES, INFORMATION TO PEOPLE OF NON-ENGLISH SPEAKING BACKGROUNDS

405. Hon LJILJANNA RAVLICH to the Minister for Transport representing the Minister for Fisheries:

- (1) For all Government departments and agencies under the Minister for Fisheries' control, what was the budget allocation for the provision of information to people of non-English speaking backgrounds in -
- (a) 1994/95;
 - (b) 1995/96;
 - (c) 1996/97;
 - (d) 1997/98; and
 - (e) 1998/99?
- (2) Have any Government or departments under the Minister's control utilised the services of radio 6EBA non-English print media as media to provide information for people of Cultural and Linguistic Diverse backgrounds?
- (3) If not, why not?
- (4) If yes to (3) above, how much was spent on -
- (a) electronic media; and
 - (b) print media, in -
 - (i) 1994/95;
 - (ii) 1995/96;
 - (iii) 1996/97;
 - (iv) 1997/98; and
 - (v) 1998/99?

Hon M.J. CRIDDLE replied:

- (1)-(4) Please refer to the answer given in response to Question on Notice 381 of 7 September 1999.

ROADWORKS, DISPLAY OF SIGNS

415. Hon BOB THOMAS to the Minister for Transport:

- (1) Has Main Roads WA been made aware of instances where private road building contractors have failed to properly display signs alerting motorists to roadworks ahead?
- (2) What action has the department taken to ensure that all contractors staff are fully aware of the correct procedure for the placement of these signs on roads where work is being carried out?

Hon M.J. CRIDDLE replied:

- (1)-(2) Main Roads' Code of Practice for 'Traffic Management for Roadworks' defines the required standards of signing at roadworks. This Code of Practice has been issued to all contractors that have been pre-qualified to undertake Main Roads' works and to relevant Industry bodies. The Code of Practice is freely available on Main Roads' Internet website. Prior to the commencement of works, contractors are required to submit a Traffic Management plan. Main Roads has audit processes in place to ensure that these Traffic Management plans comply with the Code of Practice. Additionally, contractors are required to use accredited Traffic Management personnel for traffic management field operations. To ensure that sufficient personnel are available to industry, Main Roads has developed a traffic management accreditation scheme and to date over 5 000 personnel have been accredited. Throughout the construction activity, Main Roads' appointed Superintendent is responsible for auditing the contractor's traffic management operations to ensure that they comply with the relevant standards.

AGRICULTURE WA, SERVICE FEES

448. Hon KIM CHANCE to the Minister for Transport representing the Minister for Primary Industry:

I refer to service fees charged to clients of Agriculture Western Australia and ask -

- (1) What was the mean increase in service fees charged by the agency from the 1998/99 financial year to the 1999/2000 financial year?

- (2) What proportion of full cost-recovery do the service fees for the 1999/2000 financial year represent?
- (3) If the 1999/2000 service fees do not yet represent the full cost-recovery of agency services when is it expected that service fees will reflect full cost-recovery?
- (4) Is it correct that in most cases service fees went up 10 per cent from the 1998/99 financial year to the 1999/2000 financial year?
- (5) Is the Minister for Primary Industry aware of the following increases in service fees charged by the agency for Plant Disease Diagnosis -

Service	1998/99 fee	1999/2000 fee
Soil test for nematodes	\$38.00	\$70.00
Pathogen isolation plant tissue sample	\$45.00	\$80.00
Phytophthora on soil samples (first test)	\$23.00	\$50.00
- for each additional test	\$12.00	\$30.00
Visual Examination	\$15.00	\$35.00

- (6) For the agency service fees listed above can the Minister explain why there have been such substantial increases in the cost of these services from the 1998/99 financial year to the 1999/2000 financial year?

Hon M.J. CRIDDLE replied:

- (1) The mean increase across all 648 fees is estimated at less than 2 per cent.
- (2) Full cost recovery is currently achieved for 74% of schedule fees (477 of 648 total). The level of discount applicable to the other 171 services is being decreased except where there is a strategic reason for maintaining that discount.
- (3) Agency fees have been moving towards full cost recovery over the last three years. This process is expected to continue.
- (4) No.
- (5) I am aware that substantial fee increases have been enacted in this area.
- (6) The fees have increased to bring them towards full cost recovery, as only nominal fees have been charged in the past. The revised fees were enacted following consultation with the Pastoralists and Graziers Association, Farmers Federation, Flowers WA, Potato Growers Association, Table Grape Association, Nursery Industry Association and Wine Industry Association.

GOVERNMENT CONTRACTS, CHAMBER OF COMMERCE AND INDUSTRY

581. Hon KEN TRAVERS to the Minister for Tourism:

- (1) Have any of the Government agencies for which the Minister for Tourism is responsible had contracts with, or made payments to, the Chamber of Commerce and Industry in each of the following years -
- (a) 1996/97;
 (b) 1997/98; and
 (c) 1998/99?
- (2) If yes, what was the nature of each of the contracts and what was/were the payments made?

