

# Legislative Council

Wednesday, 25 October 2006

THE PRESIDENT (Hon Nick Griffiths) took the chair at 2.00 pm, and read prayers.

## PAPERS TABLED

Papers were tabled and ordered to lie upon the table of the house.

### MINISTER FOR EDUCATION AND TRAINING - CONFIDENCE OF THE HOUSE

#### *Motion*

HON PETER COLLIER (North Metropolitan) [2.02 pm]: I move -

That this house has lost confidence in the capacity of the Minister for Education and Training to carry out her duties to the satisfaction of the Western Australian community and calls on the Premier to replace her immediately.

This is not a motion that I move lightly, and it is one that I felt a little reluctant to move because moving what is essentially a motion of no confidence in a minister of the Crown is a serious step. I feel we have reached the situation in the portfolio of education and training whereby some credibility and confidence, which I feel are sadly lacking at the moment, need to be restored to the education sector. The only way we can do that is to have the Minister for Education and Training removed from her portfolio and replaced.

I start my comments by referring to the overall notion of the principle of ministerial responsibility, because that is essentially what this debate is all about. Individual ministerial responsibility is one of the most fundamental components of our liberal democratic system. I read an article in today's *The West Australian* which laid claim to the fact that the notion of individual ministerial responsibility is a lost art form; that it is actually a lost principle. I would like to think that that is not the case and that the requirements, expectations and challenges of a minister today remain exactly the same as they have been since the inception of this Parliament. It is for that reason I move this motion and seek the support of members. I feel that individual ministerial responsibility, in the case of the Minister for Education and Training, is sadly lacking.

To digress for one moment, I will remind members what individual ministerial responsibility is. There are a number of different definitions of ministerial responsibility but they all come back to the common theme of accountability and respect for the position. I will read from the Wikipedia encyclopaedia. It states -

... Individual ministerial responsibility is a constitutional convention in government using the Westminster System that a cabinet minister bears the ultimate responsibility for the actions of their ministry. Individual Ministerial responsibility is not the same as cabinet collective responsibility, which states that members of the cabinet must approve publicly of all its collective decisions or resign.

This means that if waste, corruption or any other misbehaviour is found to have occurred within a ministry, the minister is responsible even if the minister has no knowledge of the actions. A minister is ultimately responsible for all actions by a ministry. Even without knowledge of an infraction by subordinates the minister approved the hiring and continued employment of those civil servants. If misdeeds are found to have occurred in a ministry the minister is expected to resign. ...

The principle is considered essential as it is seen to guarantee that an elected official is answerable for every single government decision. It is also important to motivate ministers to closely scrutinize the activities within their departments.

That is a general overview of the Westminster model of individual ministerial responsibility. It is, as the definition stated, a convention. I refer now to Graham Maddox, a renowned Australian political theorist. He adds to that definition, but from an Australian perspective. He states -

Government is too great and complex a business for every minor decision to be brought to the attention of cabinet. Each minister is, as some have described it, a kind of 'managing director' of his or her department, who may delegate non-controversial decisions to the permanent officials of the department, but who will normally require matters that may become politically sensitive to be referred to him or her in person. It is up to the minister to be aware of what is going on in the department, and to be sufficiently in control to know that what is delegated is likely to remain politically neutral. In any case, all business conducted by the department is done in the minister's name or at his or her direction. The minister will be quick to take political credit for the success stories of his or her department, but he or she must also accept criticism when things go wrong. ...

Under individual responsibility, the minister whose department has failed to perform up to public expectation or, worse, has been tainted by public scandal, should resign his or her commission. . . . More important for our discussion of democratic theory, however, is the view that the minister who is the responsible head of a department of state should be seen to be accountable to the public. His or her resignation or removal should confirm the people's confidence in democratic government: the rulers are accountable to the people, and hold office only so long as they perform satisfactory service to the people.

The Labor Party was very big on individual ministerial responsibility going into the 2001 election. It hounded the Court government over and over about the accountability, or lack thereof, of several of its ministers. In its policy statement in 2001, headed "Labor. accountability", it referred to "Integrity in Public Life" and stated -

Public confidence in Western Australia's political processes and public institutions is vital. Labor will lead by example in its objective to improve the quality of the State's political life.

A strong public service is essential for an open and accountable government. Public servants must be free from political interference and able to give professional advice while carrying out their public responsibilities.

It then refers to the ministerial code of conduct and says -

Labor recognises that being a Minister of the Crown demands the highest standards of probity, accountability and integrity in the exercise of public duties. . . .

Labor will ensure that all Labor Ministers are bound by a Ministerial Code of Conduct that meets the fundamental principles laid out by the Commission on Government.

Labor will:

. . . implement a Ministerial Code of Conduct as a matter of priority;

I have with me a copy of the Labor ministerial code of conduct, and I draw the attention of the house to the following -

Ministers have significant discretionary power and make decisions that can greatly affect individuals and the community. Consequently, it is necessary to set higher standards of conduct for them than for other categories of elected office holders.

Being a Minister of the Crown demands the highest standards of probity, accountability, honesty, integrity and diligence in the exercise of their public duties and functions. They must ensure that their conduct does not bring discredit upon the Government or the State.

This code of conduct has been developed in response to widespread public concern about the conduct and accountability of public officials.

. . .

### **3. Conformity with the Westminster principles of accountability and collective and individual responsibility**

Under the Westminster system of government, Ministers have both collective and individual responsibilities.

A Minister's responsibility to act as a trustee of the public interest should always be paramount in the performance of their functions.

The Westminster system requires that Ministers are answerable to Parliament, and through Parliament to the people.

In addition, Ministers are accountable to both the community and Parliament for the administration of their departments, authorities and statutes. Ministers should be as open as possible, and give reasons for, their decisions and actions to ensure they are working in the public interest.

The reason I read all of that is to set the scene for where I am about to go on the points I want to make. There are clear-cut standards of ministerial responsibility that ministers must adhere to if they are to maintain the integrity of this chamber and the parliamentary system as a whole. I suggest to the house that perhaps those standards have not been reached in the education portfolio.

In the 18 months since the Minister for Education and Training succeeded to the title there has been a litany of problems and crises - one after the other. Effectively, as a result of those problems, confidence in the education sector is at an all-time low. I love education; it is the passion of my life. As a lifetime educator, I hate to see the education sector lacking in confidence. There is such a lack of confidence permeating throughout the education sector that I believe the only way to return confidence to the sector is to remove the Minister for Education and Training.

I will make a few comments about one issue that I feel could have been avoided or resolved earlier, which ideally would have been much more beneficial to the reputation of the Minister for Education and Training. I refer to the flawed implementation of the courses of study. From the time the minister hit the ground running there have been problems with the implementation of the courses of study. That issue single-handedly resulted in the erosion of confidence in the decision-making processes of the Minister for Education and Training, the Curriculum Council and the Department of Education and Training.

I ask the house for a moment's indulgence to explain why we have these problems. The problems are so fundamental, transparent and easy to understand that I find it difficult to understand why the minister had to be dragged kicking and screaming to finally delay implementation of the courses of study. I referred in a speech I made in this place last year about a report that was made to the Curriculum Council by Professor Jim Tognolini from the Educational Testing Centre at the University of New South Wales, Professor David Andrich from Murdoch University and Professor Sam Ball from the University of Melbourne, titled "International Best Practice in Outcomes-Based Assessment Related to Post-Compulsory Education". In its conclusion, according to my notes, the report states -

In relation to

- a set of comparative case studies of specified systems in Australia, North America and Europe (including the UK), and
- expert analysis and synthesis based on the relevant literature on outcomes-based assessment it was concluded that the Curriculum Council in Western Australia has extended the outcomes based principles in curriculum and assessment beyond those in most other jurisdictions, especially internationally.

That report was written for the Curriculum Council in 2001. It was evident to anyone worth their salt in education that the model that the Western Australian Curriculum Council and the government was adopting was more pure than any other model and that there would always be issues associated with it. It was not as though these issues arose only at the beginning of this year. There was sufficient disquiet in the education sector about the K-10 curriculum framework to suggest that the problems would be compounded when the framework moved forward into years 11 and 12.

It is interesting to note that David Andrich wrote another report on assessment, given that he co-wrote this previous assessment of the courses of study for the Curriculum Council, earlier this year. Initially the Curriculum Council rejected his recommendations, but it is clearly evident that after the debacle that has occurred in the past six months it will now embrace his recommendations. The problem is that every sector of the Department of Education and Training in the past 12 months quite clearly articulated the problems. Briefly, the problem with the more pure form of outcomes-based education is that it lacks prescribed content, with which teachers had a very real problem. It came out loud and clear that teachers needed prescribed content. There were therefore very vague, nebulous outcome statements with which teachers had a real problem. One issue was that the outcome statements themselves did not sufficiently resolve the problems and concerns of the teaching fraternity. However, the most significant issue and the one with which teachers had a real problem with implementation was the assessment procedure. In essence, in all years there are progress maps for the courses of study, which are a continuum for students as they move through their courses. The problem is that the determination on where a student moves in a particular level is very subjective. This subjectivity has led to a lot of problems. However, the biggest problem comes about when students move into years 11 and 12, which of course is a move into a high-stakes area and paves the way for tertiary entrance. How on earth can teachers deal with tertiary entrance from a level? It simply cannot be done. Of course, because there is so much subjectivity involved, at the same time there are real problems with moderation. That is why I have asked about a dozen questions about moderation since I have been a member of this place. Blind Freddy could have seen and told anyone that there was a problem with the courses of study. Virtually from the day I came into this place I have heard the Minister for Education and Training say over and over again that there is no problem and that it is the philistines in the community that are creating the problem, such as People Lobbying Against Teaching Outcomes, *The West Australian*, the opposition, Kevin Donnelly and everyone else. She has said that most people like the courses of study and that 90 per cent of people like the assessment procedure. That could not be further from the truth.

In a speech I made about six months ago I showed just how ludicrous this assertion by the Minister for Education and Training was and just how out of touch she was. I referred to dozens of high-calibre education groups and individuals who had a real problem with the courses of study. I will reflect on a few of those groups. I will not refer to the whole lot but to a large number of the most significant groups. I made the speech in May of this year, and there is a reason I emphasise that date. The groups wanted a delay in the implementation of the courses of study so that the endemic problems could be corrected and so that everyone could breathe a sigh of relief and move forward with implementation of the courses of study. The groups and individuals, who did not

want much, just a delay, were: the State School Teachers' Union of WA; the Western Australian Council of State School Organisations, the pivotal parent body of state schools; the Independent Education Union; the Association of Independent Schools of WA; the Catholic Education Commission; the Association of Heads of Independent Schools; the WA College of Teaching; the Geographical Association of Secondary Schools; Bruce Hancy, president of the Economic Teachers Association; the History Council of Western Australia; the WA branch of the Statistical Society of Australia; David Gee, headmaster of Wesley College; Reverend Andrew Syme, headmaster of Scotch College; Glenda Parkin, principal of St Stephen's School; Margaret Herley, principal of Iona Presentation College; Ian Elder, principal of Sacred Heart College; the former principal of Christian Brothers College, Alan Wedd; Dr Pam Garnett, dean of curriculum at St Hilda's Anglican School for Girls; Rossmoyne Senior High School science teachers; Associate Professor Richard Berlach of the School of Education at the University of Notre Dame Australia; David Ralph, chemistry program chairman at Murdoch University; Bill Leadbetter, former chief examiner of history; Jan Bishop, current chief examiner of history; Professor David Black from Curtin University of Technology and former chief examiner of history; Dr Bobbie Oliver, senior history lecturer at Curtin University of Technology and currently on the Curriculum Council of WA advisory panel; Professor Ian McArthur, University of Western Australia physics lecturer; Bob Loss, head of physics at Curtin University of Technology; Dr Niall Lucy, Curtin University of Technology English lecturer and former member of the English examination panel; Professor David Andrich, Murdoch University assessment expert; Associate Professor Neville Bruce from the University of Western Australia and a current member of the ARM panel for the human biology course of study; Dr Debra Judge, from the University of Western Australia and current chief examiner of the human biology TEE examining panel; Dr Peter Roberts from Edith Cowan University and a member of the human biology TEE examining panel; and Associate Professor Linc Schmitt, of the University of Western Australia and a previous member of the human biology TEE panel. I have gone through that rather extensive list to indicate that it was not one or two people, or a group of dissidents from the wilderness, who were seeking a delay. Every single group of prominence in the education fraternity was seeking a delay - every group. Not one group was not seeking a delay; every single group was calling for a delay. However, at the time, over and over again we heard from the minister that we did not need a delay. She kept saying that the small vocal minority were the only ones who were concerned. That was not the case. What was happening to education in this state at the time? Confidence was being depleted on a daily basis. Teachers were disillusioned; they were disengaged from and disempowered in the decision-making process. We are talking about the education of our students, yet we had to put up with this rot. It was an absolute debacle, which could have been avoided if the Minister for Education and Training had eaten humble pie. It could have been avoided if, back in January or February, she had listened to the group that she purports to represent, and said, "Yes, I have listened; I am performing my role of accountability as the Minister for Education and Training, and I am going to delay it, engage everyone in the decision-making process, and we will all move forward together in 2008".

**Hon Kim Chance:** Is that not what we are doing now?

**Hon PETER COLLIER:** I wish this had occurred in February. The damage that has occurred to education and the cynicism and negativity that permeates through the education system now is profound. It could have been avoided.

**Hon Kim Chance:** Even though the issue is fixed.

**Hon PETER COLLIER:** Absolutely. It has not actually been fixed or resolved. We are still waiting for things. I asked questions about some moderation procedures at a budget estimates hearing two weeks ago. Things on the Curriculum Council web site are inaccurate; we are constantly finding inaccuracies. Teachers are constantly asking what will happen with assessment and with the courses of study. Resolution just did not occur. It is the role of the Minister for Education and Training to engage members of her sector. She did not do that.

I compiled the list that I just read out to this chamber toward the end of May 2006. However, on 11 May and 25 May the Minister for Education and Training stood in this chamber and said that 90 per cent of teachers supported her. Once again we heard a vitriolic attack on the philistines - the non-believers. She was out of touch. This was the Minister for Education and Training, for goodness sake! If she is not listening to the union, the sectors, the Association of Independent Schools of Western Australia or the Catholic Education Commission, who is she listening to? That was the most difficult part of this issue for me. As a former educator, and as a member of Parliament, it was very difficult seeing my former colleagues in such a state of dismay. That is why I needed to get through the whole notion of the courses of study. I will reinforce my point. I will not read too many articles to the house, but two very brief ones typify and support this notion of what the minister said in the chamber about the 90 per cent. The first article states -

**Drop OBE, it's a dead issue, says Ravlich.**

Education Minister Ljiljana Ravlich yesterday declared that WA's controversial outcomes-based education system was a "dead issue" - months before a parliamentary team inquiring into the bungled introduction of OBE to Years 11 and 12 delivers its final report.

Asked whether she accepted that some teachers were not confident with sweeping and ongoing changes to the education system, Ms Ravlich said there might be a “very few” teachers who did not feel entirely comfortable but they would receive district office support.

“I think OBE is a dead issue. It has been overplayed,” she said.

The headline of the second article is, “OBE worries ‘an overreaction’”. The interim report of the parliamentary committee stated that the committee required all the deadlines to be met by the end of term 1. I stood in this chamber on 13 April and asked a question about the deadlines. The exams were not prepared; they were not ready. Teachers were to go to professional development sessions without having any exams to work on, because they were not ready. If the recommendation of the parliamentary inquiry had been implemented, all the courses should have been delayed and we would have moved forward. The minister’s response was as follows -

#### **OBE worries ‘an overreaction’**

Education Minister Ljiljana Ravlich has shrugged off teachers’ concerns about delays in delivering sample exams for the new high school curriculum, claiming people’s anxieties were an overreaction.

“It’s not the end of the world and I’m not going to slit my wrists over this,” Ms Ravlich told *The West Australian* yesterday.

...

Ms Ravlich said “there’s no way” she would delay the new system. “If people think this is the biggest crisis facing WA, then they need a reality check,” she said.

As I said, at that time the education sector was saying quite categorically that it wanted a delay in the implementation. The minister was ignoring the sector that she purports to represent. At the same time, because she was not getting her way and people were not listening to her, she tried other avenues through which to get her way. First of all, on 26 May, as the State School Teachers’ Union was about to hand down its decision on what it would do with the courses of study, the government gave the teachers a pay offer of 12 per cent over two years - hallelujah! They had been negotiating for nine months, but the government happened to choose the very day that the teachers’ union was to hand down its edict on what teachers should do with the courses of study. Even the least cynical person would suggest that there might be a semblance of a bribe in that aspect of negotiation. Fortunately - it does not surprise me, because the State School Teachers’ Union listens to its members - the union thanked the government very much for the pay offer and said that it would take it, but also that it would delay the implementation of the courses of study. That put a real spoke in the wheels for the Minister for Education and Training. At the same time, the minister was still not satisfied, and was not listening to the various education sectors, so she thought that she would try to force them into submission. She sought some advice from the education department. Briefing note request DK 032006 states -

The Minister urgently requires advice regarding EBA Curriculum Implementation SSTU Industrial Action.

#### **SPECIFIC QUESTIONS**

1. What clause(s) can be placed into the new EBA to restrict any industrial action being taken by the SSTU to hamper or stop the implementation of new curriculum courses E.G. Outcomes Based New courses of study?
2. What clause(s) if any, in the existing EBA can be used to restrict SSTU industrial action in delaying the new courses of study?
3. What performance indicators could be applied in regards to curriculum implementation?
4. What would a restriction of industrial action (as outlined above) have on the current EBA negotiations?

The minister was trying to link the EBA agreement with compliance with the implementation of the courses of study. She could not win the teachers over. She could negotiate with them to try to resolve the issues. Therefore, she tried to link the EBA agreement with compliance with the implementation of the courses of study. Members should not forget that this briefing note is dated 15 May 2006. Ten days later, on 25 May, she stood in this chamber and said that 90 per cent of teachers supported her. If she felt so confident in her position, why was she trying to get the union to comply with her demands? Why on earth did the minister not listen to the teachers?

I believe that the minister lost sight of her ministerial responsibility. She was thinking about her political survival, whereas in reality, everyone was telling the minister that she should simply delay the implementation of OBE. That was the most logical solution, but no, we could not have it. As a result of that document, I asked the minister in the chamber what was the response from the education department. The minister basically said, “Get lost”, so I submitted a freedom of information application for the response from the Department of Education

and Training. The Department of Education and Training rejected my freedom of information application. I put in for an internal review and that was subsequently rejected so I undertook an external appeal to the Information Commissioner. I am delighted to be able to say that yesterday afternoon I was granted access to that document.

**Hon Ljiljanna Ravlich:** She is a good commissioner.

**Hon PETER COLLIER:** She is a good commissioner and the minister could have saved her the trouble if she had given me access to that document. Quite frankly, the response from the Department of Education and Training does not surprise me. It states the bleeding obvious and it is exactly what members and the minister should have known. The recommendation reads -

It is recommended that no action be taken in relation to seeking clauses in the replacement agreement to restrict industrial action by the SSTUWA on the grounds that the negotiations are at a delicate stage and are close to being finalised, and the good will and cooperation is demonstrated by the SSTUWA in relation to operational matters is likely to fragment.

Of course they are likely to fragment. The minister is saying, "Let's try and make this conditional", and, of course, the union will be upset. Imagine if an industry group tried the same thing on one of the unions. Imagine what the Labor Party would say. I find it the height of hypocrisy. It is appalling. The response by the Department of Education and Training states -

What clause(s) can be placed into the new EBA to restrict any industrial action being taken by the SSTU . . .

**Answer:** None as the SSTU would not agree to such a clause. The Department would also not be successful in pursuing a clause of this nature if the matter was arbitrated. The Western Australian Industrial Relations Commission (WAIRC) would not allow a clause that contravenes the objects of the *Industrial Relations Act 1979* to appear in a registered agreement.

An issue that appeared to be of minimal significance to the minister, is obviously of significance - it involves trying to contravene the Industrial Relations Act. To continue -

What would a restriction of industrial action (as outlined above) have on the current EBA negotiations?

**Answer:** There is no ability to restrict industrial action taken by the SSTUWA other than through the WAIRC conciliation and arbitration processes. Any attempt by the Department to restrict a union's right to take industrial action is likely to undermine the substantial progress in negotiations made to date and the union's commitment in trying to quarantine the bargaining process from the implementation of the new courses of study. The risk for the Department is that the SSTU leadership may refuse to recommend that the next offer be put to a membership ballot.

The response from the Department of Education and Training is evident. However, the Department of Education and Training should not have been put in that predicament. If the minister had listened, there would not have been any need for her to go down that road.

**Hon Paul Llewellyn:** Will you table that document?

**Hon PETER COLLIER:** I have no problem with that. I seek leave to table the document titled "Briefing Notes for Education and Training Regarding EBA and Curriculum Implementation SSTU Industrial Action".

Leave granted. [See paper 2154.]

**Hon PETER COLLIER:** Would the member like the original briefing note?

**Hon Paul Llewellyn:** Yes.

**Hon PETER COLLIER:** I also seek leave to table the briefing note request DK O32006 from Hon Ljiljanna Ravlich, Minister for Education and Training, to the Department of Education and Training.

Leave granted. [See paper 2155.]

**Hon PETER COLLIER:** Having said that, I found this comment from the minister on 8 May in an article headed "Teachers Demand OBE Meeting" a little too cute. This was at a time when we were reaching a crescendo with this issue. The union wanted a good, valid, just and fair outcome for their members. The article reads -

The State teachers union is demanding a meeting with education chiefs to ask that they delay new outcomes-based education courses planned for next year as Education Minister Ljiljanna Ravlich refuses to acknowledge there are problems with the planned rollout of the courses and says there is no prospect of a delay.

Teachers are considering a ban on the Statewide introduction of all new OBE courses next year.

The State School Teachers Union's stance has firmed since president Mike Keely said last week it was likely delegates would vote on whether to ban next year's implementation of the OBE courses at the union's State council next month.

This is the interesting bit -

Ms Ravlich said the union was using OBE concerns as a bargaining chip in pay negotiations, an allegation Mr Keely rejected. She claimed growing dissent over OBE was a beat-up orchestrated by the teachers' lobby group, PLATO.

"The teachers that I meet are proactive, are enthusiastic and want to get on with the job and the vast majority of teachers out there are sick and tired of a small minority dragging them down and the whole process down," she said.

"I will not be sacrificing the opportunities of students on account of a small number of dissatisfied teachers who for their own reasons are just not interested in the best welfare of students.

"The only people who seem to be having a major problem with the new courses of study and OBE seems to be *The West Australian*.

The Minister for Education and Training accused the union of using OBE as a bargaining chip in pay negotiations. I remind the house what I quoted from the briefing note request from the minister dated 15 May, and the article I read was published on 5 May. We would not find a more vivid example of the pot calling the kettle black.

I come back to the issue of courses of study. If the minister had listened from the start and performed her role, I would have supported her. I would have supported the notion of a delay - I have said that categorically, transparently and consistently - and we could have moved forward and the anxiety would have been removed from the equation. All the angst would have been removed. Certainly, it would have needed some refinement but it could have been achieved had all sectors of the education community been engaged.

With those points about the courses of study in mind, it brings me to the government's code of conduct for ministers. It reads -

In addition, Ministers are accountable to both the community and Parliament for the administration of their departments, authorities and statutes. Ministers should be as open as possible, and give reasons for, their decisions and actions to ensure they are working in the public interest.

If the minister had been working in the public interest on the implementation of the OBE, she would have listened to the public. If the minister had been interested in being open, she would not have gone, in a clandestine fashion, and sought advice on how to force the union into compliance. If the minister had been open and transparent, she would have provided me with that document when I asked her for it in May. I would not have had to go through the process of freedom from information. Its availability is in the public interest. The first time I was refused access to that document, the issue was that it would not be seen to be in the public interest to reveal it. How could it not be in the public interest? This is an issue that affects education and virtually every family in Western Australia. How could it not be in the public interest? Did it include something about which the minister was ashamed? It beggars belief. The other reason that I was not granted access to the document is that it was deemed that its release would have a negative impact on the department's industrial relations and the relationship between the SSTU and the department. Enough has been said on that. That is blatantly obvious and was clear from the word go. I do not know why on earth the minister went down that path in the first place. If she had confidence in the direction she was taking, there was no need for her to worry.

The next issue concerning the role of the Minister for Education and Training is the complaints management unit. The unit was established within the Department of Education and Training by the former Minister for Education and Training, now the Premier, Alan Carpenter, in 2002. It was deemed to be a vehicle for complaints from teachers, administrators, parents and students. A review was tabled in March this year titled the "Complaints Management Review". It was headed by former director general Peter Browne. It refers to a complaints management unit. I will read some of the findings of that review. This review looks at the complaints within the department, of which there have been dozens, and these are some of the more choice selections -

... the findings highlighted -

...

- a lack of effective case management; inadequate record keeping and systemic reporting leading to inconsistencies and a lack of faith in the process.

- the adoption of a “one size fits all” approach to employee performance and misconduct matters. It was stated that a structural failure of such an approach is a perceived lack of transparency in the decision making framework and the management of risks.
- a lack of information, transparency and support. . . .
- a perception that processes adopted are there to protect DET and its image by hiding behind bureaucracy rather than sorting the matter out in a timely fashion based on substance or lack thereof.
- a lack of “testing” as to the veracity of allegations and responses.
- . . . .
- an inability to take actions against those who make wrong or malicious accusations.
- . . . .
- the CMU does not assess track, monitor, record or report on the status or outcomes of all complaints systematically.

That was a report on the complaints management unit. Obviously, we do not have a particularly professional or, dare I say it, effective complaints management unit in the Department of Education and Training. The Minister for Education and Training apparently knew very little about this report. This is a report on a very significant component of her portfolio, the complaints management unit within the Department of Education and Training. On 19 October 2006 she stated -

I understood that Peter Browne was doing some work in the department, the nature of the details of the work were not conveyed to me . . .

She did not know what Peter Browne was doing. He was involved in a comprehensive report on the complaints management unit. She was unaware that this was occurring. That would appear to be contradicted by a question without notice that she answered on 16 March 2006 asked by Hon Simon O’Brien. He asked-

- (1) Will the report of the review into the internal procedures of the complaints management unit, currently being conducted by Peter Browne, be tabled in this place; and, if not, why not?

The minister replied in March this year. We should remember that because she stated last Wednesday that she did not know anything about it. She replied -

- (1) No. I will not be tabling the report of the complaints management unit in Parliament for the reason that it is an internal report designed for internal purposes. The report was never designed or scoped as a public document and I do not see any reason for that to change. Quite clearly, there are internal issues, and obviously the department, in seeking best practice, needs to have a full and frank report in order to provide direction.

The minister answered that question in March, yet in October she did not know anything about it. There is obviously a problem with memory loss.

**Hon Kim Chance:** Did you give any notice of that question in October?

**Hon PETER COLLIER:** It was from Hon Simon O’Brien.

**Hon Ljiljana Ravlich:** It was only half a question anyway. It was the first part of a two-part question.

**Hon PETER COLLIER:** The other part is not relevant to the complaints management unit. I did not ask the question; it was Hon Simon O’Brien.

**Hon Kim Chance:** Was notice given of the question? It was asked seven months after the event.

**Hon PETER COLLIER:** I have no idea. Members can see where I am going with this.

**Hon Kim Chance:** What did the member have for breakfast on 28 March?

**The PRESIDENT:** Order, members!

**Hon PETER COLLIER:** If I were the Minister for Education and Training, and a report as damning as this on a key component of my portfolio was handed down, I would make it my job to find out about it.

**Hon Kim Chance:** As I recall, I think that was the answer she gave Hon Simon O’Brien.

**Hon PETER COLLIER:** She did not know anything about it last week.

On 12 July this year I appeared on the Howard Sattler program with the current acting director general, Sharyn O’Neill; then director general Paul Albert was away. We did a very comprehensive interview on the problems of



the complaints management unit. One response from Sharyn O'Neill when asked whether the unit was doing a good job was -

What I'm saying is that we've improved over time, but yes, there's certainly further work to be done in this area. We acknowledge that in the open way that we've taken the recommendations onboard and we're acting on those.

The acting director general did not see fit to inform her minister about the problems within the Department of Education and Training. There is obviously a problem with individual ministerial responsibility. As well as that, I have a document from the government's own media monitoring unit. Is the government telling me that the office of the Minister for Education and Training does not check the media monitoring unit? Further, this issue got widespread media publicity over two days in June. I cannot work this out. I cannot work out how the minister could not be aware of it. If the shadow Minister for Education and Training and the acting director general were involved in discussing a significant issue such as this in an interview on 6PR, would the minister really not be aware of it? Again, I get back to the whole notion of individual ministerial responsibility.

**Hon Kim Chance:** You are saying that it is a ministerial responsibility that the minister listen to radio 6PR?

**Hon PETER COLLIER:** Not at all.

Several members interjected.

**The PRESIDENT:** Order, members! This is a serious debate.

**Hon Helen Morton:** It is a serious debate.

**The PRESIDENT:** Will Hon Helen Morton please be quiet when I am speaking to the house. Hon Peter Collier has been listened to with very few interjections. Unfortunately, when one side interjects, the other side joins in. I am sure that succeeding speakers will be given the opportunity to be heard in relative silence. I trust they will be. I hope that the house does not see fit to allow itself to engage in these silly cross-interjections that prevent it from doing its job.

**Hon PETER COLLIER:** Thank you, Mr President. I appreciate that because I think the interjection was a little unnecessary. I do not expect the Minister for Education and Training to listen to every radio station and every interview. However, if an interview is taking place on an issue of profound significance to her department, one would like to think that she would be made aware of it.

I return to the government's own code of conduct. Ministers are accountable to both the community and Parliament for the administration of their departments, authorities and statutes. Ministers should be as open as possible and give reasons for their decisions and actions to ensure that they are working in the public interest. Once again, there is an aspect of accountability. I do not know what the minister's interpretation of "accountability" is but, certainly, accountability for individual ministerial responsibility is extremely lacking.

I wanted to deal with a number of issues but I will finish my speech in five or six minutes so I will deal with only the report from the Corruption and Crime Commission. That report was handed down on 16 October 2006. It was much more damning of the Department of Education and Training than was the report into the complaints management unit. If anyone has not read this document, he or she should take the time to read it because it raises serious concerns about the capacity of the Department of Education and Training to deal with issues of sexual misconduct. Part of the conclusion states -

In the Commission's opinion the case studies indicate that at the present time DET does not adequately manage sexual contact cases. On the evidence of the case studies it appears to the Commission that the following problems exist in DET's approach:

1. greater weight appears to have been given to employee welfare than to the safety and security of children policy;
2. too much responsibility for dealing with sexual contact allegations being assumed by local and district managers;
3. insufficient attention being paid to identifying and managing risks;
4. non-adherence to policies and procedures;
5. failure to give practical effect to the *Western Australian College of Teaching Act 2004*;
6. senior managers not holding local and district managers to account for their decisions;
7. insufficient attention to ensuring that police are notified and consulted; and
8. poor record-keeping.

In all of these circumstances, the Commission concludes that there are grounds for concern about DET's capacity to ensure that learning environments are safe and secure for school children, insofar as

sexual contact by DET staff is concerned. As demonstrated by the Wood Royal Commission in New South Wales a decade ago, such a deficiency leads to an ideal environment in which those who choose to sexually abuse children are likely to thrive.

**Hon Paul Llewellyn:** What is the title of the document?

**Hon PETER COLLIER:** It is from the Corruption and Crime Commission. It is titled "Sexual Contact With Children By Persons in Authority in the Department of Education and Training of Western Australia".

Also of concern regarding the CCC report is recommendation 3.1.1, which states -

In relation to roles and responsibilities within DET for dealing with sexual contact allegations, the Commission recommends that:

- a. all responsibility for dealing with suspected or alleged sexual contact be removed from local and district managers and transferred to the Complaints Management Unit;
- b. as part of the process of change arising from the review of the Complaints Management Unit, DET employ within the Complaints Management Unit appropriately qualified and experienced staff to deal with sexual contact allegations;

...

This is the very unit that I have just spoken about. I have explained the serious problems with the effectiveness of the role that it was intended to perform. What is of concern is that, once again, the minister had no idea that this investigation was even taking place. As with the review of the complaints management unit, the minister pleaded ignorance. I am astounded that that was the case. How could she not know that the Corruption and Crime Commission was investigating her department? I can confirm that she did not know. In response to a question I asked her last week about her knowledge of the CCC investigation, the minister stated -

- (1) I can confirm that I did not know that the CCC was carrying out an inquiry into the agency, investigating the matter of sexual misconduct by staff towards students. In fact, I noticed that the member left out one paragraph of the CCC statement, which states -

The Minister was briefed about the report (but did not receive a copy) late in the afternoon of Thursday 12 October, and the Premier and Leader of the Opposition received an embargoed copy on Friday 13 October.

I did not know that an inquiry was occurring into the department. I had been advised that ongoing work was taking place, with two agencies coming together to improve the processes of the complaints management unit.

- (2) I first found out about the inquiry when I met with officers from the Corruption and Crime Commission on the afternoon of Thursday, 12 October.

With all due respect, that is very difficult to understand. How could the minister not have known that the CCC was investigating the Department of Education and Training? She was aware that its officers were in the department, but I can assure her that if the officers of the CCC were smelling around in her department, they were not there to check out the colour coordination. She should have assumed that there was an issue. As well as that, the Corruption and Crime Commission released a media statement on 18 October 2006, which stated -

The Commission released a Media Statement on 1 June 2006 stating that "the Commission plans to table a report in Parliament on this important issue (sexual misconduct towards students) later this year".

A draft of the report was sent to DET on 30 June 2006.

The department returned its response on the 7 August 2006.

...

Executive Director, Mike Silverstone, said from the Commission's point of view, there was no restriction on the department informing the Minister about the report.

The Corruption and Crime Commission released a media statement on 1 June and the minister still did not know anything about it. She simply did not know that the Corruption and Crime Commission was investigating issues within the Department of Education and Training. During the minister's response to that question I interjected by asking, "What about the media statement of 1 June?" The minister's response was, "I do not want to get into that." Of course she did not want to get into that. It is absurd and appalling that the Minister for Education and Training was not aware that the Corruption and Crime Commission was investigating allegations of sexual misconduct in her department in June this year when that report was released. The media statement got significant media coverage over the next two days.

What is the problem here? This relates to accountability and individual ministerial responsibility. The minister can keep making excuses, but one of my affirmations in life is "Make no excuses". There are no excuses; she should take responsibility. It is not an excuse for the minister to plead ignorance of issues such as this by claiming a lack of knowledge about serious investigations into the complaints management unit and of sexual misconduct in her department. She has failed to meet her responsibilities and she should not be in that position. That is why I have moved this motion. Why was the Minister for Education and Training ignorant of the fact that the CCC was investigating her department? I refer to an e-mail sent from the Department of Education and Training to district directors at 1.58 pm on Tuesday, 15 August 2006, which in part states -

Hi Everyone

The Minister's Office has requested the names of all the schools visited across the State by Hon Peter Collier (see today's *Inside Cover*).

The minister thought it was more significant to be concerned about the schools that I was visiting than to be concerned about a CCC investigation into sexual misconduct in schools. That is appalling. Quite frankly, it is my right to visit schools in this state, and the impact of this e-mail has been profound. As a result, school headmasters and principals are now reluctant for me to visit their schools. That has been the impact of that e-mail, but that is irrelevant; that is an argument for another day. The simple fact of the matter is that the Minister for Education and Training determined that tracking where I was going throughout the state was more significant than tracking what was going on within her own department.

In conclusion, the minister has been found wanting in her ministerial responsibilities virtually from day one. She has shown complete disregard for the sectors that she purports to represent. It started with the debacle that was the flawed implementation of the new courses of study and her ignorance of problems with the complaints management unit and of the CCC investigation. More recently, there have been accusations of bullying a principal of a remote district high school, her completely inappropriate reaction to the Governor-General's criticisms of Wiluna Remote Community School and so on. I remind members that the Minister for Education and Training has failed on numerous occasions. She has failed in her most fundamental role - individual ministerial responsibility. Accountability and transparency are essential components of this facet of our liberal democratic system. I ask members to consider the points that I have made on the motion when they vote, and to reinstate some sanity and credibility to our education sector. This can best be achieved by supporting the motion to remove the Minister for Education and Training.

**HON LJILJANNA RAVLICH (East Metropolitan - Minister for Education and Training)** [2.56 pm]: I assure you, Mr President, that I will not support the motion. I do, however, welcome the opportunity to put a number of issues on the record. I thank the honourable member for moving this motion because it allows me to address a number of matters that have been raised by members in this place. First, no member likes a motion of this nature. However, I see it as an opportunity rather than a threat, because it will provide me with the opportunity to set the record straight for a number of members. It will provide me with an opportunity to inform the house of a range of issues surrounding the tabling of a very concerning report by the CCC into my department and the way in which the department has dealt with complaints of alleged sexual misconduct by staff with students.

I take this matter very seriously. I also take my role as Minister for Education and Training very seriously. First, I will address very quickly the issues that have been raised about outcomes and standards education. When I became minister, obviously I had been out of the system for some time. The education system had moved on. I certainly remember the debate many years prior about the Court government's policy on the introduction of outcomes and standards education. At the same time that it created the Curriculum Council, it abolished the positions of 200 curriculum writers in the then Department of Education. Yes, I have a very vivid recollection of the theory on outcomes and standards education. Members can read it for themselves in the second reading speech of Hon Colin Barnett, the then Minister for Education, when he referred to throwing out the curriculum. He was going to throw out the content, because all that was needed was a purist model in which students would just have to work towards outcomes. That is why the curriculum writers within the department were to be removed, because there was no longer a need for a curriculum. The new system was about the creativity of teachers; it was about teachers knowing clearly what the outcomes were and not being bound by a prescriptive syllabus or content under which to achieve those outcomes. That was the philosophy, which was underpinned by an agreement signed in 1999 in Adelaide between Minister Barnett and the federal education minister at the time, Minister Kemp. That was the history of it, and members should never lose sight of that.

When I became Minister for Education and Training there were some issues surrounding outcomes and standards education, but I do not know that anybody at any point in time had said to me that we should go back to an old system that we had left in 1997; not one person said to me that was the way to go and that we should abandon outcomes and standards and go back to where we were 30 years ago. There had quite clearly been a major investment in outcomes and standards. I support outcomes because I see them introduced in all Organisation for

Economic Cooperation and Development nations. Quite frankly, I want Australia to keep up with the rest of the world. I do not want Western Australians and Western Australian students lagging behind. Is anybody for a moment saying to me, as Minister for Education and Training, that Western Australia should not be consistent with OECD nations? Is anybody saying to me that we should go back to where we were 30 years ago? We quite clearly had some difficulties with the introduction of outcomes and standards. As a new minister, I would certainly have preferred it had those issues not existed, but the fact is that they did and it was my responsibility to do the best I could under very difficult circumstances by making sure that we addressed the issues that were raised.

It could be argued that perhaps I did not get there as fast as some people would have wanted. However, people could not argue against the determination and the aspiration to get it right for the students, the system and the teachers in this state. The course requirements for outcomes and standards are on track as per the agreement between the government and the State School Teachers' Union. Teachers' advice is being considered along with that of course experts, industry representatives and academics. The Curriculum Council has established contact and feedback databases. The new courses will have a syllabus and content. The assessment issue is being addressed. The Curriculum Council, under my direction, commissioned the Andrich report. The decision to implement the Andrich report recommendation was made under my direction. The fact that we are moving forward with the implementation of the new courses is testament to the strength of the education system generally. In fact, on Friday afternoon of last week I once again had the subject association representatives in my office together with the Independent Education Union, State School Teachers' Union and sector heads. That was probably about the fifth or sixth time that that group of people has come together. We work together to resolve and work out a way forward for ongoing implementation.

My view is that when I am advised of a problem I am responsible for making sure that something is done about it. I have overseen the introduction of a syllabus for each course, the introduction of clear and explicit content for each course, the changes to the nature and the weighting of course outcomes of some courses, the refinements to course standards, further modification to the assessment policy, adjustments to the Western Australian Certificate of Education, examinations for all courses, and a greater focus on plain English language in the course documentation. Is this a minister doing nothing? A minister who introduces a program with industry that will lead to an extra 4 000 apprentices being employed through public sector work opportunities - that is, by reintroducing training requirements for the public sector - cannot be described as a minister who does nothing. It is not a minister who does not care who reforms this state's apprenticeship training system by introducing some of the biggest reforms in nearly 100 years. It is not a minister who does not care who initiates a literacy and numeracy review. It is not a minister who does not care who implements a review of school canteens. It is not a minister who does not care who wants to pilot single-sex classes to see if they make a difference to the academic performance of students. These are not the signs of a minister who does not care. Some of these initiatives were not part of our election commitment. I do care very, very much.

I want to take members through the course of events involving the Corruption and Crime Commission. First, as I said in this place some days ago, the abuse of children in any form is totally intolerable and the department will take every measure necessary to make Western Australian schools the safest in Australia. The department willingly embraces the report and its recommendations, and it will immediately proceed with implementing all six recommendations to their fullest extent. In fact, by the time I finish my contribution I will have taken members through a plan of action that has already been devised. Every effort will be made to ensure that the department has the very best processes in place, and under no circumstances will there be any tolerance of teachers having any sexual contact with children. Under no circumstances will the department employ a person who has been convicted of sexual offences against a child, or indeed any other person. I am not interested in the circumstances of the offence. Allegations of a sexual nature against school staff involving children will be acted upon immediately via the department, and the CCC and the police will be informed. That person will immediately be removed from duties, as is currently the case.

I was very concerned when I read the executive summary of the report, when I had a meeting with the CCC nearly two weeks ago, because it made some very damning allegations about greater weight being given to employee welfare than to the safe and secure learning environment of children. The report also made a number of other observations, but the one that most concerned me was that the department was seen to be obstructing the efforts of the CCC. On Thursday, 12 October, during a non-sitting week, I was advised that I would be meeting with the CCC. It was not made clear to me why I would be meeting with the CCC, but I allocated time in my diary that would allow me to do that. I met with the CCC in the afternoon. That was the first time that I had any insight into this whole issue of the CCC inquiry into the department. In fact, my recollection is quite clearly that at that meeting I said to the people I met: "I am absolutely gobsmacked. This has come out of left field and it will be my intent that all those recommendations will be implemented." Such was my concern for what I had found out. I will add that I was given only an executive summary at that point. This is a very important point: at the end of that meeting I asked whether I could keep the executive summary and I was advised that that would not be appropriate and I was required to hand it back.

I received the full report on the Friday morning. Mr Albert had been on an overseas trip and I called him back immediately. That was the first thing I did. He arrived back late on Saturday afternoon; within a couple of hours of having received that report I had acted to recall him. There are some issues in relation to disclosure of what happens when a CCC investigation takes place into a government agency or a part of a government agency. There are also some issues for me about when a cooperative relationship between two agencies changes to a formal inquiry. These are very interesting issues to consider. I wanted to make that comment about having to give back the executive summary to the CCC at the end of that meeting because I cannot understand why, if I was allowed by the CCC to know about the inquiry into my department, as minister I was not allowed to keep a copy of the executive summary for 24 hours. That still does not make sense to me, but I will come back to the matter of communication shortly.

Was I aware that the CCC was conducting an investigation? I have to say, no, I was not aware that it was conducting an investigation. I had been made aware a number of weeks earlier that the CCC had been in the department for quite some time working with the department in relation to strengthening the complaints management processes. Was that in respect of complaints about sexual misconduct? No, that was not in relation to sexual misconduct; it was generally in relation to assisting the department in a cooperative way to work to improve the systems. The complaints management unit looks at all sorts of complaints: complaints from parents, complaints about tendering, complaints about allegations of nonperformance by teachers, etc. There was no reason for me to suspect that we were dealing with something relating to sexual misconduct. It has been put to me that perhaps I should have asked more questions at the time. At no point was I ever briefed by the director general of the department about the specific work of the CCC in the department. At no point was I briefed by the director general about any case of a sexual nature. At no time did my office receive correspondence about any one of these cases that are mentioned in the CCC report, or about any other case relating to matters of sexual misconduct.

I do not know what is in the director general's head. However, I have to ask myself whether, even if the director general had told me - let us suppose for a moment that he had - it would have altered anything. Could I have done anything? I think the answer is no. With a formal investigation going on into the department at that time, there was nothing I could have done. The fact is that these issues were not brought to my attention.

The point was made that of course I should have known that the CCC was at the education department conducting an investigation. That is what the CCC does; it investigates things and then it takes those people through a process and finds them guilty. That is the allegation. What do we see if we look at the CCC's mandate? What does it do? The CCC has a broader mandate than just to investigate government agencies and misconduct within those agencies. For example, the CCC accepts and can investigate allegations of misconduct by Western Australian public officers, including police officers and officers employed in local government. That is the broad mandate. The CCC also monitors the reporting and subsequent investigation of misconduct by public sector agencies. It also conducts education programs with public sector authorities in the community to increase the awareness of misconduct and how to prevent it. Clearly the issue for me is that if the CCC had been at the education department for quite some time and had been working in a spirit of cooperation, at what point did that cooperative working relationship between two agencies become a formalised inquiry? I would have thought that it would be appropriate for the CCC to advise the minister of such. Clearly my department did not advise me of such, but I would have thought that perhaps the CCC could have advised me.

It has been alleged by members that I should have known and I should have acted. I want to make some comments about that. One of the things the CCC commented on was the sheer size of the Department of Education and Training. We have more than a quarter of a million students, about 28 000 full-time employees and 776 schools. My working day starts at five o'clock in the morning - I do not know about anybody else - and I work through to about 10.30 pm or 11.00 pm when the Parliament is in session. I wanted to know how many pieces of correspondence I sign off on every month because the one thing I take pride in is that I like to clean out my in-tray pretty much on a daily basis. It is not an easy job, and the idea that I would be so uninterested in this that I would not bother to follow up anything or to ask any questions at all does not represent the real situation.

I want to make some comments about the Browne review of the complaints management unit. Clearly the unit had not been working as efficiently as it might have. However, having said that, it was a vast improvement on there being no centralised complaints management system at all. It was a vast improvement on that which was the case during the Court years, when pretty much everything was dealt with at a local level, and if it could be swept under the carpet, that was the way it was done. It may not have been a fantastically functioning unit but it was better than the one we had. The Browne review was never brought to my attention in a briefing note and it was never discussed with me as an item during the regular meetings I had with my director general. Okay?

**Hon Murray Criddle:** That is not okay.

**Hon LJILJANNA RAVLICH:** It is not okay. I do not believe it is okay either. I do not believe it is okay for a moment. No briefing note was received by me from the Department of Education and Training.

On 29 June 2006, which was the last sitting day of this Council before a six-week break, Bethany Hiatt had written a story, published on page 40 of *The West Australian*, saying that an internal report had found that teachers had been condemned to several years in limbo and had been denied natural justice after the Department of Education and Training investigations. The story reads -

Former education director-general Peter Browne, commissioned to review the operations of the department's complaints management unit, concluded that respect for the welfare of employees caught up in the process was deficient.

So the story went on. I will not read the whole lot. Basically it was a media story on page 40 of *The West Australian* when the Parliament was about to suspend sitting for six weeks. If members believe what opposition members have said, they would think that I did nothing and was not interested in doing anything. I read the story and sought advice from my department about it because I was concerned about it. The whole issue about a review of the complaints management unit was never raised with me by the director general during any formal meeting and I never received a briefing note on it. After reading the story, I asked the department to send me a briefing note. The briefing note that the department sent, which was put together by Alby Huts, reads -

Today's article in the Western Australian newspaper (page 40, copy attached) is another example of misreporting and misrepresentation of Departmental operations.

...

Although otherwise reported in the article, information related to the Review has long been intended to be released to the public. No information on the Review has been released by the Department through Freedom of Information.

The article is sensationalist in stating that the Review found that teachers were denied natural justice through the Department's complaints management practices. The Review Committee and its chair, Professor Peter Browne, did not support this through their findings. Complaints management involving misconduct or sub-standard performance is dealt with by the Department in accordance with the requirements of Part 5 of the *Public Sector Management Act 1994*. The rules therein are very detailed and prescriptive, placing a heavy emphasis on an individual's right to procedural fairness.

The Department does not wish to respond or comment on individual cases of complaints management but it should be noted that the examples given in the article are very misleading. They do not reflect normal practice.

The newspaper, in its reporting, is obviously aiming to raise public concerns about the Department, not founded in fact.

The Review Committee's full report has not been released. However, it forms the basis of the Executive Summary.

I do not know what other members would do if they were in my position and that was the response they received from the department, but it is wrong to suggest that I did nothing or that no action was taken.