Hon N.F. MOORE replied:

Western Australian Tourism Commission

- (1)-(2) Yes.
- (a) \$134 - \$50 for a Seminar and \$84 for booklets.
 (b) \$80 for booklets.
 (c) Nil.

Rottneest Island Authority

- (1) (a)-(c) Nil.
 (2) Not applicable.

METROBUS, DRIVERS ON REDEPLOYMENT

620. Hon JOHN HALDEN to the Minister for Transport:

How many Metrobus drivers are still on redeployment and what is the current monthly cost of their wages?

Hon M.J. CRIDDLE replied:

- (a) There are 193 former Bus Drivers registered for redeployment as at Tuesday, 12 October 1999.
- (b) The current monthly cost of wages for former Bus Drivers on redeployment is \$443 705.

WETLANDS, RAMSAR LISTING

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

- (1) Further to Questions on Notice 446 of June 22, 1999 and 1545 of April 22, 1999, has the Government made any decision yet about further nominations of WA wetlands for Ramsar listing?
- (2) If yes, which ones?
- (3) If not, why not?
- (4) Why is the Government taking so long to honour this important election promise?
- (5) When was the WA Wetlands Coordinating Committee established?
- (6) Who are the members of this committee?
- (7) How many times has it met since its inception?
- (8) What are its main achievements, if any?

Hon MAX EVANS replied:

- (1)-(2) No.
- (3)-(4) Consultations with stakeholders are still underway and a final decision on nominations has yet to be made by the Government.
- (5) Appointment of the Wetlands Coordinating Committee was announced by the Minister for the Environment on 22 February 1998.
- (6) Mr Keiran McNamara (CALM; Chairman)
Mr Jim Lane (CALM)
Dr Ross George (Agriculture WA)
Dr Mike Bamford (voluntary conservation movement)
Cr Elizabeth Eaton (local government)
Dr Jenny Davis (non-government wetland scientist)
Mrs Joan Payne (voluntary conservation movement)
Mr Jeff Kite (Water and Rivers Commission)
Mr David Nunn (Minister for Planning)
Mr Geoff Bott (Department of Environmental Protection)
- (7) Four times, on 19 June and 17 November 1998, and 21 April and 10 June 1999.
- (8) The Wetlands Coordinating Committee is established under the Wetlands Conservation Policy for Western Australia. The policy states that the committee is "to coordinate the implementation of this policy and the activities of relevant agencies with respect to wetlands". Matters addressed have been -

- Procedural matters for the committee.
- Implementation of the wetlands conservation policy for Western Australia, including development of a program of action.
- Salinity action plan.
- EPA draft position statement on wetland protection.
- Environmental protection (south west agricultural zone wetlands) policy 1997.
- Natural Heritage Trust national wetlands program.
- Strategic drought proofing to protect wetlands against use as emergency water resources.
- System 5 wetlands review.
- Swan coastal plain lakes environmental protection policy.
- Perth's bushplan.
- Buffer widths.
- Wetland classification system.
- Wetlands inventory.
- Midge problem at Lake Joondalup.
- Wetlands of the southern coastal plain between the Blackwood and Nornalup/Walpole Estuaries.
- Listing of wetlands under the Ramsar Convention.
- Wetland mitigation.
- Wetland research and development requirements.
- Various reports and publications.

The committee has helped to achieve improved coordination and information sharing in relation to wetlands conservation.

SCUBA DIVING, TASK FORCE

632. Hon J.A. SCOTT to the Minister for Sport and Recreation:

In relation to the task force formed to enquire into recreational scuba diving in Western Australia -

- (1) Who are the members of the task force and what were the selection criteria used to select them?
- (2) Have any members of the task force been involved in scuba diving accidents in the past two years?
- (3) Where and when was the formation of the task force advertised?
- (4) Where and when were advertisements for membership to the task force advertised?

Hon N.F. MOORE replied:

- (1) The members of the task force are as follows:

Alex McKenzie (Chair)
 Peter Turner
 John Shepherd
 Richard Evans
 Martin Chape
 Stephen Sturgeon
 Nigel Haywood
 Terry McVeigh
 Barbara O'Dowd
 Alan Byrne
 Gary Tattersall
 Frank Keough
 Graham Brimage

Appointments were finalised to encompass a wide cross section of the dive industry; including charter boat operators, commercial operators, public sector representatives and the recreational diver.

- (2) Yes.
- (3)-(4) Expressions of interest for membership to the task force and terms of reference were advertised in the West Australian on Saturday, 8 May 1999.

CALM, NEW CONTRACTS FOR LOGS

643. Hon NORM KELLY to the Minister for Finance representing the Minister for the Environment:

- (1) Have any new CALM contracts for the supply of logs from State forests been signed since April 1?
- (2) If yes -
 - (a) with whom have they been signed;
 - (b) for what species and grade of log;
 - (c) for what volume; and
 - (d) for what period?
- (3) Have any existing contracts for the supply of logs from State forests been renewed or extended in the past 6 months?
- (4) If yes -
 - (a) with whom have they been renewed;
 - (b) for what species and grade of log;
 - (c) for what volume; and
 - (d) for what period?

Hon MAX EVANS replied:

- (1) No.
- (2) Not applicable.
- (3) Yes.
- (4)

(a)	(b)	(c)	(d)
R T & T J Waugh	Jarraah firewood logs	500 tonnes	renewed to 30 June 2002
C W Baldock	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
R K Waugh	Jarraah firewood logs	100 tonnes	renewed to 30 June 2002
	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
G I Legge	Jarraah fencing logs	600 tonnes	renewed to 30 June 2002
L J & D R Crouch	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
L J & D R Crouch	Jarraah firewood logs	500 tonnes	renewed to 30 June 2002
Ravenscliffe Fencing	Jarraah fencing logs	500 tonnes	renewed to 30 June 2002
M R Donaldson	Jarraah firewood logs	500 tonnes	renewed to 30 June 2002
W C & E M Herdigan	Jarraah firewood logs	800 tonnes	renewed to 30 June 2002
	Jarraah fencing logs	500 tonnes	renewed to 30 June 2002
J G & S W Fredericks	Jarraah firewood logs	500 tonnes	renewed to 30 June 2002
	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
Yornup Mill Pty Ltd	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
C W & L J Campbell	Jarraah firewood logs	500 tonnes	renewed to 30 June 2002
	Jarraah fencing logs	100 tonnes	renewed to 30 June 2002
Premium Jarrah			

Fencing Supplies	Jarrah firewood logs	500 tonnes	renewed to 30 June 2002
	Jarrah fencing logs	500 tonnes	renewed to 30 June 2002
T J & M B Waugh	Jarrah fencing logs	500 tonnes	renewed to 30 June 2002
Dawson Contracting	Jarrah firewood logs	2000 tonnes	renewed to 30 June 2002

RACING, INTRODUCTION OF REGULATIONS

782. Hon N.D. GRIFFITHS to the Minister for Racing and Gaming:

- (1) Can the Minister for Racing and Gaming confirm that in May 1999 the Government had agreed that, those recommendations of the National Competition Policy Review of the *Betting Control Act 1954* and the *Totalisator Agency Board Betting Act 1960* that could be implemented by Regulation, would be put into effect as soon as possible after the Racing Ministers conference of August 1999?
- (2) When is it now anticipated that the Regulations will come into effect?
- (3) Why the delay to date?
- (4) Can the Minister confirm that the Regulations will deal with amongst other things -
 - (a) to enable a bookmakers licence to be granted to a body corporate;
 - (b) to repeal the restriction on bookmaking on Anzac Day; and
 - (c) to do away with the restriction on minimum levels of telephone bets with bookmakers?

Hon MAX EVANS replied:

- (1) Yes.
- (2)-(3) The Western Australian Government is committed to implementing the recommendations of the National Competition Policy Review of the Racing and Betting legislation. However, the Racing Ministers' 1999 Conference endorsed the resolution of the Council of Australian Government Committee on Regulatory Reform that potential outcomes from reviews of racing and betting legislation in all states and territories should be discussed at a national level before individual governments proceed to implement the recommendations. Accordingly, finalisation of the amending regulations has been delayed until after the national review scheduled for February or March next year. The purpose of this national review is to ensure that all costs and benefits are properly evaluated and there are no unforeseen impacts which may cause the recommendations to be modified.
- (4) No, because the regulations will not be finalised until after the February/March 2000 national review of the recommendations.

CURTIN COLLEGE OF TAFE, KALGOORLIE

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

- (1) Is the Curtin College of TAFE in Kalgoorlie established as a college under Section 35 of the *Vocational Education and Training Act 1996*?
- (2) Does the college have a governing council?
- (3) If yes, who are the members?
- (4) If not, why not?
- (5) Was Ministerial approval sought by Curtin University in respect of the naming?
- (6) What is the Government's policy regarding publicly funded training organisations not established under the *Vocational Education and Training Act* using TAFE as part of their title?
- (7) What mechanisms exist to prevent private training providers using the acronym TAFE as part of their title?

Hon N.F. MOORE replied:

- (1) No. Kalgoorlie Campus of Curtin University is not using the title Curtin College of TAFE. The Vice Chancellor of Curtin University has written to the Department of Training and Employment advising that they have rescinded the title and that the University will not use terms such as technical and further education or TAFE in any formal or informal title for the Kalgoorlie Campus or in any product marketing.
- (2)-(4) Not applicable.
- (5) No.
- (6) The Government policy is that only organisations established under the VET Act should use TAFE as part of their title.
- (7) The Government could initiate a "passing off" action in common law against any organisation that attempts to use the acronym TAFE as part of its title.