I refer now to the question that was asked of me by Hon Simon O'Brien. Following the launch of the report, I was interviewed by the media and asked whether I knew that Peter Browne was doing work in the department. I said yes, that I knew Peter Browne was doing some work in the department, but I was unsure of the precise nature of what he was doing. Perhaps I should have been better prepared for the media and recalled a question that had been asked of me some seven months earlier. I do not know about other members, but given the volume of paperwork that I deal with on a daily basis, which is probably the greatest volume for the ministries, perhaps I should have recalled the question that was asked of me by Hon Simon O'Brien on Thursday, 16 March. It was in fact a two-part question. The first part was about the review of the complaints management unit and the second part was not about the review of the unit but about a review of the School Education Act. I did not want to mislead the media. I have no reason to mislead the media, as there is nothing for me to hide. I gave an answer to the best of my ability. I had not recalled at that time that Hon Simon O'Brien had asked me a question seven months earlier. In fact, it was one question, as there were two parts to it, but that is the big crime I have committed. I do not know whether any member of this place who was asked to recall something that occurred seven months ago would pass that test. However, clearly I did not recall the question.

**Hon Peter Collier:** We are not ministers.

**Hon LJILJANNA RAVLICH:** Okay; I am a human minister and I hope that I never stop being a human minister. I try to do my absolute best. That is exactly what I do. That is the point I want to make. However, I want to make some other comments about some questions that were asked of me by opposition members almost 12 months ago. I did not ignore those questions. Hon Barry House has alleged in this place that I ignored those questions. I did not ignore the questions; I actually sought advice. I will tell the house the response I got from my department. I sought written advice at the time about how these matters were being handled within the

Department of Education and Training. The department advised me that the allegations of sexual assaults on students by staff had been immediately referred to the police child protection squad and that the department was investigating such cases. Hon Barry House asked me a question without notice on 1 September 2005, which I answered on that date. He asked me a question also on 30 September 2005, which I answered on 11 October 2005 - I do not know why there was that delay. He also asked me question without notice 719 on 12 October 2005, which I answered on that date. I will not refer to the specific answers to those questions. He then asked me another question on 15 November 2005, which I answered on that date. He asked another question on 16 November 2005. I requested a briefing note on 17 November 2005 about the question the honourable member asked on 16 November, because I noted something consistent about them. I therefore asked DET for an overview of what was happening and to send me a briefing note on some of those issues. The department sent me a briefing note dated 17 November 2005. Once again, it was prepared by Mr Alby Huts, Executive Director, Human Resources. It states -

- Allegations of sexual assault of students by staff result in the employee being relocated to a non student contact environment until such time that the matter is resolved
- These matters are referred immediately to the Corruption and Crime Commission and the Child Protection Squad. The Department of Community Development is also advised as per Department policy
- The matters are investigated according to the disciplinary provisions of the *Public Sector Management Act 1994* or processes that mirror the Act for waged staff.

**Hon Barry House:** Were you aware that the matter had been referred to the Corruption and Crime Commission?

**Hon LJILJANNA RAVLICH:** They are, as a matter of course, referred to the CCC. The briefing note continues -

The Department's prime consideration is the safety and welfare of students in taking decisions to relocate staff accused of sexual assault of students.

The processes undertaken ensure procedural fairness to both the complainant and respondent and the reporting responsibilities of the Director General are consistent with legislative requirements.

I also had some research undertaken into what happened between 1998 and 2001. It was interesting to look at the number of Department of Education and Training staff who had been suspended during that period. In 1998 there was none; in 1999 there was none; in 2000 there was none; and in 2001 there was none. The government put the complaints management unit in place in 2002. There are statistics for staff dismissed for misconduct. In 1998, it was one. The education system is a very, very big system. In 1999 six staff were dismissed for misconduct; in 2000, seven; and in 2001, four. There are also figures for cases in which the misconduct was of a sexual nature: in 1998 there were three; and in 1999, five. It seems to me that people are judged by a different set of standards for doing the right thing. It may not be the best-performing complaints management system, but it is a lot better than what existed previously, and there is more to do to make it better.

I turn to the question of communication - that is, who should know what and who is able to know what - when an investigation takes place. When Mr Albert returned and attended a meeting in my office on the Sunday morning, we went through the five cases in the CCC report. I asked why this had not been brought to my attention. The first response given was that the Department of Education and Training had written advice from the CCC to the effect that it could use and communicate about the draft CCC report only for the purpose of seeking legal advice and preparing the departmental response. I have subsequently obtained correspondence from the CCC to Mr Paul Albert, Director General of the Department of Education and Training, dated 30 June 2006. The last paragraph of that correspondence quite clearly states -

The draft report contains official information. Pursuant to sections 152 and 153 of the Act, aside from the purposes of obtaining legal advice and formulating your response, you and your Department are not at liberty to disclose the contents or substance of the draft report.

**Hon Peter Collier:** What about the media release?

**Hon LJILJANNA RAVLICH:** Hang on; I will get to that. Members should keep in mind that when I met with the CCC, I was not even allowed to hang on to the executive summary; I had to give it back. This letter, which was received by the former director general, is very clear about how this information can be used.

**Hon Kim Chance:** Is it dated?

**Hon LJILJANNA RAVLICH:** Yes, it is dated 30 June 2006.

After the report was made public, there were issues surrounding the reason I had not been informed. There were quite clearly different views floating around the place. I thought it was very interesting that on 18 October the

Corruption and Crime Commission took the opportunity to put out a media release to clarify the situation about who could be communicated with. It seems to me that if it was unambiguous and everybody understood who could be advised about what, and under what circumstances, there would not be the need for a press statement to clarify who was allowed to know. The statement from the Corruption and Crime Commission reads -

The Commission released a Media Statement on 1 June 2006 stating that “the Commission plans to table a report in Parliament on this important issue . . .

A draft of the report was sent to DET on 30 June 2006.

The department returned its response on the 7 August 2006.

Some of those responses resulted in amendments to the draft report after examination of the points raised.

The department’s response was included in its entirety in the Commission’s final report.

On the 28 September the Commission confirmed to the department its intention to table the report.

The Minister was briefed about the report (but did not receive a copy) late in the afternoon of Thursday 12 October, and the Premier and Leader of the Opposition received an embargoed copy on Friday 13 October.

Executive Director, Mike Silverstone, said from the Commission’s point of view, there was no restriction on the department informing the minister about the report.

Clearly there were public servants in my agency - officers at levels 6, 7 or 8 - who had seen that report. I do not know; plenty of them would have seen it. The Premier got a copy; the Leader of the Opposition got a copy. However, I was not allowed to keep an executive summary; it had to be handed back. I have to say there is something wrong with that. I also say that I cannot understand why this report was not released by Commissioner Hammond himself. I cannot understand why the CCC report into this matter was released by a level 8 or 9 officer, or possibly an senior executive service level 1 officer. I have no idea; but it seems odd to me. I have to say that I am concerned. In a situation in which, as in this case, the Corruption and Crime Commission and the Department of Education and Training are working together to attend to the improvement of internal processes, at what point does a working relationship between two agencies become a formal inquiry? What is the trigger for that? I am very concerned about that. Hon Peter Collier spoke on the ABC with Geoff Hutchison, who read from the CCC report and said, “We all knew”. He implied that if the ABC and all its listeners knew about the CCC investigation, the minister should also have known about it. Hon Peter Collier said that the minister’s office carries out comprehensive media monitoring and advises her on every aspect, and so on and so on. Why did I not know? I understand that the media monitoring unit’s coverage of the Corruption and Crime Commission investigation into child sex charges against a schoolteacher included radio coverage from 1 June 2006. Radio station ABC 720 ran the story on its 6.00 pm and 7.00 pm reports. No transcripts of these items were produced. Nova and Triple J also carried the story on their 6.00 pm news bulletins. No transcripts were produced of these items. There was radio coverage on 2 June 2006. The ABC ran stories at 5.30 am and 7.00 am and, again, no transcripts were produced of these items. Radio stations 94.5, 92.9 and Nova carried the story throughout the morning and no transcripts of these items were produced. I refer now to television coverage. The item on the *7.30 Report* was not put on the video package for the minister.

The interesting thing about 1 June is that I made a commitment to this house that I would visit Wiluna and Halls Creek. I take the commitments that I make to this house very seriously, as I take my portfolio very seriously. On 1 June a couple of things happened. Firstly, at 7.15 in the morning I departed my residence for Perth airport to travel to Wiluna to deal with the issues in that town. I do not know whether radio access is available at Wiluna, because I do not usually travel with a radio.

**Hon Norman Moore:** You get radio coverage there.

**Hon LJILJANNA RAVLICH:** Hang on. My priority was to give 100 per cent attention to the people at Wiluna, and that is exactly what I did. For those members who say I was all over the place, it is clear that I was not all over the place. I was in Wiluna and my media person at the time, Michelle White, was also at Wiluna with me. On 2 June *The West Australian* carried a three-paragraph story on page 9 about a 40-year-old former teacher being charged with sex offences. No mention was made of any investigation being carried out by the CCC. The article reads -

A 40-year-old former teacher will appear in court next Wednesday after the Australian Federal Police charged him yesterday with two counts of indecently dealing with two girls while overseas.

The AFP will allege the man committed an indecent act on a 13-year-old girl while on an overseas trip in 1995.

It will also be alleged that he committed an indecent act on a 15-year-old girl on a flight between London and Kuala Lumpur in July 2003.



That was on page 9 of *The West Australian* and I have the article in my hand. This is how big the story was. I must have missed that article. On 1 June there was also reference to this teacher, who had been charged, in a media statement put out by the CCC. It is alleged that I should have been checking the Corruption and Crime Commission's web site on a daily basis. If I had known that an inquiry into my department was the subject of a CCC report, I would have been checking the CCC web site. I advise Hon Norman Moore that, at the same time, I would have been checking the CCC's annual report. If he saw this reference in the annual report and he really cared, why did he not ask me a question?

**Hon Norman Moore:** Parliament was not sitting.

**Hon LJILJANNA RAVLICH:** A phone call - anything. This is exactly the point: if I had known that there was an inquiry into my department by the CCC, of course I would have checked the web site.

**Hon Norman Moore:** Do you think it is my job to draw your attention to these things?

**Hon LJILJANNA RAVLICH:** I told the member where I was on 1 June. I did not take my computer with me to Wiluna, because my press officer and I were giving our full attention to the people of Wiluna.

On 2 June, I left my home at 6.30 in the morning to travel to the Swan Valley to give a presentation at the Swan Chamber of Commerce and the City of Swan breakfast. That was followed by a meeting with my sector heads, the opening of a new library at Mt Hawthorn Primary School and then a meeting with my director general. The issues that have come to the fore through the CCC are very serious issues. The real question is: where to from here?

I have given my agency very clear directions on where to from here, and all six recommendations will be implemented. I will demonstrate where we are heading on this issue, because it is about accepting responsibility. Firstly, all responsibility for dealing with suspected or alleged sexual contact will be moved from local and district managers and transferred to the complaints management unit. We will appoint a high-profile community professional person with a legal and/or investigative background to oversee the implementation of the recommendations in the CCC's report. Members should bear in mind that the CCC will continue to work with the department to make sure that all the recommendations are implemented. We will establish a professional standards directorate with responsibility for the internal assurance branch and the complaints management unit. The directorate will report directly to the director general.

Already we are starting to adjust the departmental structures to reflect the new directorate, and the process has commenced to inform staff of the internal assurance branch and complaints management unit. We will develop a human resource management plan to deal with the changed management processes and the proposed implementations. We will appoint an executive director of professional standards in an acting capacity. The director general has already had discussions about making sure that we second an appropriately qualified person. We are strengthening the complaints management unit by increasing its staff from 7.5 full-time employees to 15 FTEs. Members should bear in mind that they will not carry out the investigations. The investigations are contracted out.

We are also reviewing all the structures, roles and functions of the complaints management unit in light of the report's recommendations. We will ensure that the unit has strong expertise in investigation methodologies and an appropriate understanding of the legislative framework. Preliminary internal work has already commenced. We are undertaking a review of the department's organisational structures to ensure that there is a strong focus on the government's objective of a world-class education system for public schools in Western Australia. We are developing terms of reference to appoint a review chair for the review of the organisational structures. We will also be developing terms of reference and appointing a review chair for the review of district education offices. The terms of reference are being developed, and an analysis of the previous reviews has started.

A meeting with the Commissioner of Police is scheduled to seek an immediate full-time secondment of a child protection expert from the WA Police child protection squad to the new professional standards directorate. We are seeking urgent discussions with the president of the Western Australian Council of State School Organisations to establish terms of reference and functions for a new parent advocacy unit to ensure that the interests and welfare of parents and students are addressed through representation. We will also appoint an executive officer to put processes in place to establish the parent advocacy unit. By the way, I am very fortunate to have received a letter from the Western Australian Council of State School Organisations. I will read it to the house because I addressed the WACSSO executive on Sunday last. I have to say that that is not the action of a minister who does not care. The letter is from Mr Robert Fry, the president of WACSSO, and states -

I am writing to thank you for attending the last State Council meeting of the Western Australian Council of State School Organisations (WACSSO) on the 22nd October at such short notice. State Council greatly appreciated the opportunity to meet and discuss emerging issues in education in Western Australia with you.

As the peak body representing parents in our State, we welcome the Department of Education's moves to implement the six recommendations made by the Corruption and Crime Commission in the recent *Report into Sexual Conduct With Children by Persons in Authority in the Department of Education and Training in Western Australia*. We have full confidence that in your role as Minister for Education and Training, the Western Australian Department of Education and Training will be guided towards a successful resolution of these matters.

State Councillors are supportive of both yours and the Department's proactive response and believe that all actions will be driven by the underlying notion that children must come first in education.

As an organisation we had a truly positive relationship with the past Director General, Paul Albert, and the Department of Education and Training, and look forward to continuing this important partnership with Acting Director General, Sharon O'Neil. In closing, I would like to note that your presence at State Council clearly demonstrated your dedication and that the Department continues to see parents as key stakeholders in education.

That is not the first supportive letter I have received from WACSSO. I will read to the house a letter dated 26 June -

Dear Minister Ravlich,

I am writing to you on behalf of the Western Australian Council of State School Organisations (WACSSO). WACSSO State Council wishes to thank you for your continued hard work in ensuring that West Australian students in public education are able to access the highest quality education through excellence in teaching, curriculum and support.

WACSSO State Council met on the 24th and 25th of June and passed a motion that the President; "Write to the Minister for Education and Training congratulating her on her efforts on working to ensure that the State School children of Western Australia receive the best possible educational outcomes." As such, our organisation, as Western Australia's peak parent body, would like to acknowledge your excellent service and strength in what we appreciate are trying times in the education portfolio. We feel that your efforts are in the interests of both public school students and the parents of Western Australia.

Our organisation greatly values your contribution to State School education and looks forward to continuing our strong relationship. I would like to thank you once again for accepting our invitation to speak at our annual conference on the 19th August and look forward to seeing you soon.

**Hon Peter Collier:** Did you go to that conference?

**Hon LJILJANNA RAVLICH:** I believe that Hon Norm Marlborough represented me.

Recommendation one, part (c) of the Corruption and Crime Commission report discusses a continuous improvement of policies and procedures. There will be an immediate audit of those systems, policies and procedures specifically aimed at giving effect to the department's safe and secure learning environment policy. There will be an immediate policy redrafting in which inadequacies will be identified. We will engage existing seconded police officers to act in an advisory role to undertake a review of system policy relating to student care, safety and wellbeing. We will also deploy additional resources, if required, to ensure completion by the end of 2007 of mandated child protection professional training of staff in contact with students. We will audit human resource management systems to identify any staff member not trained in child protection by the end of 2007. We will introduce a mandatory professional learning module for all new and graduate teachers. We will reform the delivery of child protection professional learning to ensure facilitation is conducted by a child protection expert. We will develop curriculum and student resource packages based on best practice advice on self-protective behaviours. We will also revise the department's policies to ensure that any teacher convicted of sexual misconduct in or out of the school environment does not continue teaching or working with children. We will refine processes so that disciplinary action is taken against any staff member who fails to comply with the department's policy of mandatory reporting of any suspicion or allegation of sexual contact with children. Each of the six recommendations of the CCC will be fully implemented, in addition to some further commitments given by the former director general and me concerning these matters. I ask the house to not support the motion because it does not reflect the true situation.

**HON KIM CHANCE (Agricultural - Leader of the House) [3.58 pm]:** I am about to move the adjournment of this motion to a later stage of this day's sitting. It is my intention, if the house is of a mind to support the motion, to immediately move for the suspension of so much of sessional and standing orders that will enable the debate to continue to 6.00 pm today to resolution excepting, of course, the time provided for afternoon tea and question time, which will occur within the normal time frame.

*Adjournment of Debate*

On motion by **Hon Kim Chance (Leader of the House)**, resolved -

That debate be adjourned to a later stage of the day's sitting.

Debate thus adjourned.

[Continued below.]

**BUSINESS OF THE HOUSE***Sessional and Standing Orders Suspension - Motion*

**HON KIM CHANCE (Agricultural - Leader of the House)** [3.59 pm]: I move without notice -

That so much of standing orders and sessional orders be suspended, other than sessional orders 2(3) and 4(4), to enable motion 49, "Minister for Education - Confidence of the House", to be taken until 6.00 pm at today's sitting and the question put and determined, if not sooner, at that time.

**HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition)** [4.00 pm]: The opposition supports this proposition. It is appropriate that matters raised affecting confidence in a minister should be dealt with at that day's sitting. I appreciate the Leader of the House suggesting that extra time be made available. The opposition supports the motion.

Question put and passed with an absolute majority.

**MINISTER FOR EDUCATION AND TRAINING - CONFIDENCE OF THE HOUSE***Motion*

Resumed from an earlier stage of the sitting.

**HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition)** [4.01 pm]: I commend Hon Peter Collier on a very compelling argument, and a very compelling case about the performance of the Minister for Education and Training, and I commend his motion to the house. He has made a very substantial case on the performance of the Minister for Education and Training. As he said in his speech - I agree with him absolutely - this is a very serious matter. Motions of no confidence in ministers are very rare. They occur on occasions when members of the house have reached a stage at which they believe some serious action needs to be taken about a minister's behaviour and the capacity of that minister to carry out his or her duties. Hon Peter Collier went through a long litany of concerns that have been expressed by the media, the community and members of the opposition about the performance of the Minister for Education and Training over quite a long period of time. I do not want to go into all those details again, because he has very clearly and very articulately explained the concerns of the opposition about these matters. I will say a few things about a couple of aspects of this matter that are of particular concern to me.

I commend the minister for a quite valiant attempt to defend the indefensible, and I acknowledge, having been a minister for education, that it is a very onerous business; it is one of the toughest portfolios around. As the minister said, an enormous amount of information comes across her desk. I acknowledge all that. However, the thing that concerns me fundamentally about her most recent performance has been the way in which she has neglected to take a significant interest in a matter of the utmost importance; that is, the matter that was inquired into by the CCC in response to concerns and allegations about sexual contact with children by staff in her department. We had a debate the other day about an inquiry into the Department for Community Development. I made a speech to the house on the importance of children in our community, and said that they are far more important than any other consideration. This particular issue that is the subject of the CCC report into the Department of Education and Training is about sexual contact between teachers or staff in the department and children. That is the sort of issue that I would have thought would be top of the range for any minister. It is the sort of issue that the minister should be right across and that she should be totally apprised of. For the minister to suggest that somehow she did not know that a report was being made defies comprehension. I have thought about this long and hard. Having been a minister, I know that there are times when ministers do not know things that they should know. We did not have a CCC in those days but we had an ACC, and we also had the auditor general. I always took the view that when those two organisations were looking at something that affected my portfolio, I wanted to know about it. If I was not told, somebody would get into serious strife, because they are two organisations that can cause significant grief to a minister. They are the watchdog bodies that are set up by Parliament to ensure that people do the right thing in government agencies. Ministers should know what is going on. This minister has said that she did not know that the CCC was even doing a report. I can understand somebody saying that they could not tell her what the CCC was inquiring into, or the matters being investigated, but they could make her aware that an inquiry was under way. I suspect she should have known that. Last week in the house I raised the fact that this matter was contained in the CCC's annual report that was tabled in the house on 27 September. That was more than two weeks before the Corruption and Crime Commission report

into the sexual conduct issue was tabled on 16 October. Therefore, from 27 September to 16 October the annual report of the Corruption and Crime Commission of Western Australia for 2005-06 was sitting on the table of this house. When the report was tabled on Wednesday, 27 September, I asked for a copy, which I read through. I came across the Department of Education and Training. I made a note in my question file to ask a question when the house resumed after the two-week break, which I did. Under the heading "Department of Education and Training" this report states at page 31 -

- A report addressing sexual contact between DET staff and students is expected to be tabled in Parliament shortly.

The report makes a number of recommendations for a change within DET. It concludes in this section by stating -

While DET has indicated a preparedness to improve its misconduct handling mechanism, substantive changes have not yet occurred.

Again, it defies comprehension that nobody in the minister's office, the Department of Education and Training, the government or anywhere told the minister about that paragraph in the CCC annual report. It just defies belief. The minister should have known. I do not know whose fault it is, but she claims she did not know. The reason that reports are tabled right in front of the minister - we do this every day of the week when Parliament is sitting - is so that members of Parliament are able to access the annual reports and all the other documents that are tabled and brought to their direct attention. I sit and listen when the list of tabled reports is read out, because I want to know, for example, if there is to be a regulation with regard to the Mining Act, because that is my responsibility. When there is one, I get a copy. If there is nothing that affects my portfolio and I am not interested, I do not get a copy. However, the reason that ministers and parliamentary secretaries read them out is so that they are drawn to our attention. I would have thought that any minister or, indeed, any member who has the vaguest interest in Western Australian politics would always read the report of the Corruption and Crime Commission, because it contains all sorts of interesting information - the sorts of things that titillate people. Here it is. It was tabled in this house on 27 September for the Minister for Education and Training to see. Page 31 states that the Corruption and Crime Commission has completed a report into sexual contact between Department of Education and Training staff and students and it is expected to be tabled in Parliament shortly.

I have given some thought to the question of whether the minister is telling the truth about her knowledge of these matters, and I have thought about it because of the comments I have just made. It defies my comprehension that she did not know that this inquiry was taking place. However, she has said in this place and publicly that she did not know until 12 October 2006 that the inquiry was taking place. It has crossed my mind to ask which is worse: not telling the truth about what she knows or not knowing. I think the latter is worse. Not telling the truth is a serious matter, but not knowing that her agency was being investigated by the CCC for a matter of most serious concern is even worse. I said it earlier and I will repeat it: millions of issues cross the minister's desk every day; it is an onerous portfolio. However, some issues are more important than others. Issues of sexual contact between children and staff in schools and colleges and within the Department of Education and Training are the sorts of issues that the minister must know about. The executive summary of the report "Sexual Contact With Children By Persons in Authority in the Department of Education and Training of Western Australia" in part states -

With this in mind, this report examines five allegations of sexual contact with children handled by DET in the last few years, in the light of its stated safe and secure learning environment principle.

I will repeat those words -

... in the light of its stated safe and secure learning environment principle. The Commission considers that, based on the cases examined, there are grounds for concern about DET's capacity to achieve this principle.

I would have thought that the fundamental principle would be that when a child goes to a school or institution run by the Department of Education and Training, he or she can expect to have, and indeed demand to have, a safe and secure learning environment. Regrettably, some people are predators of these young people, and these things happen. I have nothing but the greatest contempt and loathing for people who take advantage of young children in this environment. However, the magnitude of the issue is such that the Minister for Education and Training must know what is going on. The minister was asked a number of questions in this house over time by Hon Barry House and by me and the impression I got - it is an impression - from the answers to those questions was that she was not across the issue. She gave me the impression that this was not a top-of-the-mind issue, and it should have been; it must be. I hope that from now on, if the minister is still around, it will be a top-of-the-mind issue for her and her agency.

This matter has been of such serious concern that the Director General of the Department of Education and Training, the second highest paid public servant in Western Australia, has effectively been sacked. Before we

adjourn for a few minutes, I ask a rhetorical question of the minister: why was he sacked? The minister made a statement in this house - I will read it when we return to the debate - but it does not indicate why he was sacked. Why was the director general sacked? Why was Mr Alby Huts sacked? It is called a management-initiated retirement; it is another phrase for "sacked". I want to know why they were sacked. Once we know the answer to that, we will be able to work out why the minister should go.

Debate interrupted, pursuant to sessional orders.

[Continued on page 7579.]