QUESTIONS WITHOUT NOTICE

PERTH-ROCKINGHAM-MANDURAH RAILWAY, FUNDING

551. Hon TOM STEPHENS to the Minister for Transport:

I refer to the article in today's *The West Australian* confirming that it is unlikely that the Government will pass its legislation for the sale of AlintaGas.

- (1) Does the minister recall his answer last Wednesday that the principal funding for the Perth-Rockingham-Mandurah railway line is contingent upon the AlintaGas sale and that other arrangements will have to be made if that does not come to fruition?
- (2) What other arrangements are being canvassed to fund the railway line?

Hon M.J. CRIDDLE replied:

These questions are pre-empting a decision and debate in the House and I will be very interested when the debate takes place in the House to see what the result of the debate will be. I will not pre-empt any further message that the Government might have regarding the funding of the south west rail line.

PEARL BAY RESORT DEVELOPMENTS, PERFORMANCE BOND

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

- (1) Will the minister explain why the form of the \$10m performance bond is being decided by negotiations between Pearl Bay Resort Developments Pty Ltd and its provider, and not by the Government?
- (2) Has the Government applied a deadline for the company to submit its \$10m performance bond?
- (3) If so, what is the deadline; and, if not, why not?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) It is the responsibility of Pearl Bay Resort Developments Pty Ltd rather than the Government to determine the means by which the required bond to the Government is provided pursuant to its obligations under the memorandum of understanding.
- (2) No.
- (3) Raising a \$10m bond can involve complex commercial negotiations.

STATE BUDGET, REVENUE AND EXPENDITURE PROJECTIONS

553. Hon N.D. GRIFFITHS to the Minister for Finance:

I refer to the 1999-2000 state budget and ask -

- (1) In what areas and in what amounts do current projections of revenue differ from that set out in the budget?
- (2) In what areas and in what amounts do current estimates of expenditure differ from that set out in the budget?

Hon MAX EVANS replied:

(1)-(2) I thank the member for some notice of this question.

The mid year review, which will be published before 31 December 1999, will detail variations to revenue and expenditure projections relative to the budget estimates. Expenditure is spread over 180 agencies and to try to transpose those figures into the ups and downs at any one time is not simple.

Revenue is easy because it all comes from my State Revenue Department and for some years now we have had an itemisation of the budgeting of all revenue each month and the year to date. To that the actual figure is compared. We can then at any time project what may happen. Some three or four years ago before this system was brought in, there was no similar system. We see that on present indications revenue will be up by about \$42.8m over the budget. That figure includes payroll tax, which will be down by about \$27m, and a large part of that relates to the reduced activity of the mining industry due to the effect of native title and other factors. The big mining exploration companies are spending less money and paying less payroll tax and some are going out of business completely. Less being spent results in less payroll tax or their going to a lower scale and paying a lower rate of tax. Some companies are dropping below the \$700 000 threshold and are then paying no payroll tax.

Insurance policies could be up by \$12m; stamp duty, conveyancing and transfer fees could be up \$15m; land tax revenue is up \$11m and the casino will be down \$2m on present projections. Sales are recorded in United States dollars and royalties are based on United States dollars and converted to Australian figures. A low Australian dollar will result in increased royalties. This financial year royalties might be up \$19m over budget. If the Australian dollar stays down the result may be even better. In the first year of this Government when the Australian dollar was around 83¢ and 84¢ we were \$29m below

budget. Specific purpose grants will be up \$9m and financial assistance grants will be down \$18m. This will result in a difference of about \$42.8m.

These are the best figures that I can give at the moment on the main items. With expenditure it is not really a case of bringing them all together on what changes have been made in the budget - that will all come out next month.

BUSES, FIVE NEW BUSES

554. Hon J.A. SCOTT to the Minister for Transport:

- (1) Will Mercedes-Benz still provide the five multipoint sequential fuel injection compressed natural gas buses in 1999 promised as part of the 133 bus first contract; and, if so, when will they be delivered?
- (2) Are the bus bodies all being built in Western Australia as promised; and, if not, why not?
- (3) Will all buses purchased in the future use CNG fuel?
- (4) Given price rises in diesel fuel and the failure to get a 23¢ per litre fuel rebate, will the operating costs of the diesel buses be more expensive than anticipated?

Hon M.J. CRIDDLE replied:

- (1)-(4) I am meeting with Mercedes-Benz on Thursday to discuss the buses and we will discuss with the people concerned the five compressed natural gas buses that were intended to be delivered. I will be interested in their remarks.

Hon J.A. Scott: Will they be delivering them or not?

Hon M.J. CRIDDLE: That is what I have just said. We will finalise the arrangements when the representatives arrive on Thursday. I often talk to the representatives in Germany and the member should be aware that I have been there several times and that the arrangement has developed over a period of time. There is only one contract for the buses and it is a continuing commitment. I am happy to say that the bus bodies are being built at Malaga. Volgren has set up-

Hon J.A. Scott: Are they all being built here?

Hon M.J. CRIDDLE: Initially they came from Victoria because we did not have a factory here. I opened the Volgren factory earlier this year and it is now delivering buses into the fleet. Eventually they will all be built here, but because there was a large commitment in the early stages of the 133 bus order it was necessary to get the bodies built in Victoria. The factory in Western Australia provides employment for 50 people and turns out an outstanding product. Anyone who has had the opportunity to ride in the buses would understand how good the bus bodies are. There have been additions, such as the kneeling capacity, the ability to handle disabled passengers, the ramps and the video cameras for security, all of which are good initiatives.

Regarding the use of CNG, the member would be aware that a report was produced earlier and that presently the buses have Euro II low-sulphur diesel engines. The engines were found to be environmentally, economically and operationally as good as any other option available at the time of purchase. I had discussions with Ministers for Transport who were here at a conference last Friday and we discussed running diesel buses instead of gas buses. There is an interesting discussion around Australia as to what fuel should be used in buses.

The fourth part of the question related to the rises in diesel fuel. Members would be aware that there are offsets with regard to the tax package. The Government anticipates that there will not be a great deal of impact on fares when the across-the-board changes to the tax system in general are considered.

PERTH MARKET ACT, REVIEW COMMITTEE

555. Hon HELEN HODGSON to the minister representing the Minister for Primary Industry:

In regard to the review of the Perth Market Act 1926 announced on Tuesday of last week -

- (1) Why did the minister not include representation from the retail sector on the review committee?
- (2) Is the minister aware of concerns from the fruit and vegetable retail sector that that lack of representation on the committee will result in its concerns not being adequately addressed?
- (3) Will the minister be taking action to include retail sector representation on the committee?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

- (1)-(3) The Perth Market Act governs the central trading area of the Perth Markets. This primarily relates to the receipt and disposal of horticultural produce and involves transactions between the growers and the agents. The transactions between retailers and consumers are not governed by the Perth Market Act. The review committee has been formed with the above in mind and comprises persons with the skills and expertise to address that Act. The terms of reference will ensure that the transparency of the business relationship between growers and other parties is investigated. The review committee would welcome input and submissions from the retail sector on matters of relevance to the Perth Market Act. I seek leave to table the terms of reference.

Leave granted. [See paper No 400.]

CABLES ARTIFICIAL SURFING REEF

556. Hon RAY HALLIGAN to the Minister for Sport and Recreation:

- (1) Has the Ministry of Sport and Recreation undertaken any research studies to confirm whether the Cables artificial surfing reef has increased the number of surfable days over the past winter months?
- (2) If so, what are the results?
- (3) If the results are negative, will additional work be carried out on the reef to help improve its performance?
- (4) If the results have been positive, will the Government consider building additional reefs along the north metropolitan coastline to help reduce congestion in this growing sport?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. It is an excellent question.

Several members interjected.

Hon N.F. MOORE: Obviously members were not listening. The other member for the North Metropolitan Region might also have taken some interest in the fourth part of the question.

Several members interjected.

Hon Ljiljana Ravlich: I am waiting with bated breath.

Hon N.F. MOORE: I am pleased about that. I hope bated breath has some permanent effect!

- (1) The Ministry of Sport and Recreation has engaged the Centre for Water Research at the University of Western Australia to undertake research studies to ascertain performance of the Cables artificial surfing reef over a one-year period.
- (2) The research is ongoing and to date the months of March through to August have been analysed. During those six months, Cables has broken on 77 days. To put this in perspective, the number of days Cables broke before the reef was built was five to eight a year. The number of surfable days to date is in line with the scientific predictions that Cables would break more frequently after the reef was built - 49 to 70 days a year. The average predicted number of surfable days is based on data over five years, 1994-98, using a theoretical calculation for predicting waves. The measured data relates to web cam images that show waves breaking.
- (3) The results are positive.
- (4) The Government would consider submissions presented by local government authorities, sporting organisations or community groups seeking financial assistance through the community sporting and recreation facilities fund to construct artificial surfing reefs.