*Sitting suspended from 4.15 to 4.30 pm*

### QUESTIONS WITHOUT NOTICE

#### ELECTORAL DATABASE SYSTEMS

**937. Hon NORMAN MOORE to the Leader of the House representing the Premier:**

I refer the Leader of the House to the Premier's answer to question without notice 915 provided yesterday.

- (1) Who authorised the two letters provided in the answer to part (2) of the question?
- (2) Why were Labor members offered a choice of two different electorate management systems when non-Labor members were offered the existing EMS system only?
- (3) Was the then Premier involved in the decision to offer different systems to ALP and non-ALP members; and, if so, what was his involvement?

**Hon KIM CHANCE replied:**

I thank the honourable Leader of the Opposition for some notice of this question.

- (1) The letters were issued by the manager, information technology, in accordance with the responsibilities of that position.
- (2) Further to the response to question without notice 815, through the tender process it was intended to provide members with a choice of product to meet their requirements. However, of the tenders received, only two met the required conditions. One of these tenders was submitted on the basis that their product would be made available to ALP members only. Therefore, an alternative to EMS for non-ALP members could not be provided.
- (3) The decision to proceed with establishing arrangements for the provision of alternative systems to members was made by the coalition government.

**Hon Norman Moore:** I beg your pardon? That is absolute tripe. How the Leader of the House can give that answer and keep a straight face is beyond me. That has to be the most outrageous thing that has happened in years.

**The PRESIDENT:** I suspect that the Leader of the Opposition is about to ask a question.

#### THIRD PARTY INSURANCE FUND - TRANSFER

**938. Hon NORMAN MOORE to the minister representing the Treasurer:**

I refer the Treasurer to the transfer of \$190 million from the third party insurance fund.

- (1) Why did the Treasurer approve the transfer?
- (2) Will the Treasurer explain why third party insurance payments and investment fund earnings should be diverted to pay for other government approved insurance activities undertaken by the Insurance Commission?
- (3) Will the Treasurer explain why motorists should pay higher third party premiums as a result of significant financial assets being diverted out of the third party fund?

**Hon LJILJANNA RAVLICH replied:**

I thank the Leader of the Opposition for some notice of this question.

- (1) The transfer is an internal transfer from the third party insurance fund to the Insurance Commission general fund and does not affect the consolidated finances of the Insurance Commission of Western Australia whose assets at 30 June 2006 were \$577.2 million. The transfer is to fully fund liabilities underwritten by the consolidated fund, which originate as a consequence of insurance policies issued by the now defunct State Government Insurance Office to general industry employers. The majority of claims arise from asbestos exposure in the mining industry; that is, Wittenoom workers between 1943 and 1967 whilst employed by Midalco Pty Ltd-CSR Ltd. The Insurance Commission general fund has

borne liabilities such as Insurance Commission employee entitlement liabilities for superannuation and long-service leave, which arguably should be proportionally borne by the third party insurance fund. The transfer is to partition off moneys from the third party insurance fund to facilitate emerging considerations, such as possible enhancements of the motor vehicle compulsory third party - personal injury - scheme.

- (2) On 29 June 1996 the government made a one-off consolidated fund payment of \$74.8 million to the third party insurance fund. The payment did not arise from funds sourced from the motorists of Western Australia. The present value of the \$74.8 million, based on the Insurance Commission's projected investment returns over the period to 30 June 2006, was estimated to be \$188 million.
- (3) Western Australia has the lowest compulsory third party premium rates in the country. CTP premium rates for major motor vehicle categories in Western Australia have not increased for three years - that is, from 1 July 2003 to 30 June 2006 - and this government introduced a 10 per cent reduction in premiums, which came into effect from 1 July 2006. This has resulted in the cost of CTP premiums for Western Australia being some 20 per cent less than those in the next lowest state and 47 per cent less than those in the highest state. Notwithstanding the 10 per cent reduction in premiums and the \$190 million transfer, the third party insurance fund retains a ratio of assets over liabilities - that is, solvency ratio - of 129 per cent.

PLANNING APPROVALS - APPEALS TO MINISTER FOR PLANNING AND INFRASTRUCTURE AND  
STATE ADMINISTRATIVE TRIBUNAL

**939. Hon SIMON O'BRIEN to the parliamentary secretary representing the Minister for Planning and Infrastructure:**

I refer to the answer given to my question on notice 4169. Noting that the minister receives large volumes of representations concerning planning issues -

- (1) Have any of these representations involved the failure of a local government to enforce or implement effectively the observance of a local planning scheme?
- (2) If so, why has the minister never made use of section 211 of the Planning and Development Act 2005 to refer such matters to the State Administrative Tribunal?
- (3) Has the minister ever invoked section 211; and, if not, why have such a provision?

**Hon ADELE FARINA replied:**

I thank the honourable member for some notice of this question. As this question requires significant research, the minister asks that the question be put on notice.

Q FEVER - INCIDENCE ON BARROW ISLAND

**940. Hon GIZ WATSON to the parliamentary secretary representing the Minister for Health:**

I refer to question without notice 1158 of Wednesday, 20 August 2003 and question on notice 4196 of Wednesday, 28 September 2006 regarding the incidence of Q fever.

- (1) Will the minister explain the discrepancy between the answers to these questions? In part (4) of question 1158 the minister stated that the Department of Health was notified of two cases of Q fever associated with Barrow Island, whereas in the answer to question 4196 the minister stated that there were no cases on the notifiable diseases database of Q fever from Barrow Island between 1998 and 2006.
- (2) How many cases of Q fever have been reported annually on Barrow Island between 1998 and 2006?
- (3) How is the disease transmitted on Barrow Island?
- (4) What measures is the Department of Health taking to ensure that this disease does not spread further?

**Hon KATE DOUST replied:**

On behalf of the parliamentary secretary representing the Minister for Health, I provide the following reply -

- (1) The notifiable diseases database records the residential address of the person being notified. With regard to question 4196, no-one contained on the database notified with Q fever was stated to be a resident of Barrow Island. The response to question without notice 1158 in August 2003 related to two persons who were resident in the Perth metropolitan area as opposed to Barrow Island, but who had an association with Barrow Island. The database has now been searched to find any persons with a possible link to Barrow Island.
- (2) Based on information in comments on databases, one person, resident elsewhere, but with a link to Barrow Island, contracted Q fever in 2001 and one person was similarly described in 2002. There have been no notifications since.

- (3) It is unclear how the disease is being transmitted on Barrow Island. The vast majority of cases are livestock-related and most cases in Australia are associated with abattoir workers. However, one of the cases reported a tick bite, which is a possible mechanism, as is direct exposure to wild animals that may be infected, or indirect exposure via dust contaminated by birth fluids and excreta of infected animals.
- (4) No cases even plausibly linked to Barrow Island have been notified to the communicable disease control directorate in the past four years, and the average annual number of cases statewide has halved in the past three years. The Department of Health does not believe that further steps are necessary.

#### HIGH SCHOOLS - INCLUSION OF YEAR 7 STUDENTS

**941. Hon MURRAY CRIDDLE to the Minister for Education and Training:**

This question is without notice.

- (1) Has the minister received the review document dealing with year 7 students moving to high school?
- (2) Will she release the document; and, if so, when?

**Hon LJILJANNA RAVLICH replied:**

- (1) I just want to get this right. I have probably received some briefing notes on the issue of year 7 students but I have not received a review document. The answer is no.
- (2) Not applicable.

#### HIGH SCHOOLS - INCLUSION OF YEAR 7 STUDENTS

**942. Hon PETER COLLIER to the Minister for Education and Training:**

I think the minister has answered my question.

- (1) Has the minister received a report from the Department of Education and Training on recommendations for the proposed shift of year 7 to secondary schooling?
- (2) If yes, will the minister explain the recommendation contained within the report; and, if not, why not?
- (3) If yes to (1), will the minister table the report; and, if not, why not?

**Hon LJILJANNA RAVLICH replied:**

I thank the honourable member for some notice of this question.

- (1) This is what I was trying to clarify earlier. I have received a technical study prepared by the department, which is an internal research and planning document.
- (2) As the study is an internal working document, I have asked the department to further investigate the costs and impacts. If there is evidence to suggest that moving year 7 students into high school has merit, there would be extensive public consultation prior to making a decision on the future placement of year 7 students.
- (3) As this is an internal research and planning document, it will not be tabled.

#### DEFENCE INDUSTRY SKILLS TASK FORCE - HUNTLY CONSULTING GROUP

**943. Hon HELEN MORTON to the Minister for Education and Training:**

I refer to the minister's joint press release with the Premier of 3 February this year regarding the establishment of the Defence Industry Skills Task Force and to the subsequent commissioning of the Huntly Consulting Group to conduct a skills audit of the industry.

- (1) What was the value of the contract awarded to the Huntly Consulting Group for this work?
- (2) What were the terms of the contract?
- (3) Was there a public tender process for the contract, how many submissions were received and were these submissions public?
- (4) What were the assessment criteria for the awarding of the contract?
- (5) Who from the task force was involved in the evaluation and awarding of the contract?

**Hon LJILJANNA RAVLICH replied:**

I thank the member for some notice of this question.

- (1) The value of the contract was \$95 700.
- (2) The Department of Treasury and Finance's general conditions of contract for the supply of goods and services, July 2005, V1.

- (3) The Department of Treasury and Finance issued a request for quotation to Synovate Pty Ltd, BDO Chartered Accountants and Huntly Consulting Group. Only one quotation was received, from HCG.
- (4) Four criteria were used. These were suitability of proposed services, specified personnel, organisational capacity and demonstrated experience.
- (5) Retired Commodore Mike Deeks, defence strategist, Department of Industry and Resources; Mr James Mackaway, acting director, industry and community policy, Department of Education and Training; Mr Graham Priestnall, business development manager, ADI Ltd; and Mr Geoff Davis, alliance general manager, ANZAC Alliance.

DEPARTMENT OF EDUCATION AND TRAINING - ALLEGATIONS OF MISCONDUCT

**944. Hon BARRY HOUSE to the Minister for Education and Training:**

Earlier today the minister referred to a briefing note that she had sought from the Department of Education and Training. I think the date was 17 November last year. It was a follow-up to the series of questions I asked in September, October and November last year. Will the minister table that briefing note; and, if not, why not?

**Hon LJILJANNA RAVLICH replied:**

I am happy to table that.

[See paper 2156.]

BUILDING SUSTAINABILITY INDEX

**945. Hon PAUL LLEWELLYN to the parliamentary secretary representing the Minister for Planning and Infrastructure:**

This question is about the Western Australian building sustainability index - BASIX - program.

- (1) Has the government commissioned an independent analysis of the impact of BASIX on housing affordability?
- (2) What is the average cost of implementing BASIX per new house?
- (3) What is the likely pay-off period for BASIX per dwelling?
- (4) How much water and energy can be saved per dwelling per annum?
- (5) If there were a full roll-out of the BASIX program over the next 10 years, how much water and energy could be saved?

**Hon ADELE FARINA replied:**

I thank the honourable member for some notice of this question.

- (1) Yes. Pracsys economists conducted the analysis.
- (2) For an average four-bedroom, two-bathroom house, the marginal cost of implementing BASIX will range from \$460 to \$835 per new dwelling.
- (3) At seven per cent interest, the pay-off period for these costs will range from 2.4 to four years. Further, repayments on a 30-year loan at that interest will incur additional costs of only \$40 to \$80 a year.
- (4) For each average four-bedroom, two-bathroom house, complying with BASIX will save from 25 kilolitres to 45 kilolitres of water and from 830 kilograms to 1 170 kilogram of carbon dioxide equivalent gases through energy savings each year.
- (5) Over the next 10 years, with a full roll-out of BASIX, the state would save around 62 000 megalitres of water, with a value to the state of \$72 million at current prices, and 1.58 megatonnes of CO<sub>2</sub> equivalent gases, with a value of \$240 million.

STATE BUDGET - PREMIER AND CABINET, DIVISION 3, PAGE 96 - MAJOR ACHIEVEMENTS FOR 2005-06

**946. Hon RAY HALLIGAN to the parliamentary secretary representing the Minister for Citizenship and Multicultural Interests:**

I refer to the answer to question without notice 725.

- (1) How many staff are involved in the "ongoing, multifaceted approach" referred to?
- (2) What has been or is anticipated to be the cost, from all sources, of the media strategy, including the media training, in 2004-05, 2005-06 and 2006-07?
- (3) When is it expected that the "other aspects of the strategy" referred to will be finalised?



- (4) Will the government give an undertaking to table a copy of the strategy when it has been finalised?  
 (5) If not, why not?

**Hon ADELE FARINA replied:**

I thank the honourable member for some notice of this question.

- (1) A communications officer coordinates the project as a minor part of that officer's responsibilities.  
 (2) The estimated cost of the project is nil in 2004-05; \$22 819 in 2005-06; and \$30 000 in 2006-07.  
 (3) As outlined in the answer to question without notice 725, the strategy is ongoing.  
 (4) As the strategy is still in the consultative phase, it is not clear what final form aspects of the strategy will take. As the project develops, the suitability of each aspect for tabling will be assessed.  
 (5) Not applicable.

**PYRTON SITE - DEVELOPMENT PLANS**

**947. Hon DONNA FARAGHER to the parliamentary secretary representing the Minister for Housing and Works:**

I refer to the Pyrtton site in Eden Hill and proposed development plans A and B.

- (1) (a) Has the government reached an agreement with the Indigenous Land Corporation to sell the entire site to the corporation as proposed in preferred plan A;  
 (b) if yes to (1)(a), when was the agreement entered into and will the minister provide details of the agreement, and, if not, why not; and  
 (c) if no to (1)(a), what is the current status of the negotiations?  
 (2) Given that proposed plan A was not referred to in the Pyrtton draft structure plan released for public comment in September 2004, will the minister advise if any public consultation by the minister or her department on this alternative plan was undertaken with either the Town of Bassendean or its residents prior to her announcement in July?  
 (3) Why has no public consultation, similar to the release of the Pyrtton draft structure plan referred to in (2), been undertaken with residents of the Town of Bassendean to determine their views on the relative merits of either plan A or plan B?

**Hon KATE DOUST replied:**

I thank the honourable member for some notice of this question. The Department of Housing and Works advises -

- (1) No. The Indigenous Land Corporation is assessing a range of issues that will form part of a business case for consideration by the ILC board in early 2007. If the ILC wishes to then proceed with the acquisition of the Pyrtton site, final state government approval will be required.  
 (2) Consideration occurred with the member for Bassendean, who has in turn canvassed local community members.  
 (3) The proposed sale to the ILC was an outcome arising from the public consultation process on the Pyrtton draft structure plan, in which the ILC registered an interest in the site if the government supported such an approach. The public consultation process on the Pyrtton draft structure plan resulted in 127 submissions.

Recognising the divergent views within the community on the Pyrtton draft structure plan and that Pyrtton is within a site registered under the Aboriginal Heritage Act 1972, the government supported negotiations with the ILC being undertaken to demonstrate its commitment to the process of reconciliation and remediation of a site to enable future community use and enjoyment.

In the event that the ILC does not wish to proceed with the acquisition of the site, the Department of Housing and Works will seek the necessary approvals to enable the implementation of a revised structure plan.

**CERVANTES - FUELLING FACILITY AND JETTY**

**948. Hon GEORGE CASH to the Minister for Fisheries:**

- (1) Is the minister aware of the problems fishermen are facing relating to the use of the fuelling facility and jetty at Cervantes?  
 (2) What is the minister's understanding of these problems?

- (3) What action has the minister taken to resolve these problems?  
 (4) Are the fishermen satisfied with the minister's actions?

**Hon JON FORD replied:**

Is this a question without notice?

**Hon George Cash:** Yes, without notice; you know, from me to you!

**Hon JON FORD:** Sometimes it is a question without notice, of which some notice has been given. I thank the member for the question.

- (1)-(4) If my memory serves me correctly, an arrangement was entered into on this particular wharf in relation to a levy that helped fund it. This matter was raised with me a long time ago. At that stage some negotiations were going on between the Department for Planning and Infrastructure and the Department of Fisheries with the cooperative. I do not know the current status of those negotiations, and the matter has not been raised with me recently. However, I will give an undertaking to find out the current status and get back to the member.

STIRLING RANGE DISCOVERY CENTRE

**949. Hon NIGEL HALLETT to the minister representing the Minister for Goldfields-Esperance:**

Will the minister please detail -

- (a) when the construction of the proposed Stirling Range discovery centre will commence;  
 (b) the total budgeted cost of the project; and  
 (c) how the project will be funded?

**Hon JON FORD replied:**

I thank the member for some notice of this question. The Great Southern Development Commission advises -

- (a) The Great Southern Development Commission supported planning for the proposed development of the Stirling Range mountain discovery centre near Bluff Knoll, culminating in the production of a concept design and feasibility study this year that examines environmental, social and economic aspects of the project. The feasibility study is part of the deliberative process of government decision making, and no decision as yet has been made by the government and other parties.  
 (b) The estimated cost determined by the feasibility study is \$6 251 331.  
 (c) Not applicable.

MEEKATHARRA SCHOOL OF THE AIR

**950. Hon ANTHONY FELS to the Minister for Education and Training:**

The Meekatharra School of the Air is currently being housed in dongas owned by the Department of Agriculture and Food.

- (1) Can the minister inform the house when the new school of the air will be built and where it will be located?  
 (2) Will the minister make a decision regarding the rebuilding and possible relocation of the school as a matter of urgency?

**Hon LJILJANNA RAVLICH replied:**

I thank the member for some notice of this question.

- (1)-(2) I can inform the house that prior to the fire at Meekatharra School of the Air, a process was commenced including the preparation of a feasibility study and cost estimates for the relocation of the school. The department informs me that a recommendation will be made to me on this matter within a matter of weeks.

CARNARVON - FLOOD MITIGATION WORKS

**951. Hon KEN BASTON to the Minister for the Kimberley, Pilbara and Gascoyne:**

- (1) Have the flood mitigation works proposed for Carnarvon commenced?  
 (2) If not, on what date are the flood mitigation works anticipated to commence and what are the reasons for the delay?  
 (3) What is the anticipated completion date of the flood mitigation works?

**Hon JON FORD replied:**

I thank Hon Ken Baston for some notice of the question.

- (1) Yes. I am advised by Main Roads that phase 1 of the flood mitigation works has commenced. In fact, I was advised verbally that they commenced yesterday. Phase 1 consists of an upgrade to the floodways on North West Coastal Highway, south of Carnarvon. The bulk of the construction work will be undertaken in January 2007. Phase 2 involves the construction of levees from BP Palms Roadhouse to the Gascoyne River and levees north of the river. Phase 2 is expected to commence in late 2007 once environmental referrals are complete.
- (2) Not applicable.
- (3) Late 2008.

## MEMBER FOR BALLAJURA - DRIVER'S LICENCE

**952. Hon NORMAN MOORE to the minister representing the Minister for Police and Emergency Services:**

I refer the minister to question without notice 678.

- (1) Why did the police withdraw the fines?
- (2) Was there any reason for the date on which the police withdrew fines issued to the member for Ballajura?
- (3) If no to (2), why were the fines not withdrawn earlier?
- (4) Will the minister table the police notice dated 25 August 2006 concerning the withdrawal of the infringement notices; and, if not, why not?

**Hon JON FORD replied:**

I thank the Leader of the Opposition for some notice of the question. The Minister for Police and Emergency Services has supplied the following answer -

- (1) The two infringements referred to in question without notice 678 were withdrawn when, as a result of legal advice, it was discovered that the licence suspension had been inappropriately applied.
- (2)-(3) The infringements were withdrawn only following receipt of legal advice that clarified the application of the licence suspension. The date of this advice was 28 June 2006.
- (4) Yes.

I signed this answer but I will make sure it is tabled.

[See paper 2157.]

## CHILDREN - MULTIPLE TEETH EXTRACTIONS AND MOUTH CLEARANCE

**953. Hon HELEN MORTON to the parliamentary secretary representing the Minister for Health:**

- (1) In the past 12 months, how many Western Australian children up to the age of three years have been hospitalised, given a general anaesthetic and had -
  - (a) mouth clearance, that is, all teeth removed; and
  - (b) multiple teeth extractions?
- (2) How many of these children came from non-metropolitan areas of Western Australia?
- (3) In the same time, how many Western Australian children from the age of three to seven years have been hospitalised, given a general anaesthetic, and had -
  - (a) mouth clearance, that is, all teeth removed; and
  - (b) multiple teeth extractions?
- (4) How many of these children in (3) came from non-metropolitan areas of Western Australia?
- (5) What is the main reason that children up to the age of seven years need to have multiple extractions or their mouths cleared of teeth?

**Hon KATE DOUST replied:**

On behalf of the parliamentary secretary representing the Minister for Health, I thank the honourable member for some notice of this question.

I am sure that the honourable member is well aware that extracting the data for these types of questions is extremely time consuming and labour-resource intensive. I request that this question be placed on notice as gathering this data will take significantly longer than the time allowed by the member. The Minister for Health always endeavours to answer questions without notice on the day they are asked; however, some are of a nature that makes it impossible. I suggest that the honourable member save her time and the time of the house by asking these types of questions as questions on notice rather than without notice.

#### LOCUSTS - AGRICULTURAL REGION

**954. Hon MURRAY CRIDDLE to the Minister for Agriculture and Food:**

No notice of this question has been given and it is in regard to locusts.

- (1) Is the minister satisfied that the locust outbreak developing in the Agricultural Region will be controlled?
- (2) Is there sufficient funding and manpower available to carry out the task?

**Hon KIM CHANCE replied:**

I thank Hon Murray Criddle for his question.

- (1) Yes, I am, and that is not based on blind faith. I am satisfied that we can achieve the level of control that we are setting out to achieve because I have been assured, as recently as two days ago, by the Department of Agriculture and Food that that is the case.
- (2) Yes. In the event that we find the campaign challenged by resources, such as the amount of chemical or human resources, we will find the chemical and human resources to meet the level of control. I am sure the honourable member will understand this, but a person reading the answer may not understand it: the degree of control that the Department of Agriculture and Food sets out to achieve equates to about only 70 per cent of the total possible flying mass. It is probably technically possible to go about 10 per cent better than that; that is, for approximately 80 per cent control, but the cost of gaining that additional 10 per cent of control would probably be uneconomic. Certainly, it would double or even treble the cost of the control that we have now. At a little over \$11 million from the state's part of the control, we can effectively control about 70 per cent or a little better of the flying biomass. We believe, and it is not belief based on theory but on experience, particularly the experience we gained from what became an award winning control procedure carried out by the honourable member's government in 2000, that we can achieve 70 per cent. We have learnt a lot from the 2000 campaign and that knowledge has been defined in subsequent smaller campaigns. I do have that confidence. We had that confidence shaken a little on day one of the spraying campaign when we had some difficulty with control of droplet size and the height at which the planes were operating. By the next day we thought we were over that, but there will always be little glitches. Little glitches aside, I can answer yes to both of those questions.

#### BURRUP PENINSULA - NATIONAL HERITAGE ASSESSMENT

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

I refer to the national heritage assessment of the Burrup Peninsula, islands of the Dampier Archipelago and Dampier coast and Dampier rock art precinct, and a submission and/or letter sent to the federal Minister for the Environment and Heritage by the Department of Environment and Conservation - sent or received on 15 December 2005 - about information on the mix of land tenures on the area and national heritage values.

- (1) Will the minister table or provide a copy of that submission and/or letter?
- (2) If no to (1), why not?

**Hon LJILJANNA RAVLICH replied:**

I thank the member for some notice of the question.

- (1) Yes, I will table a copy of the letter.
- (2) Not applicable.

[See paper 2158.]

#### QUESTION WITHOUT NOTICE 935

*Answer Advice*

**HON LJILJANNA RAVLICH (East Metropolitan - Minister for Education and Training) [5.03 pm]:**  
Hon Anthony Fels yesterday asked a question without notice 935 to which, unfortunately, I did not have a

response. Therefore, I would like to inform the honourable member that I now have a response from the Minister for the Environment, which I seek leave to table and have incorporated into *Hansard*.

Leave granted.

[See paper 2159.]

The following material was incorporated -

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The Minister for the Environment thanks the Honourable Member for some notice on the question. A high-level working group has been established to develop an action plan to phase out highly water soluble phosphate fertilisers in environmentally sensitive areas. A key task for this working group is to consider the development of alternative "river-safe" fertilisers. The working group is therefore comprised of representatives from the fertiliser industry and Government departments with knowledge of fertilisers. The group, chaired by Dr Walter Cox, will be drawing on considerable work done in this area over the last couple of decades, including field trials.