TEACHERS, EMPLOYER INITIATED PLACEMENT

557. Hon BOB THOMAS to the Leader of the House representing the Minister for Education:

Will the minister table responses to the following questions -

- (1) If a teacher is not successful in receiving his or her three choices under the employer initiated placement but accepts an offer of a position at another school, is that teacher eligible to apply for another EIP after one year at the new school?
- (2) If not, what are the rules regarding transfers for that teacher?
- (3) If a teacher accepts a position of his or her choice under an EIP, is that teacher then able to rescind that acceptance?
- (4) Under the Government's new proposal to offer permanency for temporary teachers at country or hard to fill schools, does the three years apply to service at one school or simply to three years of service?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1)-(2) If the position accepted is a substantive one, the teacher loses employer initiated placement status and must fulfill normal eligibility requirements in that school before a transfer application can be accepted. However, if the position is temporary - for example, relieving a teacher on maternity leave - the EIP status will be retained.
- (3) No.
- (4) Three years of service at any school with the proviso that the teacher is placed in a clear vacancy within those three years. Subject to satisfactory performance, it is expected that the teacher will remain in that vacancy and achieve permanency after three years.

DENMARK AGRICULTURAL COLLEGE BUILDINGS

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

- (1) Is the minister aware of the public petition signed by 650 electors of Denmark seeking the retention of the old agricultural high school buildings in Denmark so they can be used for conferences, field studies and other community uses?
- (2) What is the estimated value of these buildings?
- (3) Has the Heritage Council assessed the buildings?
- (4) What income is currently derived from the letting of this accommodation?
- (5) What income could be derived from the letting of these facilities on a year-round basis?
- (6) Is it still the minister's intention to cause these buildings to be demolished by June of next year for the purpose of building a driveway and bus bays?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

- (1) No.
- (2) No detailed estimate of the value of the buildings has been prepared. However, given the current state of the facilities, considerable expenditure would be required to bring the buildings up to an acceptable standard.
- (3) The Heritage Council of Western Australia has considered the Denmark Agricultural College buildings for placement on the state register of heritage places. A heritage assessment was prepared and it was decided that the buildings do not have sufficient cultural heritage significance at the state level. Therefore, they have not been recommended for entry on the register of heritage places.

The decision to relocate the school and buildings has largely been due to the buildings having reached the end of their economic life. The Shire of Denmark acknowledged that when discussions were held regarding the future of the present school. The decision to build at a new location and demolish the existing buildings has also been endorsed by the Denmark Parents and Citizens Association, the staff of the Denmark Agricultural College and Denmark District High School and members of the Denmark Agricultural Advisory Council.

- (4) In the past 12 months, the facilities have been let to community-based organisations for a financial return of approximately \$8 000.
- (5) Given their poor state of repair and that only irregular access has been sought previously, annual revenue from letting these premises on a year-round basis would be low. Furthermore, the new school facilities will be available for similar use and this will undoubtedly impact upon requests for access to the old accommodation.
- (6) It is intended to demolish the buildings upon the completion of the new facilities as they have reached the end of their economic life. However, the site will not be used for a driveway and bus bays. This part of the site will be required for additions to the school in the future.

CHILD PROSTITUTION, CHARGES

559. Hon TOM STEPHENS to the Attorney General representing the Minister for Police:

- (1) What charges can be laid against people involved in child prostitution?
- (2) How many people have been charged with these offences from 1 January 1999 to 31 October 1999?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) The following sections of the Criminal Code relate to child prostitution.

Section 186 - Occupier or owner allowing certain persons to be on premises for unlawful carnal knowledge.

Section 191 - (1) Procuring a girl or woman who is under the age of 21 years and is not a common prostitute or of known immoral character to have unlawful connection with a man.

- (2) Procures a woman or girl to become a common prostitute.
- (3) Procures a woman or girl to leave Western Australia that she may become an inmate of a brothel elsewhere.
- (4) Procures a woman or girl to leave her usual place of abode in Western Australia with intent that she may become an inmate of a brothel.

- (5) Procures a man or a boy for any of the above purposes.

Section 192 - Procuring person to have unlawful carnal knowledge by threats, fraud, or administering drugs.

Section 195 - Permitting boys to resort to brothels.

Section 320 - Sexual offences against child under 13 years of age.

Section 321 - Sexual offences against child of or over 13 and under 16 years of age.

Section 322A - Sexual offences against juvenile males.

The following sections of the Police Act relate to child prostitution -

Section 59 - Common prostitute soliciting for prostitution.

Section 76G - Soliciting for immoral purposes.

Section 31A of the Child Welfare Act covers causing a child under 14 years of age to be in need of care and protection.

- (2) The Police Service cannot provide a response to this question as the information available relating to the offences does not specifically relate to child prostitution. Consequently, obtaining information against the above offences that could be linked to child prostitution would require a manual search of all records of those offences.

GAY AND LESBIAN COUNSELLING SERVICE OF WA, CLOSURE

560. Hon GIZ WATSON to the minister representing the Minister for Health:

I refer to the threat of closure of the Gay and Lesbian Counselling Service of Western Australia.

- (1) Is the minister aware that the rate of suicide in young gay people is much higher than that for heterosexual youth?
- (2) Is the minister aware that the counselling service receives approximately 600 calls a month?
- (3) Is the minister aware that gay people and lesbians are extremely unlikely to call a counselling service that is not staffed by gay people and lesbians?
- (4) Does the minister concede that the rate of gay and lesbian suicide may increase if the Gay and Lesbian Counselling Service closes?
- (5) Will the minister provide funding to prevent the counselling service closing?
- (6) If not, why not?

Hon MAX EVANS replied:

- (1)-(6) I thank the member for some notice of this question and ask that it be placed on notice.

POLICE ACT, SECTION 59 ARRESTS AND PROSECUTIONS

561. Hon NORM KELLY to the Attorney General representing the Minister for Police:

- (1) How many arrests have been made under section 59 of the Police Act 1892 in 1997, 1998 and so far this year?
- (2) How many prosecutions have been made under section 59 of the Police Act 1892 in 1997, 1998 and so far this year?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

- (1) The Police Service of Western Australia cannot readily provide a response to this question. I ask that this question be put on notice.
- (2) The Police Service cannot answer this question as it does not retain this information.

MILK VENDORS, DISTRIBUTION ADJUSTMENT ASSISTANCE SCHEME

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

- (1) How many former milk vendors-distributors received financial assistance between 1 July and 10 August under, first, scheme A of the distribution adjustment assistance scheme and, secondly, scheme C?
- (2) Of these former milk vendors-distributors, how many from scheme A were formerly, first, household vendors and, secondly, wholesale distributors?
- (3) Of these former milk vendors-distributors, how many from scheme C were formerly, first, household vendors, and secondly, wholesale distributors?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

- (1) No milk distributor received financial assistance under scheme A, and one received financial assistance under scheme C.
- (2) Not applicable.
- (3) The former milk distributor-vendor supplied both the household and wholesale trade.

WESTRAIL, MINERAL HAULAGE CONTRACTS

563. Hon MARK NEVILL to the Minister for Transport:

I refer to the Westrail mineral haulage contracts.

- (1) Is the minister aware of any approaches by private rail companies to obtain those contracts when they expire; if so, is he aware of the names of those who have approached the mining companies in this regard?
- (2) To the minister's knowledge, which of the mineral haulage contracts come up for renewal within the next two years?

Hon M.J. CRIDDLE replied:

- (1)-(2) This question is very detailed. I am quite happy to get the information sought for the member. I understand some approaches have been made; however, I am not prepared to give the member a definite answer at this time. I am quite prepared to talk to him later about any detail he may require in this regard.

ILLEGAL IMMIGRANT VESSELS, QUARANTINE RISKS

564. Hon SIMON O'BRIEN to the minister representing the Minister for Primary Industry:

With the increasing number of illegal boats being found heading into Western Australian waters, is the minister confident that sufficient resources and procedures are in place to deal with the introduction of any exotic pests and diseases that might be a threat to our agricultural industries?

Hon M.J. CRIDDLE replied:

I thank the member for some notice of this question.

A number of organisations are responsible for managing the coastal surveillance including Coastwatch, the Department of Immigration and Multicultural Affairs, the Australian Customs Service, the Royal Australian Navy and the Australian Quarantine and Inspection Service. Close cooperation has been developed between all the parties, and protocols are in place to ensure each organisation's interests are addressed, even when only one is involved in the initial contact or apprehension.

In most instances the boats are intercepted at sea or at Ashmore Reef, and the quarantine risks can be addressed offshore. Food, animals, plants and fresh water can be removed, destroyed or contained before landfall. The boats can then be taken to an isolated locality; that is, Willie Creek. Quarantine staff are always involved in the reception party if the boats are landed. The boats are inspected thoroughly and, if necessary, treated by fumigation, or destroyed by burning. With uncontrolled landings, quarantine staff attend the site as soon as possible to address any quarantine risks.

AQIS maintains staff at the Broome office primarily as part of the northern Australian quarantine strategy. As well as regular quarantine duties, these officers carry out monitoring and surveillance for pests, diseases and weeds throughout the north of Western Australia.

Agriculture Western Australia also has staff at numerous centres throughout the north west who also maintain vigilance against incursions of exotic pests or diseases. Agriculture Western Australia and AQIS are confident that the quarantine risks associated with the illegal immigrant vessels are currently being managed.

DRONABINOL

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

I refer to question without notice No 462 of 28 October 1999.

- (1) Does the minister accept the fact that for some terminally ill patients, none of the current medications available for relief of nausea from AIDS or chemotherapy has any noticeable effect?
- (2) If not, can the minister explain what evidence he has that the above statement is incorrect?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The approval for a medicine to be used in Australia for the treatment of nausea associated with AIDS or chemotherapy is based upon scientific evidence. The evidence is collected from clinical trials involving patients, and approval would not have been granted by the Australian authority - that is, the Australian Drug Evaluation Committee - unless the evidence supported the use of the medicine.