The Minister is meeting with the Western Australian Farmers Federation and Western Australia Vegetable Growers Association this week to discuss with them the way in which the four year phase-out will be developed.

There will be further opportunities for various industry and user groups and other stakeholders to provide input when the working group's action plan is presented at a symposium expected to be held in April next year.

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### QUESTION ON NOTICE 4183

#### *Answer Advice*

**HON KATE DOUST (South Metropolitan - Parliamentary Secretary)** [5.04 pm]: Pursuant to standing order 138, I wish to inform the house that the answer to question on notice 4183 asked by Hon Anthony Fels on 19 September 2006 to the parliamentary secretary representing the Minister for Small Business will be provided on 1 November 2006.

### MINISTER FOR EDUCATION AND TRAINING - CONFIDENCE OF THE HOUSE

#### *Motion*

Resumed from an earlier stage of the sitting.

**HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition)** [5.05 pm]: Prior to question time, I was asking a question, in the rhetorical sense, of the Minister for Education: why was Mr Albert sacked? All we have been told is what is contained in a ministerial statement delivered to this house undated, but I guess it was some time last week. It says -

Premier Alan Carpenter has announced that the Director General of the Department of Education and Training Paul Albert, will leave the public service.

Further on it states -

"It is with regret that during our discussion we came to an agreement that it was in the best interests of all parties for Mr Albert to leave the public sector under a Management Initiated Retirement.

The statement also reads -

"Mr Albert has provided excellent service to the Government over many years . . .

It further states -

I accept that the CCC did not make any specific adverse findings against Mr Albert, but we both agreed that public confidence in our education system was paramount.

The statement goes on to say what the government will do as a result of Mr Albert's removal. As I said the other day when we sought to bring on the debate as a matter of some urgency, the sacking of a very senior public servant in this state is a very serious matter. If a government member is to respond again on this matter, we are entitled to know why Mr Albert was stood aside. The minister tells us that the CCC wrote a letter to Mr Albert and told him that he was not to disclose the substance of the contents of the letter to anybody, and we are told that that included the minister. If Mr Albert was removed from his position because he did not tell the minister, but according to the minister he was advised he was not allowed to, why was he sacked? Was he sacked because he was running an agency that allowed these things to happen? Is that why Mr Huts was also sacked? That then raises the question: who is responsible for the agency- the minister, the chief executive officer or the people who work beneath the chief executive officer?

In answer to a question this minister would have us believe that issues in relation to sexual misconduct within her agency were "operational matters". I inform the minister that to my knowledge operational matters that ministers cannot talk about, have an involvement with or have some responsibility for relate only to the Minister for Police and Emergency Services. A whole range of things are undertaken by the police service that the minister should not, does not and will not ever know about because they are police operational matters. Ministers for Police, for as long as I can remember, have got up in the house and said, "I cannot answer that

question because it is an operational matter.” An operational matter for the police service is totally different from any notion of an operational matter in a normal government agency such as the education department. The minister is responsible for the Department of Education and Training in the same way as her colleague is responsible for the Department of Agriculture and Food. As they are government departments, as opposed to statutory authorities, ministers have a special responsibility for and a particular capacity to be involved in the operations of their respective organisations.

The minister was quite happy to get up in this place five years ago and condemn then minister Doug Shave for not doing things in respect of his agency which at that time, and still is, a statutory authority at arms-length of the minister. The minister was quite comfortable to get up in this house and abuse him and accuse him of wrongdoings in the administration of his portfolio. However, here we are today talking about the minister’s responsibilities for a government department. The minister cannot claim that something that goes on in her department is an operational matter and, therefore, it has nothing to do with her. Both the minister and I know that that is not the way the Westminster system works. I could not believe it when the minister used that phrase for the first time, which was a week after she became a minister. Somehow she has taken the view that an issue that she does not want to be involved in or claim to have any knowledge of is an operational matter and is, therefore, something she would not be expected to know about.

The bottom line is that the minister is responsible for what goes on in her agency and it is not good enough to have the head of that agency, the director general in this case, removed from the job, firstly, without explanation and, secondly, to expect him to carry the can for what is fundamentally her responsibility. As I said earlier, this is a matter of the utmost seriousness. Sexual contact with children in the minister’s department is of the utmost seriousness. Indeed, the minister has made that clear by getting rid of the head of the department. That is how serious the government sees the issue. However, it is not serious enough for the government to tell us why it sacked him and for the minister to go. She sits there and says that as long as the Premier says she can stay, she will stay. That is what she basically said in answer to a question the other day.

In her defence, the minister went to some trouble to explain why she did not know that these things been reported in the media. As I remember, she said that she went to Wiluna and her mind was on other things. She said that she did not hear the radio. Fair enough, I understand that. She said on another occasion that she was somewhere else and did not get a chance to read the newspaper. She said that, in another case, the article was on page 49 and it was so tiny that she did not see it. Okay; I accept all that. However, every ministerial office has a person whose job it is to look after the media interests of the minister. The minister has one, as did I when I was the minister. I expected the media secretaries to tell me everything that was said or written about me as the minister so that I knew what was happening concerning my portfolio. That was on a daily basis. In fact, it was on an hourly basis sometimes when there were certain issues of interest to the media. For the minister to say that she did not hear of the issue on the radio is for her to have us believe that it did not happen. It actually did happen and the minister has people whose job it is to tell her those things. On top of all that, there is an organisation called the Government Media Office. It is a big organisation within the Department of the Premier and Cabinet that monitors everything that is said or written by anybody or any television broadcast about anything to do with the government. It is all recorded and tabulated. It is all made available for the ministers. That was created by Brian Burke. It was a very clever move; it was set up so that the government knew what was being said so that it could respond. That is why the Government Media Office is there; it is to assist the minister and her office to respond to the issues affecting her portfolio. To say that the minister did not know the issue was in the media means one of three things: firstly, that she ignores the Government Media Office; secondly, that she has an incompetent media secretary; or thirdly, that she just does not read or listen. She can take her pick which one of those it is because I do not know.

I could be cruel and say that the minister appears to have a memory problem. I do not know whether she has. I know that I have. As such, I am not being in any way critical. The minister was asked the same question twice today and she gave two different answers. With the first question asked, which was without notice, the minister gave every indication in her response that she did not know anything about the issue. About two seconds later Hon Peter Collier asked a question of which notice had been given. The minister had signed off on the answer this morning. That demonstrates that she signed off on the answer this morning and forgot about it. Had she signed off on the answer and remembered, when Hon Murray Criddle asked his question she could have said that she had a similar question from Hon Peter Collier and she could have dragged it out and given the answer. Maybe the minister forgot. I do not criticise her for that because people do forget. However, she cannot forget about the CCC looking at her agency. She cannot simply say that it did not happen, that it was an operational matter or that she did not know. The minister cannot do that; it is just not acceptable. It is inconceivable that what she is telling the house is what happened.

I would be interested if the minister would be kind enough to table the letter from the CCC to Mr Albert that she uses as a defence in not knowing about these things. If my memory serves me right about that letter, it stated something to the effect that he was not to disclose the substance of the contents of the CCC report to the

minister. I may have written that down incorrectly, but that is my recollection of it. I do not think it means that Mr Albert was not allowed to tell the minister that there was an inquiry going on; I think it means that he was not allowed to tell the minister the substance of the inquiry - in other words, the details of the particular cases. That is quite a different issue altogether. If the minister had been asked whether she knew that the CCC was investigating questions of sexual contact in her department, one would have thought that the minister might have said that she did but that she could not tell us about the substance of the inquiry because she is not allowed to know. The minister's answer was that she did not even know that there was an inquiry.

**Hon Ljiljanna Ravlich:** I didn't.

**Hon NORMAN MOORE:** The minister can keep saying that. As I said earlier, if it is a choice between whether the minister is misleading us or whether she did not know, I must say that not knowing about a matter of this substance going on in her agency is the worst offence.

I will not take much more time of the house other than to summarise the opposition's case in this matter. I again acknowledge the complexity and the difficulty of being the Minister for Education and Training. It is a very difficult portfolio, and lots of things happen in the agency. I might add, just for the record, that the most significant change in training made in the past 100 years was not made by this minister. It was, in fact, made by me when our government brought in the Vocational Education and Training Act, which was a complete rewrite of the training system in Western Australia and the creation of independent technical and further education colleges. That act has stood the test of the past 10 years, for what that is worth.

We are saying that with a portfolio that is so demanding, it is conceivable that, from time to time, a minister would not remember something or would not be aware of things going on in the agency. Literally millions of things are going on. The two main issues that were raised by Hon Peter Collier in his address were the curriculum and outcomes-based education and the minister being told by the Premier to straighten it out; and the CCC inquiry and the minister not even knowing that it was happening. Those two issues are issues that any minister worth his or her salt should know about. If the minister did not know about them, all I can say is that she should not be a minister. She is just not up to it if she does not know about those things. Mr Albert has been sacked and Mr Huts has been sacked. Maybe they were sacked because they did not tell the minister or because they did not do their jobs properly. I would like to know which is the correct version of events. It is not enough for the minister to say simply that she does not know because nobody told her or that she was not aware of it when everybody else seems to have been very familiar with what was going on. It is not enough to simply say when asked by the media whether she will be standing down - I think her answer was something to the effect - that she will stay as long as the Premier wants her to stay and that she is not resigning. The minister can tough it out if she wants to; I cannot give her the sack. I cannot make her stand aside. All I can do - as members of the opposition will - is to draw to the attention of the media and the public the fact that the minister is incapable of handling the job, and that she has demonstrated her incapacity to handle the job by the very fact that she did not have any knowledge - we accept her word for that - of the extraordinarily serious matters going on within her agency. The minister has demonstrated quite clearly to the house that she has lost our confidence in her capacity to carry out her duties to the satisfaction of the Western Australian community. We call on the Premier to replace her immediately. The Western Australian community's views have become well known. If she does not know what they are, she must not listen to the radio or read newspapers. It is time for the Premier to do something about it. I suggest that he agree to this motion and replace the minister immediately.

**HON KIM CHANCE (Agricultural - Leader of the House) [5.19 pm]:** Like the Leader of the Opposition, I will also keep my comments to a minimum, because I know that other members want to speak. I indicate from the start that I think the debate so far has reflected well on the house. It is certainly appreciated by everyone in this place that a difficult motion such as this has been dealt with in the way that it has been dealt with by all honourable members who have spoken. It is an opportunity. The minister, although perhaps not welcoming the motion, did welcome the opportunity to settle the matter, and that is a very good approach to a difficult motion such as this. I also do not intend to lecture the house on the issue of ministerial responsibility. However, I will from time to time draw on gems that I learnt from Hon Peter Foss; and, if any member takes that as being a lecture, I assure them that it is not meant to be. Hon Peter Foss was probably the most learned person on the concept of ministerial responsibility this house has ever seen. He was always very generous in the way in which he shared his knowledge of that particular subject. I always appreciated it, because I learnt much of what I understand about ministerial responsibility from Hon Peter Foss. One of the things that I learnt from him was how to make a distinction between ministerial responsibility and fault. I know that honourable members in this place will remember a particularly good speech of Hon Peter Foss on that very issue. Sadly, I have not been able to find it in *Hansard*, but I will go into it a little later.

The first questions that we must consider when we debate a motion of this kind are: where are we coming from, what is the concept of ministerial responsibility and how is that equated to fault? The first question was adequately answered by Hon Peter Collier. He defined ministerial responsibility accurately and properly in my view. It is also fair to say that an important aspect of individual ministerial responsibility is that ministers are

responsible for what their departments do. Hon Peter Collier did not say that, but that is very true. Ministerial responsibility means that ministers are responsible for what their departments do, whether or not the ministers know about it. Let us put it clearly on the record what a minister is responsible for. The Minister for Education and Training has never dodged the fact that she is the responsible person. The minister is the department. The minister is responsible for whatever the department does, and, as such, we have mechanisms that attempt to ensure that the minister has the capacity to know what the department does, because unless the minister has the capacity to know, we hobble the capacity for the minister to be responsible for the actions carried out by the department. Thus, the department is the minister; all its actions are taken in the minister's name. Frankly, it is irrelevant whether an adverse action by a department is the fault of the minister; it just does not matter. It remains the responsibility of the minister and that is the proper definition of ministerial responsibility.

In his speech, Hon Peter Foss gave an analogy from when he was a partner in a law firm before he entered Parliament. He gave a hypothetical example of a junior law clerk in the firm who made a mistake that caused economic damage to a client. That was not the fault of Hon Peter Foss, but, as a partner in the firm, he was responsible for that damage and he had to make good the damage and ensure that it did not happen again. Although that example is of a law firm - it is not in the parliamentary sense - it is still a very clear definition of what responsibility is, how the responsibility is triggered and what the responsible person - in that case the law firm partner, and in this case the minister - is required to do to give effect to that responsibility. It is a very clear definition of the split between what constitutes responsibility and what constitutes fault. Too often those two terms are not clearly understood.

In an extreme case in the New Zealand Parliament, the Minister of Energy resigned because of a drought. New Zealand's power is generated mostly from hydroelectricity. The commitment to hydroelectricity had been made by that minister. That minister was responsible for the decision to commit to hydroelectricity, rather than some other form of power. When it does not rain, hydroelectricity does not work very well. That minister resigned. That is a historical case. That is probably taking it too far.

**Hon Simon O'Brien:** We do have a drought affecting the agricultural sector in Western Australia.

**Hon Murray Criddle** interjected.

**Hon KIM CHANCE:** I raise that matter knowing full well that that could arise, because I think that is a fair analogy. The drought is my responsibility; I am responsible for the drought.

**Hon Louise Pratt:** Why don't you make it rain then?

**Hon KIM CHANCE:** As the Minister for Agriculture and Food - indeed, it is also a collective responsibility because other members of cabinet have responsibilities for dealing with the drought - the drought is my responsibility. The locusts are my responsibility; indeed, I can certainly be held accountable for the actions I take, or my lack of action, on locusts and it could be a resignable issue, were I to deal with it ineffectively.

**Hon Norman Moore:** You don't have to resign if it doesn't rain, minister.

**Hon KIM CHANCE:** No. In the instance that has been raised by Hon Murray Criddle, if I were to deal ineffectively with the locust outbreak - or indeed the drought - that is a resignable offence.

**Hon Norman Moore:** That is your responsibility.

**Hon KIM CHANCE:** Yes, and there would be fault as well. It would be my fault that I did not accept my responsibility accurately. In this case, an issue has arisen in the Department of Education and Training that is not the minister's fault, but is her responsibility. What we are talking about is time frame issues and whether she should have acted two weeks earlier than she did. That is fundamentally what it comes down to, because I have not heard one word of criticism - maybe it is latent and is still to come out - about the adequacy of her actions once she learnt of the issue.

**Hon Peter Collier:** What about the courses of study?

**Hon KIM CHANCE:** I am sorry; I am talking about the Corruption and Crime Commission matter. The courses of study is a longer term issue, and I will go over that. Once the minister became aware of the issue, she took action, which included recalling Mr Albert from overseas and putting in place the machinery to effect the recommendations made in the CCC report. Members may not agree with some issues, but that has not been an issue. Her fulfilment of her responsibility has not been an issue; the issue has been whether she should have done it a fortnight earlier.

**Hon Norman Moore** interjected.

**Hon KIM CHANCE:** That is really drawing a long bow.

**Hon Norman Moore:** No, it isn't. It is the whole issue.



**Hon KIM CHANCE:** What is it the minister's responsibility to do? His or her responsibility is to make good the damage that has been caused - as with the issue that arose with the law firm - and to ensure that the problem does not recur, which is exactly what she did. This matter, which has been identified by the Corruption and Crime Commission, is an enormously important matter, and I am grateful that no member opposite has even suggested that the minister did not care about the matter, or that the minister did not deal with this seriously when she became aware of it. Members have raised issues about whether she should have been aware earlier, but nobody has even suggested that the minister does not take this issue with the utmost seriousness. She does. We all know her personally; she would be the last person to condone anything like this, and she would share the loathing - as expressed by the Leader of the Opposition - for people who perpetrate crimes of that nature. If members asked me whether the minister should have known earlier than she did, I would agree with them and say yes. The minister should definitely have known earlier. Now let us ask the question: why did she not know earlier? A number of issues have been brought forward suggesting that had she done certain things, she would have known two weeks earlier. Had she listened to the radio that day, she might have heard it. Had the GMO brought it to her attention she might have known about it. All those may or may not be relevant. However, we are talking about a time frame of a couple of weeks, during which time she probably could not have done much different from what she did anyway. Let us go to the really serious question. I agree that the minister should have known earlier.

**Hon Barry House:** My questions go back more than a year.

**Hon KIM CHANCE:** Yes, quite, but they were not questions about the CCC investigation; they were questions about what was happening with the resolution unit. As the minister has said, she was aware of that and she knew that the CCC was working in an educative function with the department. Hon Barry House has seen the briefing note and he knows what she did. I cannot see any fault in that. Yes, she should have known earlier. The fundamental allegation is quite right. We agree. Why did she not know?

**Hon Norman Moore:** We actually think she did.

**Hon KIM CHANCE:** Then Hon Norman Moore would be calling her a liar, and I do not think he wants to do that.

**Hon Norman Moore:** I am not going to say it in those words.

**Hon KIM CHANCE:** Why did she not know? In a matter this serious, why did the CCC not tell her? I have already said that the minister is the department. All the department's actions are the minister's actions. She is personally responsible for everything that the department does; nobody disputes that. Our concept of individual ministerial responsibility is built on all that. Therefore, why did the CCC not say to the minister that it had worked with the department on an issue, that it was a matter of serious concern - as it is - and that it had actually found the department to be unresponsive, if that is what it thought? Why did it not tell the minister? Members can say I am flying a kite here, but I do not think they are thinking that. In fact, their body language indicates that they are asking the same question.

**Hon Simon O'Brien:** No we are not. This is a red herring.

**Hon KIM CHANCE:** Hear me out. If members think I am flying a kite, why did the CCC go to the minister as late as Thursday, 12 October, brief her, show her the executive summary, but not the report, and then not let her keep the executive summary? If the CCC's concern was to get this issue resolved - a serious issue which, as a result of the failure of the Department of Education and Training to act properly, could have resulted in a repeat offence; it is that serious - why on earth did it not tell the minister?

**Hon Norman Moore:** That is not the issue.

**Hon KIM CHANCE:** I am sorry, but it is.

**Hon Ray Halligan:** It is not the job of the CCC either.

Several members interjected.

**The PRESIDENT:** Order, members! We are now beginning to have cross interjections. This debate will end at six o'clock, if it does not finish earlier. I am obliged to put the question at 6.00 pm, and I note that other members want to speak.

**Hon KIM CHANCE:** I will move along, Mr President. The Leader of the Opposition asked the government to table this letter from Mr Hammond, the Commissioner of the CCC, to Mr Paul Albert, Director General of the Department of Education and Training. I am about to do that. I will read the last paragraph again because not everyone can see it -

The draft report contains official information. Pursuant to sections 152 and 153 of the Act, aside from the purposes of obtaining legal advice and formulating your response -

Remember this is a letter to Mr Albert. It goes on -

you and your Department are not at liberty to disclose the contents or substance of the draft report.

I seek leave to table the letter.

Leave granted. [See paper 2160.]

**Hon KIM CHANCE:** We now go to the “any reasonable person” test. Any reasonable person - Paul Albert is most certainly a reasonable person - reading that and not reading section 153 itself, would come to the view that that is a prohibition on him providing that to the minister. It must have been unclear, because the CCC later felt compelled to issue a clarification in a media statement which says the exact opposite of that. There is no mystery in this. Honourable members should read section 153, in which subsection (3) provides a capacity to inform the minister, in my humble view. Why was the letter worded in that way in the first place? Was it just a mistake in law? I do not know; I am not going to second-guess Mr Hammond, for whom I have the utmost respect as a lawyer. It just seems strange to say that one cannot communicate. Any reasonable person without legal training, or who is not familiar with section 153 of the act, would think that that meant that he could not tell the minister.

**Hon Simon O’Brien:** It does not mean anything of the sort.

**Hon KIM CHANCE:** I think Hon Simon O’Brien would find that that is the case with the “reasonable person” test. One cannot communicate it. For whatever reason - Mr Albert is not on trial here - he took that to mean that he could not tell the minister. Whether that was the intention of Mr Hammond or not -

**Hon Simon O’Brien:** How do we know that?

**Hon KIM CHANCE:** Because he did not tell the minister.

**Hon Simon O’Brien:** How does the Leader of the House know that?

**Hon KIM CHANCE:** Because the minister told me that, and I am not going to call her a liar. There is evidence in that letter to suggest that Mr Albert would reasonably have formed that view.

**Hon Simon O’Brien:** Then why did he have to be sacked?

**Hon KIM CHANCE:** That is not the question either.

**The PRESIDENT:** I propose to give Hon Simon O’Brien the call after Hon Murray Criddle and after a member of Greens (WA), if one of those members seeks the call. In the meantime, I think the Leader of the House will conclude his comments fairly shortly.

**Hon KIM CHANCE:** I am. Honourable members are reasonably concerned about this issue, as they should be. It is quite proper, and it is quite proper for Hon Peter Collier to raise the matter in the way that he has. I support that and, indeed, the minister herself supports that. This is a difficult issue. It is a dangerous issue concerning the way in which our children’s safety is threatened. It needs to be dealt with seriously, but I question why the relationship between the CCC and ministers has to be at such arm’s length. If the minister herself had been under suspicion, of course, the director general could not have disclosed to her those issues, and the CCC itself would not have. However, there has never been any question about whether the minister was implicated in the matters under discussion. There was nothing that could have prevented the CCC directly communicating with the minister; a phone call at the appropriate time could have prevented all of this happening, with the additional benefit of the matter being settled and our children’s safety assured at a much earlier date than was achieved. Hon Simon O’Brien can suggest that this is a red herring. I ask members to consider that this is a matter in which there have been manifold mistakes.

**Hon Simon O’Brien:** Yes, it has totally undermined our confidence.

**Hon KIM CHANCE:** A number of people have made mistakes. The minister herself, frankly, was subject to some of those mistakes. Perhaps somebody could have looked at the Corruption and Crime Commission annual report, although I think the honourable Leader of the Opposition, apart from Mr President, is probably the only person in the world who reads the CCC annual report. However, somebody from the minister’s office might have read it, which would have made a whole two weeks difference. Manifold mistakes have occurred, and no-one is saying that the fault lies all in the one direction. However, members might like to consider how fundamental a difference would have been made had the CCC simply formally raised the matter with the minister. How hard is that to do and why was it not done?

**HON MURRAY CRIDDLE (Agricultural) [5.41 pm]:** This motion is of real interest to me, because I have been the subject of a couple of these motions that have been moved here, particularly by Hon Tom Stephens, and I have had to answer them. It is a pity that this motion was not debated immediately it was raised in this house, because it would have been far more current. The motion is about the wellbeing of not only children but also teachers. It is about confidence throughout the Department of Education and Training. Anybody who has been

among teachers and in the area of education would know that there is a lack of confidence, which is really sad for the state of education in Western Australia.

The minister must accept responsibility. On the first day I was made a minister, the people in my office pointed to an empty chair in the corner and said that responsibility started and stopped there and that there was no question about it. That message must be got through. The minister said she had been involved in the Curriculum Council, which is part of the management structure of the department, and involved in wage discussions. I think the Curriculum Council has had to date four chief executive officers under the minister. The minister has been involved in those issues.

The government has said that there is zero tolerance of sexual contact between staff and students. Everybody agrees with that and it is a policy that should be steadfastly adhered to. We must be sure that there will be no tolerance whatsoever. The ministerial statement clearly outlines that policy, although there are still some outstanding issues that we must have dealt with immediately. The ministerial statement says that from now on the department's policy will be that any teacher convicted of sexual misconduct in or out of a school will not continue in that job. I hope that it is the government's policy. I hope that the minister accepts responsibility for it, as I know she will, and will carry it out.

I want to ask three questions. I will not go on because I know other members wish to speak. Hon Kim Chance said that the issue was all about timing, and it is. First, did the Corruption and Crime Commission go to the department at its own instigation or did the department invite it? Second, why did the director general not tell the minister? That is also a timing issue, because a letter was sent upon which everybody hangs the argument. The timing of the letter that was sent outlines the CCC belief about whether the director general could tell the minister. It would be very interesting to know when this investigation began. Third, was any member of the minister's staff told about the CCC inquiry before the report was presented to the minister on 12 October?