- (2) The evidence is as described in the first part of the question. It is also based on the clinical trials used in applying for marketing approval in Australia.

TAFE COLLEGES MANAGEMENT INFORMATION SYSTEM, EXPENDITURE

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

What was the total expenditure by the Western Australian Department of Training and technical and further education colleges on hardware and networking used to implement the college management information system on a stand-alone basis in TAFE colleges between 30 June 1996 and 30 June 1999?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. As the information requested is not able to be provided in time for question time today, I ask that this question be placed on notice.

Hon Ljiljanna Ravlich: What a joke! This is so simple.

Hon N.F. MOORE: Perhaps the member could have asked questions Nos 498, 446 or 419. In my file I have answers to about 15 questions raised by the member which she has not bothered to ask. Had she asked one of those, she might have gone away happy.

HOSPITALS, AUDITING OF PLANS FOR YEAR 2000 COMPUTER PROBLEMS

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

- (1) Have the business continuity plans developed by all metropolitan and rural hospitals to cover contingencies for year 2000 computer problem failures or critical equipment or services been audited for readiness?
- (2) If not, why not, and for which hospitals have these plans not yet been audited for readiness?
- (3) By what date will all of these plans be audited for readiness?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I have a problem with consistency in the wording used in the question and in the answer. The member used the words "continuity" and "contingencies", and the answer uses only the word "continuity".

- (1) Yes. The project plan to develop business continuity plans for metropolitan and rural hospitals included an audit phase which has been completed.
- (2)-(3) Not applicable.

The member should make up his mind as to which word he wishes to use.

HEALTH DEPARTMENT, FREMANTLE DOCKERS CORPORATE SPONSOR'S BOX

568. Hon TOM STEPHENS to the minister representing the Minister for Health:

- (1) Can the minister confirm that the Health Department of Western Australia has purchased a corporate sponsor's box from the Fremantle Dockers either in past years or for the next season?
- (2) Can the minister confirm that funding for the sponsor's box in any season has been drawn from the Office of Aboriginal Health?
- (3) What has been the cost to the Office of Aboriginal Health for the corporate box in each year of sponsorship?

Hon MAX EVANS replied:

I thank the member for some notice of this question. I wonder where members opposite get these questions.

- (1) No, the Health Department has never purchased a corporate sponsor's box from the Fremantle Football Club.
- (2)-(3) Not applicable.

ILLEGAL IMMIGRANTS, INFRASTRUCTURE DEVELOPMENT

569. Hon GREG SMITH to the minister representing the Minister for Works and Services:

Has the State Government been involved in any infrastructure development at either Port Hedland or Curtin Airbase that is associated with the recent increase in illegal immigrants? If so, what is the total amount of the State's financing commitment?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

The Department of Contract and Management Services is not involved in any infrastructure developments at either site.

HOME AND COMMUNITY CARE DISCUSSION PAPER

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

- (1) Was a consultant or a Health Department officer contracted or employed to prepare the paper entitled "Home and community care safeguards policy fee limit - a discussion paper" dated 4 October 1999?
- (2) If a consultant was contracted, what was the cost of preparation?
- (3) Why was a consultant contracted?
- (4) What input did the fees working group have to the discussion paper?
- (5) Were consultations undertaken with metropolitan, regional and remote area service providers?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

- (1) The discussion paper was prepared by the fee limit subgroup of the home and community care fees working group. The subgroup comprised representatives from industry and consumer bodies. A consultant assisted in the drafting of the discussion paper.
- (2) The cost was \$1 300.
- (3) This project is a high priority of the HACC fees working group. Therefore, the contractor was required to ensure the deadlines were achieved.
- (4) The paper was a result of several subgroup meetings and was jointly drafted by members of the subgroup.
- (5) The discussion paper is the first of a two-stage process. The first stage is the consultation process and the second stage is the final report to the Minister for Health. All providers received a copy of the discussion paper and were given a six-week period to provide written responses. The deadline for submissions is today. The subgroup will be meeting shortly to review the written submissions received as a consequence of the first stage and the fees working group will consider the draft final report for recommendation to the minister.

DEPARTMENT OF MINERALS AND ENERGY, STAFF PROCESSING MINERAL LEASE APPLICATIONS

Hon N.F. MOORE (Minister for Mines): I seek leave to make a correction to question without notice 206 asked by Hon Nick Griffith on 15 September 1999.

[Leave granted.]

Hon N.F. MOORE: In the original answer to that question it was stated that -

The number of staff dealing with the Native Title Act process was increased by seven in the first half of 1997.

The response should have stated -

The number of staff dealing with the Native Title Act process was increased by seven over the period July 1996 to August 1998.