**Hon Ljiljanna Ravlich:** What was the second question?

**Hon MURRAY CRIDDLE:** Why did the director general not tell the minister that the CCC inquiry was under way? Bearing in mind the date of the letter that was sent, he could well have told the minister before the letter was sent. He could have found out whether he had an obligation to tell the minister before the letter was sent.

I make those points on these very serious issues. Ministers of the Crown take on a very responsible job. I have been in that position, and it is not easy. One has to work long hours and be on top of the portfolio, which is the particular issue here.

**HON PAUL LLEWELLYN (South West) [5.46 pm]:** I will keep my comments quite brief, but I want to deal with the motion and some of the fairly wide-ranging issues that Hon Peter Collier raised, some of the procedures and issues that arose out of the debate and the context in which the debate is taking place. Hon Peter Collier has certainly made a strong case for there being concerns that we need to address in the way that the minister has dealt with some of the issues. However, in reviewing the motion that the house has lost confidence in the capacity of the Minister for Education and Training to carry out her duties, the minister's most important duty is to educate the children and adults of the state, to protect the welfare of children, teachers and employees of the department and to preside over responsible administration of the department.

Hon Peter Collier raised quite a number of issues, one of which was outcomes-based education and the process of introducing OBE and the community and public concerns that were raised as a result of the public debate. There needs to be some proper recognition of this matter by the minister. I think that at some levels she failed to acknowledge the depth of community concern at the rate at which OBE was being implemented rather than whether OBE should be implemented. We all learn as a result of being in this place. One of the lessons must be that we need to be sensitive to the depth of concern in the community. In this instance, a long list of people had concerns. There were also issues with the complaints process within the department. However, the issue I have most concern about was the negotiations between the State School Teachers' Union and the government being linked to OBE outcomes. That issue seriously needed to be addressed. Quite clearly, from the evidence I have seen, it seemed to be an inappropriate way for the minister to conduct the business of managing the department and managing negotiations.

The issue of the Corruption and Crime Commission and whether the minister knew about a report is, I think, a moot point. The point has been made that it was a question of timing. We all know that the Corruption and Crime Commission does not go around advertising that it is investigating; in fact, the nature of the commission is that it largely operates undercover; otherwise, it would raise other issues.

In brief, I see that there are substantial questions to be answered on the way in which the minister has been conducting herself in not only this house but also the public debate. Taking public debate seriously is an important matter. We must also put this issue in the context of the Department of Education and Training having many thousands of staff - perhaps 25 000.

**Hon Ljiljanna Ravlich:** It has more.

**Hon PAUL LLEWELLYN:** It is a much bigger department, but I could not get the numbers.

**Hon Ljiljanna Ravlich:** It has 28 000 full-time staff.

**Hon PAUL LLEWELLYN:** It has many thousands of students and a very large budget of some millions. Is the minister able to tell me the numbers?

**Hon Ljiljanna Ravlich:** The budget is about \$3.7 billion annually.

**Hon PAUL LLEWELLYN:** It is a very big undertaking and requires a great deal of capacity to train, educate and inform our community. I want to put this whole debate in context.

We also need to look at the quality of discourse in this place, the way in which we ask and answer questions and the way in which we conduct ourselves in debate. There is a burden of responsibility and the opposition putting continual pressure on the minister and haranguing her on a daily basis - I am not saying she should not be accountable -

**Hon Murray Criddle:** You should have been here when I was Minister for Transport.

**Hon PAUL LLEWELLYN:** I am not apportioning blame here. I am merely saying that it is not conducive to good governance or good decision making when people are put under unreasonable pressure.

**Hon Peter Collier:** That is our role.

**Hon PAUL LLEWELLYN:** Our role is in effect to raise really important matters in a respectful way. Let me continue this line of thinking

Several members interjected.

**The PRESIDENT:** Order, members! Hon Ray Halligan and Hon Ken Travers! We have 10 minutes to go. Hon Paul Llewellyn has no more than that to deliver his observations and there may be other members who want to speak.

**Hon PAUL LLEWELLYN:** I will be very brief. The question is: where to from here? There is a great deal of room for the minister to improve the way in which she is conducting some of her public relations. We must listen more respectfully and intently in this place and speak more respectfully, and be models of good communication because, after all, many thousands of children look at this forum.

**Hon Peter Collier** interjected.

**Hon PAUL LLEWELLYN:** I am not being moralistic here. I am not talking to anybody in particular. If the cap fits, wear it!

We should stay focused on the issue and avoid personal attacks. That has been a feature of the way in which we have had this conversation. It is right that we should have had this debate today, and perhaps we should have had it the other day. However, I do not think that, on the balance of evidence and reasonableness, we can support a motion that says the minister has lost capacity. I think the minister has demonstrated she has a considerable amount of capacity to deal with her portfolio and a considerable capacity to carry out her duties.

Are some other issues at stake? Absolutely. I think this debate has been really important because it will improve the way in which the Department of Education and Training, the minister and the government conduct their work in the best interests of the children, teachers and parents of Western Australia. The issues that Hon Peter Collier raised were well researched, well presented and well argued, but they did not necessarily make the case that the minister should be replaced and that she has no capacity to carry out her duties. We can continue this investigation but we need much more time than this to develop the carriage of the education portfolio in a more responsible way and in the public interest.

**HON BARRY HOUSE (South West) [5.53 pm]:** I support Hon Peter Collier's motion. I will start by quoting from *Hansard* of 12 October 2000 what the minister herself said about setting the standards of ministerial responsibility. Members will recall that at that time the Labor Party was in opposition. Hon Ljiljanna Ravlich said -

Members opposite may think they can govern with a hands-off approach, but they are part of the Westminster system and can abrogate ministerial responsibility no more than can chief executive officers abrogate responsibility for what happens in their agencies.

That is a pretty good summary of ministerial responsibility, which we should be applying here. That is what this motion is all about. They are the minister's words.

There is not very much time left for debate. In people's minds, the issue seems to have come down to timing. Who knew what about the Corruption and Crime Commission's involvement in this issue and at what time? I contend that the issue of sexual misconduct by employees of the Department of Education and Training was raised very clearly by the series of questions I asked from September to November last year. They established

that there were 99 cases of alleged misconduct in the department; 16 of those were warehoused in district offices, and of those we have established that seven or eight were related to serious sexual misconduct.

In today's debate the minister has indicated that she was aware of the issue. It was either as a result of those questions or through other matters - I do not know. However, her tabling during question time, at my request, of the briefing note that she sought following my questions indicates that the minister was concerned enough to get a bit more information on the issue from the department. That briefing note says that these matters were referred immediately to the Corruption and Crime Commission and the child protection squad. That indicates two things: first, that the minister was aware of the issue in the department and, second, that the CCC was involved at 17 November 2005. That was nearly a year ago. If matters of that nature have been referred to the CCC, surely the department, hence the minister, will expect that the CCC is conducting some sort of inquiry into these matters and will report back to the department and the minister.

**Hon Kim Chance:** Which it never did.

**Hon Norman Moore:** It did!

**Hon BARRY HOUSE:** Which it did.

**The PRESIDENT:** Order, members! The debate has four minutes to go. Hon Barry House has not interjected on anybody. I do not know why the two leaders have to interject on him.

**Hon BARRY HOUSE:** I am saying that in some people's minds it is a matter of timing; that is, who knew when the CCC was conducting an inquiry into this matter. I contend it is clear from the documentary evidence, the questions in *Hansard* and the briefing note the minister has provided that the nexus was established on 17 November 2005. Therefore, on that basis, along with a host of other matters, I think Hon Peter Collier's motion should be supported.

**HON PETER COLLIER (North Metropolitan)** [5.57 pm]: I would like a little more time to respond to some of the minister's comments and also to those of the Leader of the House, but I do not have that time. Suffice to say, the reason for bringing forward this motion was that the problems facing the Minister for Education and Training did not emanate from what happened over the past week. That was a profound issue but the problems have existed since she moved into the position of Minister for Education and Training. Confidence is lacking in the education sector because of the fact that the minister is not on top of her portfolio. She does not have the confidence of the education sector, she is not representing the education sector, and if we want to put some sanity back into the education sector, we need a new minister for the Department of Education and Training.

Question put and a division taken with the following result -

Ayes (13)

Hon Ken Baston	Hon Donna Faragher	Hon Barry House	Hon Bruce Donaldson ( <i>Teller</i> )
Hon George Cash	Hon Anthony Fels	Hon Norman Moore	
Hon Peter Collier	Hon Nigel Hallett	Hon Helen Morton	
Hon Murray Criddle	Hon Ray Halligan	Hon Simon O'Brien	

Noes (14)

Hon Shelley Archer	Hon Kate Doust	Hon Louise Pratt	Hon Giz Watson
Hon Matt Benson-Lidholm	Hon Adele Farina	Hon Ljiljana Ravlich	Hon Ed Dermer ( <i>Teller</i> )
Hon Vincent Catania	Hon Jon Ford	Hon Sally Talbot	
Hon Kim Chance	Hon Paul Llewellyn	Hon Ken Travers	

Pairs

Hon Margaret Rowe	Hon Sue Ellery
Hon Robyn McSweeney	Hon Graham Giffard
Hon Barbara Scott	Hon Sheila Mills

Question thus negatived.

*Sitting suspended from 6.02 to 7.30 pm*

**CRIMINAL INVESTIGATION BILL 2005**  
**CRIMINAL INVESTIGATION (CONSEQUENTIAL PROVISIONS) BILL 2005**

*Reports*

Reports of committee adopted.

**PARLIAMENTARY LEGISLATION AMENDMENT BILL 2006***Third Reading*

Bill read a third time, on motion by **Hon Kim Chance (Leader of the House)**, and returned to the Assembly with amendments.

**PRISONS AND SENTENCING LEGISLATION AMENDMENT BILL 2006***Second Reading*

Resumed from 24 October.

**HON MURRAY CRIDDLE (Agricultural)** [7.35 pm]: I was making some remarks yesterday on the Prisons and Sentencing Legislation Amendment Bill 2006. I was pointing out that the wellbeing of prisoners and their rehabilitation are essential. The bill allows for the chief executive officer to provide a broad range of services and programs. I outlined the essential needs of some of these people to enable them to get back into society, the knowledge and skills that could be gained and the ability of prisoners to integrate into the community on their release. That is one of the really serious issues that we have to grapple with. It would be interesting to know how some of these provisions will be put in place and how the programs will be implemented. Maintaining and strengthening the support of family is also a very important issue because children and extended family are involved. On quite a number of occasions the extended family is very important to those people who are put into prison.

There are opportunities for prisoners to participate in work, leisure and recreational activities. Recreational opportunities are very important to prisoners. There is an opportunity for them to become involved in some of these activities. It is also important to promote the health and wellbeing of prisoners. Certainly that is an issue in a lot of places. I am referring to the way prisoners look after themselves and how they should be prepared to return to society.

The other issue that is apparent in this bill is work camps. They have been operating successfully. As the Minister for Transport, I remember making some money available for a Special Air Service officer to take some young people into real-life situations so they could learn how to look after themselves, learn how to cook for themselves and be involved with work. To my way of thinking, that was an opportunity that should have been expanded and developed. The reports we got back from those people were that it had a very beneficial effect on their lives into the future. They were only young people. I have to admit that the person doing the job was a Spartan-type person. The prisoners reacted to that person. In many cases, if people are set a very good example and they have discipline to abide by, they react very positively. The feedback from these camps was certainly very positive. I notice that this bill establishes a role in the overall delivery of custodial services in the state. There will be a real opportunity to develop these work camps. The teaching needs to be of a practical nature. A lot of these people are pretty basic in this area but it helps them to develop as people.

As I said earlier, my comments arose from the development of a remand centre in Geraldton. A lot of money could have been expended on those buildings. My vision for that development was to have some transportable buildings brought up and put in place to give the whole centre an opportunity to develop. We could have had the opportunity to develop the skills of the prisoners so that they could go back into the community and the work force and have meaningful lives. That is the factor underlying all these issues. I look forward to the progression of the bill.

**HON JON FORD (Mining and Pastoral - Minister for Local Government and Regional Development)** [7.40 pm]: I thank members for their comments on the Prisons and Sentencing Legislation Amendment Bill. In short, this bill attempts to put management procedures in place to deal with prisoners through what is described as a more contemporary method of rehabilitation. It also makes some consequential amendments. I will try to deal with the issues that members have raised in the second reading debate. Anything that I do not deal with in detail will be dealt with during the committee stage. Hon Simon O'Brien asked about the prison officers' oath to engagement. This amendment was introduced in the consideration in detail stage in the other place to ensure consistency with similar oaths of office made by members of the judiciary and members of the local government under the changes introduced under the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005. Members asked whether prisons in Western Australia were ever known as His or Her Majesty's prisons. I am advised that that has never been the case. In the original Prisons Act 1903, prisons were referred to as jails, as they were in the 1809 ordinance that was repealed by the 1903 Prisons Act. The things members learn in this place.

**Hon Simon O'Brien:** I add that I sort of knew that. It was an unruly interjection that raised the matter of the HM.

**Hon JON FORD:** If it had not been raised, I would never have known it. Questions were asked about the reasons for prisoners' temporary absences from prisons. Hon Simon O'Brien noted that there are legitimate

reasons for prisoners to leave prisons but that there must be a mechanism to regularise their absence. The bill provides for the reasons for a prisoner's absence and for the authority to either approve or revoke approval for an absence, and it outlines the matters that must be considered before granting an absence. When granting an absence, consideration must be given to the specific reasons for a prisoner applying for a leave of absence, the level of supervision of the prisoner and how often a leave of absence may be granted. Other conditions involving the categories of prisoners who would have access to absences will be provided for by regulation. Some of the specific reasons for granting a prisoner a leave of absence include the rehabilitation of a prisoner and the prisoner's reintegration into the community. A prisoner might be granted a leave of absence to engage in community work or for home leave or educational training. Leave could be granted also for reasons of compassionate and humane treatment of prisoners and their families so that a prisoner can attend a funeral, visit sick relatives or a partner who has given birth, and for medical or other health treatment. Leave could be granted also to further the interests of justice so that a prisoner can attend a court or other judicial bodies and to assist the police. The conditions placed on absences will be very similar to the conditions that are currently followed. The main changes introduced by the bill will be the ability to grant leave for education and training, and to allow mothers with children to accompany a child to hospital. Provision has been granted for interstate absences and the ability to withhold money from a prisoner who is in paid employment to cover board, debts, family support and savings.

Hon Simon O'Brien and Hon Giz Watson asked questions about the reason for the staged introduction of this legislation. The government wants to act quickly to introduce the Mahoney reforms. It was decided that the provisions in this bill and the parole changes could be developed sooner than the others; therefore, this bill was introduced on that basis. A staged introduction will also help the Department of Corrective Services to implement the reform. The department will have time to come to grips with the reforms.

Hon Giz Watson raised concerns about the community engagement powers. She is concerned about the promotion of the privatisation of corrective services. The government does not believe that that is so. The provisions are intended to provide a clear basis for the extensive involvement of the community in the provision of corrective services, which already occurs. That includes consultation with stakeholders about proposed developments; the use of volunteers in the provision of support and rehabilitation for offenders; the use of Aboriginal community members in the system to supervise offenders on community orders under community supervision agreements; and arrangements with government and non-government agencies for the support and supervision of offenders. Hon Giz Watson also raised concerns about the bill not providing clear guidelines for the engagement of private contractors. These guidelines are already legislated for in the Prisons Act and in the public sector policy that the department currently follows. For example, contractual arrangements for prisons services provided by Acacia Prison are governed by part IIIA of the Prisons Act and, apart from minor amendments introduced by this bill, they remain unchanged. That part of the act gives detailed guidelines for the reporting on contractors and section 15G provides for the report to be tabled in Parliament. The legislative provisions are supported by an extensive policy governing the contracting of the public sector services. Hon Giz Watson also raised concerns about the exchange of information between agencies for the purpose of offender management and research, particularly regarding the breadth of its definition. The definition refers only to contractors under the Court Security and Custodial Services Act 1999.

Hon Giz Watson raised concerns also about the repeal of section 53 of the Prisons Act, "Practice of religion by prisoners", and the wording of its replacement. Hon Giz Watson seemed to be concerned that there was a belief that the requirement that the practice of religion was subject to the security, good order and management of prisons was a new feature. This requirement has always been part of the provisions and is necessary for prison management. Within these limitations, prisons accommodate the religious and spiritual needs of prisoners as fully as practicable. The new wording omits to specify that religious rights and services that a prisoner may wish to observe can occur within a prison. However, this was seen to be evident, and so the Prisons Act is to be amended. Reference to a prisoner being able to state a religion on admission and to have this recorded has also been omitted. Current standard admission processes include the opportunity for offenders to nominate a religion, which is then maintained on a prisoner database.

Clause 40 concerns information exchange and amends the Sentence Administration Act. It is at the chief executive officer's discretion to disclose information to the public if necessary for the safety of the public. This provision mirrors a similar amendment to the Prisons Act under clause 35 and covers a circumstance whereby a dangerous offender who is on parole has breached the conditions of parole and is at large and poses a risk to the community generally or to individuals. It is not thought that this provision will be used often. The CEO would need to consider the imminent risk based on all the circumstances at the time and weigh up the benefit of disclosure. This would take into account the privacy of the offender.

Information exchange for research allows the CEO to ask others for information. Hon Giz Watson indicated that she wanted to know the type of research that includes and whether additional staff will be required. She is concerned that if a CEO asks for the information, it must be provided. That is not the case. The clause gives

protection for agencies that provide information for research, but does not oblige the agencies to participate. This provision will allow for a wide range of research, ranging from qualitative interviews to large-scale linked database research. At times research will be conducted by departmental staff, but mostly research will be undertaken by external researchers. Regulation will provide for safeguards for the keeping and use of that information.

Hon Giz Watson also raised concerns about changes to the Criminal Law (Mentally Impaired Defendants) Act 1996 and changes consequential to the rearrangement of provisions within the Prisons Act dealing with temporary absences from prison. An absence that furthers the interests of justice would be to attend court or another judicial body. This reason now falls within that part of the Prisons Act that deals with temporary absences. Mentally impaired accused are excluded by the Criminal Law (Mentally Impaired Defendants) Act from access to these provisions. The amendment maintains a capacity for mentally impaired accused held in prisons to leave prison to attend court.

With regard to the changes to section 72 of the Victims of Crime Act, these changes are consequential to the creation of two departments from the Department of Justice. They will ensure that the Department of Corrective Services and the Department of the Attorney General can continue to receive information about victims of crime. This will ensure that victims of crime can continue to receive information and support services.

With regard to the transfer of responsibilities for prison health to the Department of Health, the Minister for Health is considering this recommendation of the Inspector of Custodial Services. Any legislative change that is required will be made when that decision is made.

With regard to prisoner wellbeing and rehabilitation, new section 95 of the act makes specific mention of the need to ensure that programs and services meet the needs of Aboriginal and women prisoners. That is because these groups of prisoners form a significant subpopulation of prisoners, and there is a need to ensure that programs and services are relevant, as mainstream services have not done this adequately in the past. This section is broad and covers the wellbeing and rehabilitation of all prisoners. Mention of women and Aboriginal prisoners should not be interpreted as excluding the particular needs of other subgroups of prisoners.

I refer to the concerns raised about health inspection reports on prisoners. Reports on health inspections of prisoners cover the health, hygiene and sanitary conditions of facilities in prisons. Reports are given to the prison superintendents, who are expected to make any recommended changes. These reports are available to the Inspector of Custodial Services, and they will be available under freedom of information legislation.

I have attempted to cover many of the issues that were raised. Some of the questions that were asked last night in particular were quite comprehensive. Luckily, because there was a break in the debate, I was able to get some definitive answers. We are about to go into committee. That will provide the opportunity to deal with the issues in more detail.

I thank the members for their comments on the bill. I commend the bill to the house.

Question put and passed.

Bill read a second time.

#### *Committee*

The Deputy Chairman of Committees (Hon Louise Pratt) in the chair; Hon Jon Ford (Minister for Local Government and Regional Development) in charge of the bill.

**Clause 1 put and passed.**

**Clause 2: Commencement -**

**Hon MURRAY CRIDDLE:** Subclause (2) states -

Different days may be fixed under subsection (1) for different provisions.

What are those different provisions?

**Hon JON FORD:** Although we will seek to proclaim all the provisions of the bill at the time of proclamation, we may need to bring into operation some of the provisions in the bill, such as the temporary absence provisions, at the same time as the parole provisions are brought into operation.

**Hon Murray Criddle:** When is that likely to occur?

**Hon JON FORD:** I am advised that the parole provisions are expected in early 2007.

**Clause put and passed.**

**Clause 3 put and passed.**



**Clause 4: Section 3 amended -**

**Hon GIZ WATSON:** According to the explanatory memorandum, this clause deletes references to words or expressions that have become redundant as a result of the provisions of the bill, and introduces new definitions where required. It is proposed that the reference to “Executive Director (Corrective Services)” be removed from the act, as this provision is now archaic in light of current public sector management principles and is also inconsistent with the machinery of government reforms and the Mahoney recommendations. To which of the Mahoney recommendations does this refer? If the term “Executive Director (Corrective Services)” is to be removed, what will that position now be called, and where will that term be defined?

**Hon JON FORD:** This change does not come under the Mahoney recommendations. The executive director will be called the “Commissioner for Corrective Services” and that position is established under the Public Sector Management Act.

**Hon GIZ WATSON:** To that extent, the explanatory memorandum is perhaps incorrect, because it says that the removal of the term “Executive Director (Corrective Services)” is consistent with the Mahoney recommendations. It does not really matter, but I could not find that recommendation in the Mahoney report, so I am checking to see whether it is accurate.

**Hon JON FORD:** The member is correct; it does not refer to a specific recommendation of the Mahoney report, although I am advised that the establishment of the position of Commissioner for Corrective Services was a recommendation. As I said before, that was established under the Public Sector Management Act. It was thought that the title would apply to situations in which an “executive director” seemed an appropriate position as head of a sub-agency of a larger group. It is no longer relevant and needs to be a much stronger senior position.

**Hon GIZ WATSON:** I note that there are some new definitions at subclause (1)(c), including a definition of “judicial body”, which in part states -

“**judicial body**” means a court, tribunal or other body or person that has judicial or quasi judicial functions . . .

The explanatory memorandum does not seem to make reference to this part of the clause. It does not add a lot. It states -

It is proposed through clauses 27 to 29 of the Bill, to amend the provisions in the *Prisons Act 1981* relating to the authorised absence of a prisoner from prison. Accordingly, it is proposed to insert definitions of an “absence permit” . . .

I can understand that, but I do not quite understand why there needs to be what I assume to be a new definition of “judicial body”. Perhaps the minister might explain what that definition relates to and whether it is a new definition within the act.

**Hon JON FORD:** As the honourable member suggested, it updates the definition of “judicial body” to include bodies that did not previously exist, such as the Corruption and Crime Commission.

**Hon GIZ WATSON:** I understand that it is unrelated to authorising the absence of prisoners. That is a separate issue. The relevant paragraph in the explanatory memorandum implies that it is related to the matter of assessing the absence of prisoners, but it is simply a timely way to amend the definition. Is that a more reasonable explanation for its inclusion?

**Hon JON FORD:** Yes, it is simply an administrative amendment.

**Clause put and passed.****Clause 5: Section 5 amended -**

**Hon MURRAY CRIDDLE:** This clause provides an opportunity for the minister to declare a place to be a prison. However, I notice in the second paragraph of the explanatory memorandum entry for clause 5 that there is an opportunity, as I understand it, for the minister to reverse the situation and revoke the proclamation of a prison. I ask the minister whether a prison is likely to be created in the near future, or whether the proclamation of a current prison is to be revoked.

**Hon JON FORD:** I am advised that the answer is no to both questions.

**Hon GIZ WATSON:** The explanatory memorandum indicates that this clause is consistent with one of the Mahoney recommendations. Which recommendation is referred to?

**Hon JON FORD:** It does not refer to a specific Mahoney recommendation. The clause is about consistency with a recommendation concerning section 13 of the Young Offenders Act 1994. Under those provisions, the minister can declare a detention centre. This clause makes the provision consistent with that.

**Hon SIMON O'BRIEN:** Clause 5(1) states -

Section 5(1) is amended as follows:

- (a) by deleting "The Governor may by proclamation -"

Declare a prison -

and inserting instead -

" The Minister may, -

Declare a place to be a prison -

by order - "

He may also revoke such a declaration. I am wondering what the point is of this provision. Can the minister outline for members the dot point sequence of events when a government has determined that a place should be proclaimed a prison, and sets about doing it? What are the steps from the time the decision has been made, after all other considerations, to the proclamation of a prison?

**Hon Jon Ford:** For a Governor?

**Hon SIMON O'BRIEN:** Yes.

**Hon JON FORD:** I am advised that in general terms the first step is to define the geographic boundaries of a prison. Once those boundaries have been established - that can take a few weeks because of the administrative paperwork - the minister makes a recommendation to the Governor, who then decides with the Executive Council whether the area will be declared a prison. The whole process takes several weeks.

**Hon SIMON O'BRIEN:** If a minister were to issue an order, there would be one less link in the chain. At the moment the responsible minister would have to determine that a prison was required in a certain place. Would that decision go to cabinet?

**Hon JON FORD:** If there was a requirement to build a prison, cabinet would be aware of it from a budgetary perspective. Cabinet is not required to approve the building of a prison. The Governor is required to approve the building of a prison.

**Hon SIMON O'BRIEN:** The Minister for Corrective Services - we had a Minister for Corrective Services in 1982 - may determine that a certain place be declared a prison or that the boundaries of a prison be altered. He or she will then publish that order. The minister does not need to approach his colleagues, cabinet or anyone else about the matter. If the same minister wanted to do that under the existing provisions, the proposal would have to go before the Governor. Even if the proposal does not go via cabinet and involve other government members, it would still have to be communicated to the Governor, in which case it would go through another pair of hands. I am not sure about the way in which proposals reach the Executive Council. Presumably a proposal would go before the Executive Council, the Governor would sign a proclamation and then it would be proclaimed. That removes a step from the process. It removes a level of scrutiny from the process, specifically the level of scrutiny that occurs when the instrument goes beyond the minister's office, but before it reaches gazettal and has to go the Governor in Executive Council. That is the effect of this amendment, as I understand it. I am sure the minister will correct me if I am wrong. Regardless of what Mahoney apparently said about some other recommendation that related to the Young Offenders Act 1994, which may well have been viewed in a different context because it relates to young offenders and how they are detained, why is it forward moving to delete a step in the chain that, presumably, has been around since the year dot?

**Hon JON FORD:** Currently an issue that is not required to go to cabinet may need the Governor's signature. For example, the reappointment of a director general would go to Mal Wauchope, the Director General of the Department of the Premier and Cabinet, who is the Clerk of the Executive Council. He would prepare the papers in the way that is required by the Department of the Premier and Cabinet and they would be sent to the Governor. The member is right; in this case the process would be similar. For instance, if a ward of a hospital were declared a prison, there would be a budgetary requirement. The government believes that this is a forward step because it will remove a considerable amount of administration from the process. I suppose one could say that the Governor in Executive Council is a check or balance. However, it could also be perceived as a cultural and historical step. Given that the Governor chooses mostly to take the advice of the Executive Council, which is his cabinet, a real review is not carried out. This provision is consistent with acts such as the Young Offenders Act 1994, for which the minister also has responsibility

**Hon SIMON O'BRIEN:** That is interesting. This clause has been included to remove an inconvenient administrative step. It is convenient to do lots of administrative things. I will now do an administrative thing. I move -

Page 4, lines 8 to 14 - To delete the lines.

There is no requirement for this provision. I do not believe that deleting that link to remove an administrative burden in the process is a step forward. This provision has been around for a long time and has served as a check and balance. If we want to get rid of administrative burdens, I could provide the minister with a huge list of administrative burdens. Madam Deputy Chairman would be awfully cross with me if I digressed and listed the administrative steps that could be removed when it comes to obtaining a heavy vehicle permit from the Department for Planning and Infrastructure; therefore, I would not dream of doing that. Suffice to say, I am sure the honourable minister would have a hit list of administrative inconveniences. Some members might argue, and do argue, that some of those things are needed. That is the nature of the debate about red tape as a negative versus regulations as a positive. In effect, I have moved to delete clause 5(1) because I do not believe any case has been made for the government's proposal. The amendment seeks to take out a link in a chain, which is not of consultation; it is a check and balance. The process confirmed by the minister is that once the minister at departmental or administrative level has decided a change is required, the extra check and balance requires the matter to go outside the department through the Exco process and receive some other scrutiny, even in passing, from at least one other minister and others. There may be all sorts of reasons that it might be highly useful to have that process in place. The state of Western Australia has found that to be the case since the year dot. That is why this provision remains in the legislation.

The other aspect I will address in relation to this subclause will not hold favour with the majority in this chamber - just; that is, the old O'Brien conspiracy theory with which the minister is familiar. That theory relates to his government's predilection to get rid of any reference to the vice-regal office. That might have something to do with it, and I am tempted to think that it has. In Western Australia the legislature basically consists of three parts: the Legislative Assembly, the Legislative Council and the Governor in Executive Council. I feel loath to remove a part of that and not replace it with something else. For the purpose of debate, it is reasonable to delete these provisions; they do not advance things at all. I appreciate that if we do that we may have to recommit clause 4(1)(b). That is a small price to pay for getting things right. Unless the minister has some better reason than administrative convenience for amending this provision, which has been in place for more than 100 years, I propose to persist with my amendment to delete the line.

**Hon JON FORD:** The government does not support the proposed amendment. The legislation is older than the Young Offenders Act 1994. Under that act the minister can declare a place to be a detention centre without reference to the executive. This provision will maintain consistency in the way the minister administers the portfolio.

I am shocked at Hon Simon O'Brien's suggestion that we would go to this length to remove reference to the Crown from the legislation!

**Hon Simon O'Brien:** Don't you think there is a difference between declaring a place to be a juvenile facility and a prison?

**Hon JON FORD:** As I said before, if it were to be a major prison, cabinet would be well aware of it, if not for any other reason than prisons cost money. As the member will be aware, cabinet is a hotbed of advocates looking for funds. There is always debate about where funds should be directed to, given the consequential jobs and the like. The only example I can think of is that, if for some reason there was some sickness or something and we wanted to use a wing of a hospital as a prison, we could declare it a prison and bring it under the control of the minister and the Commissioner for Corrective Services. There is no conspiracy. The government opposes the amendment. With this clause the government is seeking consistency with the provisions of another act.

**Hon GIZ WATSON:** It seems to me that the issue of siting prisons, whether it be a new prison or declaring an existing building as a prison, is of considerable community interest, if not a contentious issue. I am seeking some assurance that there will be a process. Will this amendment reduce the process of community involvement in any proposed sitings? I am slightly concerned that the minister will be able to declare places to be prisons. It sounds a bit like a John Howard idea: it is useful to have prisons dotted all over the place. I acknowledge that one of the other members asked a similar question. Is it the intention to establish more, smaller prison facilities in Western Australia? I appreciate the argument about the consistency with the provisions in the Young Offenders Act. That is a fair argument. Apart from the consistency argument, what does government envisage will happen once this legislation has been proclaimed? Will the minister declare more places as prisons; and, if so, where, and what sort of community involvement will there be in those decisions? I am considering the amendment. I am also trying to work out whether that will make any difference to the process and whether there will be sufficient debate about the location of these facilities if there is to be more of them. I thought we were trying to get rid of them.

**Hon JON FORD:** The government has no plans for there to be a plethora of prisons all over the place.

**Hon Simon O'Brien:** Is this the plan for Royal Perth Hospital? You mentioned hospitals.

**Hon JON FORD:** Now the member is being paranoid - but since he has mentioned it! Of course major prisons are a very contentious issue. It would be a very foolish government that did not consult widely on prison sitings.

We tend to consult so widely on siting prisons that we are criticised for delaying them. The Broome prison is one to which that criticism applies. Is there a particular process that demands consultation? No; that requirement does not exist now. I argue that reference to the executive will not guarantee that. There is an argument that it is there for a reason. All I can say is that it is not the government's intention to establish prisons all over the place without consulting the community.

**Hon SIMON O'BRIEN:** The idea that hospital wings or major hospitals could be converted into prisons was entertained purely in a tongue-in-cheek way, as sometimes happens when we are at the committee table. I just wanted to clarify that because I am not sure what was picked up for the record. I am not suggesting that the government would do that. Similarly, I am not getting hung up on the anti-monarchist, republican thing. However, I am genuine in making the observation about a step in the chain. A very experienced former minister who sits not far from where I sit tells a story that I will not repeat in detail in this chamber; that is his prerogative if he chooses to do so. It is possible sometimes for the minister responsible to go to Executive Council, on behalf of the government, and to get a bit of a surprise at a proposal by a ministerial colleague. As I said, a former minister, who is still a member of Parliament, has a graphic example of another minister who decided that he or she would introduce a regulation or something similar. It impacted across the whole of government, and matters involving prisons can also impact incredibly on various other ministries. In that case it was good that Exco was involved because it gave the minister, who is still a member, the opportunity on that occasion - when his heart had stopped palpitating - to say that he would withdraw that one and come back to it at the next Exco meeting. I am sure the current government has no maverick or lunatic ministers, but this illustrates the need for checks and balances; it is because of the human element. It is probably convenient for governments of both persuasions to make this amendment. It is an extra check and balance; no more, no less. There is no need to remove established checks and balances simply for administrative convenience and because the department cannot be bothered to go through the process. It is not an everyday affair when a proclamation about a prison or some such matter goes to the Governor. I think the provision is worth preserving, so I will persist with the amendment.

**Amendment put and negatived.**

**Clause put and passed.**

**Clause 6 put and passed.**

**Clause 7: Section 7 amended -**

**Hon GIZ WATSON:** Clause 7 deals with the involvement of individuals or organisations in providing services within the prison. I thank the minister for his response in his second reading summing up to the questions I raised. His answers have allayed my concerns somewhat about the intention of this amendment. Of course, the Greens (WA) would support the involvement of community organisations. I am particularly looking at the explanatory memorandum in which it is suggested that it is intended to facilitate consultation in collaboration with and use of community groups, Aboriginal elders, specific interest groups, private commercial organisations etc. That is fine, but I still have a residual concern as this amendment is so broad. Clause 7 states -

any individual or organisation in any way that the chief executive officer considers expedient for the purpose of the performance of functions under this Act.

Obviously that would encompass community organisations, service organisations and Aboriginal elders etc, but it could involve private companies. My concern remains, because the amendment is so broad, about the relationship between corrective services, which is a public service, and private organisations and private individuals in the provision of that service. I move -

Page 5, after line 18 - To insert -

(2b) The Department's Annual Report must contain a list of individuals and corporate bodies who assisted the CEO in the performance of his or her functions under the Act.

This is a fairly inoffensive addition. It simply requires that the annual report of the department sets out very clearly which individuals and organisations have been involved in providing assistance to the CEO. It is an accountability measure. It would assist to resolve my concerns about the organisations that would be approved by the chief executive officer to assist in carrying out the performance of functions under the act. I hope that other members in the chamber will support this amendment. I do not think it detracts from the intention of the clause as it stands, but it would mean that the process was transparent and it would give an account of those who had been involved in any given year.

**Hon JON FORD:** The government opposes this amendment. We understand the intention but if this were to be incorporated in the bill, there could be a couple of unintended results. One could be that it would be an extremely onerous task. We would be encouraging the chief executive officer to have quite a broad consultation. Given that, it would be quite an onerous task to include all those possible organisations and individuals involved. We believe that certainly from a ministry perspective it would be onerous, and, with a mind to that, the CEOs

would limit their consultation. The other side of it is the privacy issue, particularly from an individual perspective. Volunteers, for instance, who did not want to be identified, would be exposed to public scrutiny. It is on that basis that the government opposes the amendment.

**Hon GIZ WATSON:** I hear the concerns about privacy. It seems to me that we are still dealing with a public function, which is the provision of corrective services. Can the minister give me an example of where another department engages the assistance, collaboration and consultation of private organisations or individuals without the public knowing who they are? If this amendment was not successful, I assume that, for example, the CEO would have to keep records of who he or she was consulting with, collaborating with or being assisted by. Would those records be obtainable under freedom of information? It is just a simple accountability measure.

**Hon JON FORD:** The Department for Community Development, for instance, consults broadly on a range of community development issues and is not required to report annually in all those contexts. From a fisheries perspective, which I am familiar with, literally hundreds of individuals and organisations are consulted. Some of that information is specifically excluded from being reported on as the commercial sector is simply engaged without the fear of commercially confidential information getting out and about. They are two examples I can think of. I understand that the Department of Environment and Conservation consults very broadly both with individuals and organisations and also is not required to report on all those consultations.

**Hon GIZ WATSON:** I suggest that that information would be obtainable under FOI unless departments were consulting verbally and not making records of it, which would be rather odd behaviour for a department.

**Hon JON FORD:** My understanding of FOI is that one has to know what information one is seeking. With regard to the fishing information, I understand that it is excluded from that particular section of the act.

**Hon Giz Watson:** That is commercial confidentiality. There is a slight difference.

**Hon JON FORD:** We are talking about a particularly sensitive area, such as areas in DCD. We are trying to encourage broader consultation, not limit it. I am just putting my argument. I understand what the member is saying. We just see some risks with that.

**Hon GIZ WATSON:** I have a couple of further questions on this issue. I reiterate that I do not have a problem with the intention. The explanatory memorandum states that consultation would include but is not limited to the provision of programs and events, work and skills development opportunities, tuition, seminars and the like. All those things are fine and laudable. I have a couple of questions. Firstly, do similar acts in other states around Australia have provisions such as this to specifically enable the involvement of individual organisations? Secondly, by opening it up in this way, is there any provision for any of those individual organisations to be paid for their services?

**Hon JON FORD:** We do not know what goes on in other acts in other jurisdictions. If indigenous organisations supplied services for supervision programs, that would be done on a contractual basis, as it is now. Those people would be paid. There are also volunteers, who are not paid. There is a range of non-government organisations, for instance, that provide services for which some people get fees and other people do not. The main objection to this is the onerous nature of the administration and the consequence that CEOs would add a considerable cost to the administration of the service. There is also a chance of a reasonable risk of unintended circumstances if that information is published.

**Hon GIZ WATSON:** I assume that this amendment is considered necessary because the existing provisions are inadequate to ensure that the chief executive officer may do all these things. There must be some provision under the act for services to be provided by counsellors and by those providing tuition at TAFE and a range of things. Why is this different from what is already there? Secondly, I note that the clause is very broadly couched. It says -

in any way that the chief executive officer considers expedient for the purpose of the performance of functions under this Act.

Does this mean any functions under this act? It is exceedingly broad. It is one thing to talk about skills, training, programs and events, but surely the functions under this act also include security and other functions. Would it cover that? I am worried about that because I do not think it works that broadly. The intention is to try to make it broad so that discretion exists. Does it mean "any functions under the Act"? Surely that would mean that a CEO could make use of the assistance of an individual organisation to provide security functions, for example. I would be concerned about the ability to delegate in that way.

**Hon JON FORD:** The reason this provision is in the bill is that it clarifies the engagement of other parties by the chief executive officer, otherwise the act is silent on the matter. It outlines that the CEO can carry out these functions. In that way, it seems to be necessary. It would never be the case that any organisation or volunteers would be involved in prison guard duties. There are specific provisions for people involved in that work. There are duty-of-care provisions and a range of things covered under different acts. Whilst it is broad, it just clarifies what already occurs.

**Hon GIZ WATSON:** My final question is whether there is an issue for the engagement of individuals or organisations regarding liability and insurance if they are working within the prison premises? Is that covered; and, if so, in what way?

**Hon JON FORD:** They are protected from liability under section 111 of the general provisions part of the Prisons Act 1981, which states -

No action or claim for damages shall lie against any person for or on account of anything done, or ordered or authorised to be done, by him which purports to be done for the purpose of carrying out the provisions of this Act, unless it is proved that the act was done, or ordered or authorised to be done, maliciously and without reasonable and probable cause.

**Hon SIMON O'BRIEN:** I will indicate the opposition's position. I nearly said the government's position - I am very forward looking! The opposition's position is that it notes and sympathises with what the mover of the amendment has said. However, we cannot ignore the government's response, particularly with regard to noting possible conditions of privacy and also the value of the proposal versus the administrative burden that would be required. That is the case particularly when one considers that around the state it could be considered that many officers who are collaborating and consulting do so on behalf of a chief executive officer or as officers acting under the CEO. The requirement certainly would be onerous and almost boundless. Regrettably, we cannot support the amendment.

**Amendment put and negatived.**

**Clause put and passed.**

**Clauses 8 and 9 put and passed.**

**Clause 10: Section 13 amended -**

**Hon SIMON O'BRIEN:** I move -

Page 7, lines 2 to 5 - To delete the lines.

This government is at it again. Even after having introduced an amending bill into another place, if the government finds that it has forgotten to remove any references to the Queen of Australia, someone who is about the size of the Attorney General and who is burdened with the same level of fixation as the Attorney General jumps on it and tries to include such a clause. That leads me to direct the attention of the Committee of the Whole to clause 10(1), which seeks to amend section 13(2) of the principal act. Upon being engaged as a prison officer, under section 13(2) an officer must swear an oath of engagement that states -

I will well and truly serve the Queen of Australia as a prison officer of Western Australia;

It is now proposed to say "engage and promise that I will well and truly serve the state as a prison officer of Western Australia". It does not have the same ring to it, does it? I will serve the state. Javul! I know nothing!

**Hon Norman Moore:** Sergeant Schultz.

**Hon SIMON O'BRIEN:** Do not mention the war! This provision is no ornament to this bill; it was rightfully left out by those who drafted the bill and it was a folly to seek to include it. I do not know what prison officers or would-be prison officers would think about being asked to well and truly serve the state. What does that mean? How does one serve the state? In what context is the word "state" used? We know what the Queen of Australia is. Case history that goes back for centuries educates us about who the Queen of Australia is and what it means to swear an oath to the Queen of Australia. To whom is one swearing an oath when one swears an oath to the state? Perhaps the minister can enlighten us about whom these prison officers will be engaging and promising themselves to.

**Hon JON FORD:** The "state" is the state of Western Australia.

**Hon Simon O'Brien:** What does that mean? Is it the body politic, the ground we walk on, the government or the party of the government?

**Hon JON FORD:** It is the state of Western Australia.

**Hon Norman Moore:** Is it the executive or the minister or the Attorney General?

**Hon JON FORD:** It is not the Attorney General.

**Hon Norman Moore:** Of course it's the Attorney General. He runs the place.

**Hon JON FORD:** The Attorney General is not the state. As I said in my response to the second reading debate, this amendment was introduced to ensure consistency with similar oaths of officers made by ministers of the judiciary and members of the local government following changes introduced by the Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Act 2005.

**Hon Norman Moore:** Did that not provide an option?

**Hon JON FORD:** It certainly provided an option in this place. That is the reason for the amendment. I know that members opposite have a different position on that, and on that basis we will not agree. The government opposes the amendment.

**Hon SIMON O'BRIEN:** The minister is dead right. We will not be able to agree. I know the minister likes to hear me talk about this, because I have mentioned it previously. Once again, I note for the record that what the government is doing with its ideological, leftie, embittered and cultural-tinge zealotry, on every occasion that it gets the opportunity, is not supported by argument or reason. It is simply a blind bigotry against the monarch. I want to take it beyond that, so I will not use intemperate words but will limit myself to what I have said. Time and time again I have asked several government ministers at the table this same question: what does the state of Western Australia mean? Does it mean our level of excitement? What state is Western Australia in at the moment? Does it mean a political party? Does it mean the government of the day? Does it mean a geological bit of dirt? Does it mean a geographical area? Does it mean a body politic? We do not know.

**Hon Ray Halligan:** It is the Governor.

**Hon SIMON O'BRIEN:** The Governor is on the way out. If the member had been here for the debate on clause 5 - he was absent from the chamber on urgent parliamentary business - he would know that we have already established that the Governor and the vice-regal office are on the nose. It appears that the government, emboldened by that, now wants to get rid of the monarch as well. The opposition sees no merit in this. In fact, we see some danger. Over hundreds of years people have gone to a lot of trouble to arrive at the constitutional arrangements that exist in this jurisdiction. When those arrangements are undone just because of the whim of some powerbroker in another place - that is all it is - our constitutional position is weakened. That will not be proved the next time a group of prison officers swear the oath of engagement promising that they will well and truly serve the state. The world will not come to an end. However, this government is persisting in slowly chipping away at the constitutional arrangements that define the relationship that exists between individuals and the government. The more we take out the buffers - that is what the constitutional monarch is - that protect us from excess by governments, the more we weaken the position of every free man, woman and child in Western Australia. Therefore, it would be remiss of me to not oppose the deletion of these lines. Even though the coalition of republicans and anarchists will probably have their day, they will not do so without being opposed.

**Hon JON FORD:** The member has made some comments about the ideological or political position that is being taken by members on this side of the house with regard to the monarchy. Across the broad spectrum of politics in this country, there is a variety of views. The word "state" is used in international law and in discussions with regard to those entities that are defined by a governance, whether that be a governance that is constituted through a constitution, or some other mechanism. Indeed, Great Britain is referred to in general terms as a "state". The monarch, the governor, ministers and citizens are all entities and creations of the state. In that context, when we plead allegiance to the state, the state is that entity - Western Australia - to which we all choose to belong.

Amendment put and a division taken with the following result -

Ayes (12)

Hon George Cash	Hon Donna Faragher	Hon Ray Halligan	Hon Simon O'Brien
Hon Peter Collier	Hon Anthony Fels	Hon Barry House	Hon Barbara Scott
Hon Murray Criddle	Hon Nigel Hallett	Hon Norman Moore	Hon Ken Baston ( <i>Teller</i> )

Noes (12)

Hon Shelley Archer	Hon Adele Farina	Hon Louise Pratt	Hon Ken Travers
Hon Vincent Catania	Hon Jon Ford	Hon Ljiljana Ravlich	Hon Giz Watson
Hon Kate Doust	Hon Paul Llewellyn	Hon Sally Talbot	Hon Ed Dermer ( <i>Teller</i> )

Pairs

Hon Margaret Rowe	Hon Matt Benson-Lidholm
Hon Robyn McSweeney	Hon Sheila Mills
Hon Helen Morton	Hon Graham Giffard
Hon Bruce Donaldson	Hon Sue Ellery

**The CHAIRMAN:** As the vote is tied, the amendment fails.

**Amendment thus negatived.**

**Clause put and passed.**

**Clause 11 put and passed.**

**Clause 12: Section 15DA inserted -**

**Hon MURRAY CRIDDLE:** Proposed section 15DA(2) states -

The contract may provide for an increase in the amount of the penalty because of each day or part of a day during which a breach continues.

Can the minister give me an indication of what the increase might be? This is very open ended, from my point of view anyway. I believe that there is a need for us to understand that the penalty may not be one that is doubled every day, for instance.

**Hon JON FORD:** This penalty provision facilitates the negotiation of a range of penalties up front in the contract negotiation and for them to be agreed to. It does not allow for a willy-nilly addition of penalties. It will allow a range of penalties to be agreed to in the contractual negotiation.

**Hon MURRAY CRIDDLE:** Proposed section 15DA(3) states -

A penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

I want to understand how a breach is determined if no damage has been suffered. Maybe the minister can also explain where the recoverable amount of money will go.

**Hon JON FORD:** An example that has been given to me regarding proposed section 15DA(3) is that a prisoner or a number of prisoners may escape and be recaptured. As a result of that, there may have been no physical damage or no damage that needed to be fixed; therefore, no money was required to fix it. However, there may have been a risk to the public during that time. That is an example of when a penalty is recoverable, even though no damage may have been suffered. Prisoners may have escaped and been recaptured, so there would be a penalty for allowing that to occur. I am advised that in fact the amount of money - this is a guess, so we cannot say with certainty - would go into consolidated revenue, as do other penalties. However, we need to check that and get back to the member.

**Hon SIMON O'BRIEN:** I note some other information that has been made available to the chamber in connection with this clause. However, I will ask something else. Was there a particular incident or series of incidents that gave rise to this provision? I note that advice from the State Solicitor is given as the reason we now have this clause before us. However, was there some other incident or series of incidents before then that gave rise to the decision to put this provision in the bill?

**Hon JON FORD:** No, not to my knowledge. The State Solicitor's advice was a recommendation that this provision be drafted because it was difficult, at the time of drafting, to imagine all the things to which penalties may be applied when a contract was being negotiated.

**Hon SIMON O'BRIEN:** I fully appreciate that a provision providing for a party to the contract to be liable to pay an amount as a penalty for nonperformance must be of a general rather than a specific nature in most cases, because it is impossible to hypothesise in a contract for every possible eventuality. I note that the minister tells us that no specific incident has happened. However, I would have thought that all the time contracts with governments have penalty provisions for lack of performance. I am just curious about why we need these provisions enshrined in law and why a similar provision cannot be just put in the contract and be valid. I do not understand why we need it in the principal act.

**Hon JON FORD:** The State Solicitor's advice dealt with the type of incidents that could occur but do not normally occur when dealing with normal contractual arrangements. For example, one can envisage in this instance that it may not be about performance. There may be a prison riot, and state services such as the police service may have to be sent in to restore order, and there may be property damage. This provision is needed to ensure that the penalty is enforced under contractual law.

**Hon MURRAY CRIDDLE:** I am still a little unclear about the words "the penalty may be unrelated to the extent of any damage suffered". Will the minister explain those words? How is the penalty determined?

**Hon JON FORD:** I will use the example of a prisoner's escape from prison. The amount of damage suffered may be small, but the state considers that the escape poses a high risk to the community. This provision allows the government to negotiate a higher penalty for that particular incident as a measure as opposed to any physical damage that could result from that escape. Although the physical damage suffered is small, the risk to the community may be regarded as high and, on that basis, the government can negotiate a much higher penalty than it could in normal damages negotiations.

**Hon MURRAY CRIDDLE:** I presume that the opportunity to negotiate the penalty is in the contract, otherwise the contract would not happen. Who decides whether the penalty will be extreme or small?

**Hon JON FORD:** It is negotiated and agreed to by the parties and included in the contract.



**Hon MURRAY CRIDDLE:** That sounds very easy to arrange. However, there will be disagreement. Take for example the government's rail contract. The differential between the contractor's view and the minister's view is \$200 million. How will the government resolve the difference in what people perceive to be a fair penalty?

**Hon JON FORD:** It is negotiated up-front between the two parties; that is, the department and the contractor. If there is a dispute about the penalty, it is sorted out during the negotiations; otherwise there would be no contract. This provision - in part I am responding to Hon Simon O'Brien's questions about why the provision has been included in the bill - specifically allows that sort of negotiation to occur. The State Solicitor advised of the need for this provision to allow that contractual discussion to occur, because in normal contracts it relates directly to damages. In the example I used I referred to a subjective risk to the public. A dangerous prisoner who escapes from prison may not commit an offence before he is recaptured. In those circumstances there would be no real physical damage, but his escape would have posed a high risk to the community. We must negotiate a penalty that encourages the contractor to ensure that an escape does not happen and recognises the priority that the government places on the contractor.

**Hon MURRAY CRIDDLE:** I will not go on. I make the point that there seems to be no means of settling a disagreement between the contractor and the Department of Corrective Services, if that is the department that is negotiating the contract. There is no final mechanism for settlement. The next step would be a legal argument.

**Clause put and passed.**

**Clause 13 put and passed.**

**Clause 14: Sections 23, 24 and 25 replaced -**

**Hon JON FORD:** I move -

Page 9, lines 4 to 6 - To delete the lines.

The amendment to clause 14 and the amendments that I will move to clauses 29 and 32 are required to clarify two things. First, that authorised absences may be granted to a prisoner who is held in custody in a place other than a prison. Those absences must be approved according to part VIII of the Prisons Act 1981. The proposed sections in clause 14 deem prisoners to be in lawful custody when they are at an external facility, when they are authorised to be temporarily absent from prison and when they attend legal or investigative proceedings. The other amendments that I will move to clause 29 will clarify that prisoners held in custody in places other than a prison, such as work camps or the Franklin unit at Graylands Hospital, may be permitted an authorised absence from the place of custody. This amendment will allow an absence to occur directly from that place of custody without the prisoner having to be returned to a prison, which is what happens now. As a consequence of that amendment, consequential amendments are required to clause 14. The amendments to clause 14 will remove proposed section 23(2)(b) because it will become redundant. They will also add a reference to other facilities at which a prisoner may be held in custody under proposed section 24. These amendments clarify that a prisoner held in an external facility and a prisoner who is authorised to be absent from a prison or other facility where he or she is held in custody is deemed to be in lawful custody.

**Amendment put and passed.**

**Hon JON FORD:** I move -

Page 9, line 8 - To delete "prison" and insert instead -  
a prison or other facility

Page 9, line 10 - To delete "from prison".

**Hon GIZ WATSON:** Proposed section 23, "Prisoner assigned to external facility in lawful custody" reads in part -

(1) In this section -

"external facility" means a facility outside a prison that is used to confine prisoners to facilitate their being provided with opportunities for work or participation in programmes or activities.

Given that there is a definition in this proposed section, why are the words "other facility" required? Does not "external facility" cover any other facility that is not a prison? Is there a facility other than an external facility?

**Hon JON FORD:** This will cover places such as the Franklin unit of Graylands Hospital, where mentally ill people reside, and will allow for authorised absences.

**Hon GIZ WATSON:** Is the minister suggesting that the definition of "external facility" does not cover a facility such as the Franklin unit at this stage?

**Hon JON FORD:** Yes.

**Amendments put and passed.****Clause, as amended, put and passed.****Clauses 15 to 28 put and passed.****Clause 29: Section 83 replaced by sections 83, 83A and 83B -****Hon JON FORD:** I move -

Page 14, lines 17 and 18 - To delete “the prison in which the prisoner is confined” and insert instead -  
a prison or other facility.

Page 15, line 3 - To delete “from prison”.

As I explained, the previous amendments were necessary as a consequence of this amendment. This clause deals with the purposes and conditions associated with an absence permit from a prison. Amendments to proposed section 83(2) and (4)(b) provide that prisoners held in custody and places other than a prison, such as the Franklin unit at Graylands Hospital, may be permitted an authorised absence from their place of custody. These amendments will allow an absence to occur directly from the place of custody without the prisoner having to be returned to a prison, as may occur now.

**Hon SIMON O’BRIEN:** The opposition supports this. This is the finetuning of a provision, and will reduce an inefficiency that occurs, I understand, quite regularly in the Department of Corrective Services. Even though this bill was passed by another place without this issue being picked up, the government still found time to remove reference to the Queen from the principal act. It just shows how misplaced the government’s priorities are. The minister will thank me for pointing that out!

**Amendments put and passed.****Clause, as amended, put and passed.****Clause 30 put and passed.****Clause 31: Sections 85 to 94 replaced by sections 85, 86, 87 and 88 -****Hon JON FORD:** I move -

Page 16, after line 23 - To insert -

(4) In this section -

“proceedings” of a judicial body includes anything done in the performance of the functions of the judicial body.

The clause adds the definition of the term “proceedings of a judicial body”, which clarifies that the term means anything done in the performance of the functions of the judicial body. The Corruption and Crime Commission was concerned that the term “proceedings” could be interpreted narrowly and could exclude some of the CCC’s investigative functions that occur prior to formal proceedings. The proposed definition clarifies that any functions of a judicial body, where relevant, that issue a bring-up order are covered by the tome.

**Hon SIMON O’BRIEN:** This is what happens when lawyers are involved. Clearly, in this instance, “proceedings” is seen as proceedings with a capital “P”; that is, the formal proceedings of a judicial body rather than the common meaning of proceedings that I think many of us would presume. Perhaps this is somewhat necessary. It might be a belt-and-braces move and is perhaps more than is actually necessary. Nonetheless, it does not offend the opposition. If the government wants a belt-and-braces approach, the government can have a belt-and-braces approach. We find no reason to oppose the amendment.

**Amendment put and passed.****Clause, as amended, put and passed.****Clause 32: Part IX replaced -****Hon JON FORD:** I move -

Page 20, after line 25 - To insert -

(7) A prisoner may be confined in a facility outside a prison to facilitate the prisoner being provided with opportunities for work or participation in services or programmes under this section.

(8) This section does not authorise a prisoner to be absent from a prison, or facility referred to in subsection (7), without an absence permit.

Clause 32 deals with the provision of services and programs for the wellbeing and rehabilitation of prisoners. Proposed section 95 allows that these services and programs may be provided inside or outside a prison. The amendments add two further subsections to proposed section 95 that clarify that a prisoner may be confined in a facility outside a prison to participate even in external programs and that absences from a prison or other place where a prisoner is held in custody must be by way of an absence permit.

**Hon SIMON O'BRIEN:** Mr Chairman, the -

**The CHAIRMAN:** I draw attention to the fact that members appear not to be observing the call. I thought that I could at least tell Hon Simon O'Brien and he would not be offended. If I told anyone else, they would think I was picking on them.

**Hon SIMON O'BRIEN:** Mr Chairman, I did not even understand! Before offence and indignation, comprehension would seem to be required. However, one way or another, I seem to have caught your eye, Mr Chairman!

I alluded to proposed new part IX of the Prisons Act during the second reading debate. I basically interpret this provision as relating to yet another circumstance in which a prisoner can be legitimately absent from prison. I know that Hon Murray Criddle took an interest during the second reading debate in the circumstances under which a prisoner may legitimately be absent from prison. There are quite a few examples, and this proposed part relates to another of them. Proposed clause 95(8) contained in the minister's amendment sits very comfortably with the opposition. Proposed clause 95(7) concerns a prisoner who is confined in a facility outside a prison being able to do various things. I have two questions. Firstly, what is the meaning of the term "confined" in the context of proposed subclause (7)? Is it purely a legal technicality that describes the person's status as confined, even though he or she may not be physically restrained in a locked room? Secondly, what is the meaning of the word "facility"? Is there a special meaning attached to the term in this sense, or could it be something such as a business premises or even a residence or hostel? I ask the minister to tease the definitions out for me.

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

## WITTENOOM - GOVERNMENT SERVICES

### *Statements*

**HON NORMAN MOORE (Mining and Pastoral - Leader of the Opposition)** [9.45 pm]: I will take a few minutes of the house's time tonight to talk about Wittenoom. I am pleased that the Minister for Pilbara and Gascoyne is here, because I want to talk directly to him. Members who know about Wittenoom will know that it is a town that has a very sad history based upon a blue asbestos mine and asbestos tailings that have led to a situation in which governments of all persuasions have sought to encourage people to leave the town, on the basis that it is potentially dangerous to live there. Over the years, most of the townspeople have in fact left. There are currently approximately six residents who have indicated very clearly that they want to stay there.

They are in most cases elderly and they want to see out the rest of their days in Wittenoom. When the Court government confronted this matter, it took the view that if the residents wanted to stay there, they could, but that no-one from a government agency should be required to provide any services to the town or, indeed, ever visit the town. In order to maintain the water supply, the Court government arranged for water bores to be installed and for the citizens to operate their own bores and provide their own water supply. The government also provided for a resident to maintain the power station. The idea was that these people would live out their days and eventually pass on, and no-one would be left in Wittenoom. Indeed, I think that the aim from the government's perspective would be to ensure that no-one buys any property in Wittenoom in the future. We had the saga of the government closing the power station in Wittenoom and knocking it down. It then told the residents that if they wanted power, they would have to supply their own generators. The residents have done that to provide for their own electricity requirements. No consideration was given by the government to compensation; it simply took away a basic, fundamental public service and said, "Bad luck; look after yourself."

I have now discovered that the government will do the same thing with Wittenoom's water supply. As I have said, the Court government entered into an arrangement with Wittenoom Residents Ltd to provide and look after the water supply for Wittenoom residents. The government, through correspondence from the minister, has now made an approach to the Shire of Ashburton requesting that the shire deny Wittenoom residents access to the water supply. The reason the government is doing that is that the Water Corporation is obliged to enter into a deed with Wittenoom Residents Ltd in order to enable residents to use the water. The deed has not been entered into at this time, but there is a fundamental requirement for the Water Corporation to act in good faith and to sign the agreement if the residents want that to happen. The government is now seeking that the local authority deny Wittenoom residents access to water bores, as it cannot get the Water Corporation to turn off the water because of the deed of arrangement. The people cannot get there to make sure that they are provided with water, so, of course, they will simply have no water. No power one day, no water the next. I suggest to the minister that he

build a big fence around the place, tell the residents that they cannot come in or out, and starve them to death! There are only six or eight of them; it would not take long.

I am very angry about this matter. These folk have chosen of their own volition to stay in this place, even though it is dangerous, because it is their home. That is where they live. They bought their properties, they live there and they are not causing anybody any harm at all, to my knowledge. The government can make absolutely certain that no-one will buy a property there in the future, and it can make absolutely certain that no-one will go there who does not already go there. Why can it not leave the people of Wittenoom alone? The snide, nasty letter that the minister wrote to the Shire of Ashburton offends me grossly, and it offends the people of Wittenoom. It is a sneaky, underhanded means by which the minister is trying to get his own way. He is saying, "Let's get the shire to do it by denying them access to the water supply, even though they are entitled to it through their relationship with the Water Corporation."

I asked the minister a question yesterday and it sounded as though he did not know what I was talking about and had never heard of the letter he signed. He is part of this strategy to force out those people in the most grossly offensive way I can think of. He wants to cut off their water supply and their power. As I suggested, if he cannot get rid of them after that, he will cut off their food supply or have them put down or something like that. I do not know what he is seeking to do. The government set up the Wittenoom Steering Committee, under the chairmanship of the minister. That committee inquired into the situation in Wittenoom and finished with a report that no-one can see, including me. I have asked questions in the house. I have asked for it to be tabled and I am told it is still before cabinet. Yet it is being implemented, as we are told in this letter. Part of the implementation involves cutting off the power and water. No-one knew the water would be cut off when the rumours were going around about what would happen following the implementation of the steering committee's report. Now we have found out how the water will be cut off. The government is also expecting the shire to do a range of other things, such as resume land to remove the township status of Wittenoom.

If 5 000 people were living in Wittenoom and they were ingesting asbestos fibres on a daily or hourly basis, then fine, the government should do these sorts of things; it should close the town and have the people removed. However, over the years the population has diminished to the point at which only half a dozen people are left. They are old folk and they do not want to leave. The minister knows them personally. He knows their circumstances. He knows why they want to stay there. They have been there for a very long period. It is their home, and they want to live there for the rest of their days, which are not many. The minister comes along with this ham-fisted approach, firstly to knock down their power station, and now to chop off their water supply. They will keep fighting the minister because they have certain rights, which he is ignoring. What offends me most of all is the way the minister is going about it. He gave the impression to me in the house that he really cares for these folk and he wants to look after their interests. He says that it is a terrible state of affairs and a poor set of circumstances. Of course it is. However, only a small number of people are left. They should be left alone. The minister should let them finish their days there but at the same time make sure that no-one else moves there. He can do that. He can make sure that no-one else can buy a property there, and leave these people alone. It is as simple as that. Instead, he goes about it the way he has gone about it. I am bitterly disappointed that a person who I thought might have had some sympathy for these folk is taking the course of action that he is taking.

**HON JON FORD (Mining and Pastoral - Minister for Local Government and Regional Development)**  
[9.54 pm]: I will cover a couple of issues. One of the reasons we have not released the report is that people will read it and make assumptions that certain aspects of the report are government policy. The trouble with that is that that is not the case.

**Hon Norman Moore:** What is the government's policy?

**Hon JON FORD:** My task as chair of the Wittenoom Steering Committee is to expedite the closure of Wittenoom and look at ways to clean up or mitigate the risk from asbestos tailings. We made the decision to not forcibly remove residents based on the information that was in front of us at the time. I said to Hon Norman Moore the other day when I answered his question that we are in receipt of another report that presents a much different case. It was presented to the Shire of Ashburton as a result of some work that we did. It is an interesting study, because for the first time it identifies activity and risk in the specific areas that we have talked about. It goes into the pastoral station, following a personal request by me to do that work. One of the interesting things that has come out of this work is that when we start to deal with things such as de-gazettal, we must ask who is responsible. Over a two-year period, I had people say many things to us, including that Wittenoom had already been de-gazetted, that it is the responsibility of the minister for lands, that it is the responsibility of the local government, and that de-gazetting the town will achieve all sorts of things that we want. One of the primary things is to relieve the responsibilities which the Ashburton shire has under a number of acts but which certain policies prevent it from carrying out. There were two questions in that letter, as I recall. One was access to the -

**Hon Norman Moore:** To the water board, to stop it getting access.

**Hon JON FORD:** The member is making assumptions.

**Hon Norman Moore:** This is your letter.

**Hon JON FORD:** The member is making assumptions about the motivation of that. One of the things that we have to do is test what can and cannot be done under the current act. As I said all along - it is no secret - eventually we plan to introduce into this house a bill on this issue, and we can have a nice debate about it when the government determines its final position on this matter.

**Hon Norman Moore:** Come on, there'll be nobody left. If you cut off their water and power, how can they stay there?

**Hon JON FORD:** We have not cut off their water. The member is making the assumption -

**Hon Norman Moore:** You are about to try to do it, and you have said it. That is your letter. Are you denying that you wrote that letter?

**Hon JON FORD:** The member talked about the rights of those people. Literally thousands of people go through that area. The report that I have in front of me states - this is also my personal experience - that one of the reasons people are attracted to the town is the mere fact that there are people in the town. What about the rights and exposure to the risk of disease of those people? There are citizens who actively pursue taking people there.

**Hon Norman Moore:** Who? Would you care to name them?

**Hon JON FORD:** No.

**Hon Norman Moore:** Why not?

**Hon JON FORD:** The member knows who they are.

**Hon Norman Moore:** You tell us who they are.

**Hon JON FORD:** The member can look at the web site. There are people who disseminate information and say that there are no risks to people there.

**Hon Norman Moore:** Surely you can deal with that, can't you?

**Hon JON FORD:** We are looking at that. I had a discussion with Meg Timewell in Paraburdoo. I said to her that the government has no intention at this stage - we have this other report coming so I had to qualify it - to forcibly remove people. She explained to me how her husband has a wish to live the rest of his days in Wittenoom, which I have some sympathy for. It is a burden of governance. Life and circumstance have certainly dealt those people a hard blow, but we have a responsibility to everyone else who goes to that place and we have a responsibility to try to clean up the mess -

**Hon Norman Moore:** Put the big fence up.

**Hon JON FORD:** It is not that easy. The fibres are windblown and they are transferred by water and storm. Of course, that depends on the sorts of fibres and what they are involved with; that is, whether they are tied up in foundation beds or rolled on the ground, whether they are coarse or fine fibres, and whether they have been stabilised by water.

Many things must be considered. As I have said, an interesting thing about this report is that it defines the risk to contemporary standards right through to the risk associated with walking, driving or living in an area.

**Hon Norman Moore:** Would you like to compare that with St Georges Terrace sometime? The same applies just down the road in St Georges Terrace. Will you stop people going there too?

**Hon JON FORD:** The member cannot compare St Georges Terrace with Wittenoom. It is the most contaminated site in Western Australia, and probably in Australia. We are trying to deal with this difficult issue and we are dealing with human beings. The member is making assumptions. The government does not have a position on the water supply yet, but we will come to that.

**Hon Norman Moore:** With respect, you have written to the council asking it to deny the residents access to the water supply.

**Hon JON FORD:** No, but we asked the council to deny residents access to the reserve that it is on.

**Hon Norman Moore:** The whole point of the exercise is to stop it being fixed if it needs to be fixed.

**Hon JON FORD:** I told the Leader of the Opposition earlier that consideration must be given to the safe supply of water. The safety aspect formed part of the consideration in taking away the power supply. We did not believe that the level of expertise needed to maintain the power supply existed in the town. People had

jerry-built power supplies, and there was evidence that buildings had caught on fire. The treatment and maintenance of the large body of water is a heavy consideration. Whether the residents are given access to the water, or whether something else is done, will be decided in due course.

**Hon Norman Moore:** Don't try to give the impression you will work it out. You have made a decision.

**Hon JON FORD:** We have not. It does not matter what I say; I cannot convince the member.

### MINING AND PASTORAL REGION - ELECTORAL ISSUES

#### *Statement*

**HON SHELLEY ARCHER (Mining and Pastoral)** [10.01 pm]: Members will recall that on 21 June this year I informed the house that I had made a submission to the inquiry into civic and electoral education that was being conducted by the Joint Standing Committee on Electoral Matters of the federal Parliament. My emphasis in that submission was on indigenous electoral issues as they relate to my electorate. I wish to inform the house that I was invited to and appeared before that committee on 21 September and gave evidence to support my written submission. In that evidence I stated that I had three areas of primary concern regarding my electorate: the need to provide identification for enrolment purposes, particularly with regard to how it affects the indigenous population; the lack of education of those who live in rural and remote areas of Western Australia, particularly with regard to their right to be on the electoral roll and their right to vote; and the way in which the Australian Electoral Commission roll is purged on a regular basis. The details concerning these issues are contained in my written submission, so I will not go into them in any further detail.

In general, the committee members were courteous and canvassed the various issues I had raised in my written submission. However, I was attacked by one member of the committee over the issue of the purging of the electoral rolls of remote communities, and for having regard to the cultural issues of Aboriginal people if we want them to vote. The federal member was very rude and constantly interrupted me to the point at which I had to ask him to let me finish my explanations. He appeared to have no idea of the situation in remote Aboriginal communities. If his attitude typifies the thinking of the right of federal politics, it is no wonder that the indigenous people are facing problems with regard to their right to vote.

The Australian Electoral Commission recently advised my office that it had received a call from a federal member regarding the electorate I had previously lived in. The commission informed me that I had been purged from the electoral roll. I had been purged because the federal member had phoned the electoral commission and said that I no longer lived in the federal electorate. When I told the commission that I understood the process was that the commission had to find evidence that I no longer lived there, and that it is required to do that by providing at least three letters, the commission's excuse was that because I had left that address, it was useless sending me mail. I told the commission that I had put in place a six-month referral of my mail at the post office. I then received the letter from the commission informing me that I had been purged from the roll. In my submission I stated that this type of thing happened and yet the state and federal electoral commissions said that it did not. If I can be purged from the electoral roll - I know my rights - I cannot imagine what would happen to the indigenous people in the north west.

**Hon Jon Ford:** You are a member of Parliament!

**Hon SHELLEY ARCHER:** I am a member of Parliament but I have been purged from the electoral roll. That was not very nice of the commission. It was fascinating that the Australian Electoral Commission rang my office to warn me that the federal member had doxed me in for not changing my details. I told the Australian Electoral Commission that I had forwarded it to my new address, but naturally it could not find that anywhere.

The points I made in my written submission to the committee were that the itinerant nature of the life of many people in remote areas, combined with a lack of understanding of the processes involved, meant that the incorrect removal of people's names from the electoral rolls remained a possibility, and that electors in remote communities would be unaware that they had been removed from the roll. The federal member asked if I was saying that a different principle of roll purging should apply to remote communities. I said that I had anecdotal evidence to prove that purges of the roll do occur. I advocated that some consideration within the law and the administrative remit of the Australian Electoral Commission be given to the realities facing Aboriginal electors in remote locations. It bothers me that the federal member of Parliament displayed such little understanding of the lives of the Aboriginal people in our remote communities. I understand that he represents remote communities in Queensland. Not everyone in remote communities can read, and often individual postal addresses are unavailable. Some people ignore official mail, or, if even they do not ignore it, many of them cannot read it or have difficulty understanding it. I have substantial anecdotal evidence to show that electoral purges are conducted constantly. Federal members of Parliament send letters and have indigenous people purged from the roll, in the same way that I was.

On pages 3 and 4 of my written submission to the committee I said that the evidence suggests that the low turnout at remote polling places relates partly to the importance placed by Aboriginal people on various

traditional cultural activities, and to many practical exigencies, such as keeping food on the table. Thus absences from polling places may be caused by family funerals that are held in sorry camps at other locations, as well as hunting and fishing. I described a number of barriers and difficulties faced by indigenous people when voting and concluded that it might not be possible to address some of those issues given the cultural importance indigenous people placed on some activities. For example, it is unlikely that voting will be given precedence over sorry business. This rather unexceptional analysis of some of the issues facing indigenous electors, and my amplification of it to the committee, induced a response from the federal member. He said that this sort of paternalistic approach to Aboriginal people left him very unimpressed, as did the observations I made on pages 3 and 4 of my submission. The federal member of Parliament went on to conclude, quite wrongly, that I was advocating that the electoral laws should be relaxed in favour of people from an indigenous background. I did not say that. What I said, and will continue to say, is that the state and federal electoral commissions need to take cultural issues in remote communities into consideration and provide polling facilities to those communities at an appropriate time. My written submission referred to absent and postal voting facilities being made available to all electors but stated that they were not well understood by remote Aboriginal peoples.

I am concerned to ensure that some of the most disadvantaged members of our communities have their say at elections, by both voting and being enrolled to do so in the first place. I hope that the committee, and perhaps even the federal member of Parliament, will get the point about the need to have regard for the realities of life in remote communities.

*House adjourned at 10.10 pm*

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