Legislative Council

Tuesday, 21 November 1995

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

PETITION - REGIONAL PARK SOUTH OF GUILDERTON ESTABLISHMENT

The following petition bearing the signatures of 51 persons was presented by Hon Sam Piantadosi by delivery to the Clerk -

> To: The Honourable the President and members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned citizens of Western Australia:
>
> Request that the Government establish a regional park immediately to the south of Guilderton in order to protect the mouth and lower reaches of the Moore River and the significant dunes and coastal heathland south of the mouth of the Moore River, and further request that the Government take urgent action to acquire this land before it is further rezoned or developed.

[See paper No 869.]

MOTION - URGENCY

Comalco Case, Australian Industrial Relations Commission's Findings

THE PRESIDENT (Hon Clive Griffiths): I have received the following letter dated 21 November 1995 -

> Dear Mr President
>
> At today's sitting, it is my intention to move under SO 72 that the House, at its rising, adjourn until 9.00 am on December 25 1995 for the purpose of discussing the significance of the findings and principles, endorsed by the federal Industrial Relations Commission today in the Comalco case, for Western Australians working under state awards or under workplace agreements.
>
> Yours Sincerely
>
> Alannah MacTiernan MLC

Before this matter can be discussed it will require at least four members to indicate their support by rising in their places.

[At least four members rose in their places.]

HON A.J.G. MacTIERNAN (East Metropolitan) [3.37 pm]: I move -

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

Today, the Full Bench of the Federal Industrial Relations Commission made two findings of principle that have great relevance to Western Australian workers, not just to those who are covered by federal awards but also those covered by state awards and those labouring under workplace agreements. The first finding states that union members should not be discriminated against on the basis of their preferred form of bargaining. The second finding states that equal pay for work of equal value should be based on objective standards and tests and not on the subjective standards of the employer. These principles, which are so self-evidently fair and reasonable, have the very real potential to undermine the Workplace Agreements Act in this state - legislation which, by its very nature, entrenches the discrimination and unequal treatment that has been complained of in the case deliberated upon today.

Let us look at the facts of the dispute that has been adjudicated upon by the federal Industrial Relations Commission. Over the past two years CRA has developed a systematic policy of offering individualised contracts to its employees. This policy has

not been confined to the company's Weipa site, although that site is the subject of this dispute and litigation. This practice has been entrenched throughout its sites and operations in Western Australia. Under this policy, the company offered above award payments and, in many instances, very generous payments, as an inducement to move away from collective bargaining. These above award payments were based on individualised agreements being offered to employees. At the same time the company effectively refused to proceed with enterprise bargaining on a collective basis, and any chance of a productivity increase for those workers evaporated if they would not go it alone. It was quite clearly blackmail. The only chance of a pay increase for the work force at CRA, no matter how willing, prepared and able they were to undertake productivity trade-offs, was through individualised agreements. The company has systematically refused to continue the process of enterprise bargaining, which is the other route for achieving pay increases based on productivity.

It is clear that the issue for CRA was not one of productivity. Indeed, its claims that it prefers contract workers because of greater productivity should be treated with a great deal of scepticism and contempt. I refer to the case in Argyle. By 1990 a series of disputes had occurred at that work site between management and workers, and there is some evidence that it was due to poor management. In 1990 it was decided on both sides that it was time to put the conflict behind them and move to an enterprise bargaining agreement. The work force was more than happy to engage in enterprise bargaining and to make the requisite adjustments in flexibility based on productivity. They successfully struck a bargain which was in their view, and in the view of the company, a win-win agreement. It provided for new management structures to be put in place, and more worker participation in decision making. According to the trades people to whom I have spoken who worked under this agreement, the place was buzzing. The new work structures under the collective enterprise bargain generated a new vibrancy and excitement in the workplace.

However, with the effluxion of time the agreement came to an end and attempts to renegotiate commenced. There was, strangely, deliberate prevarication on the part of the employer. The reason became apparent when CRA produced workplace agreements with individualised conditions. This caused a great deal of animosity, and generated much fear in the workplace. At the end of the day more than half the work force decided to sign these workplace agreements which gave them a 5 per cent wage increase. The remainder believed it was not in the long term interests of workers to enter into these agreements, and that it was a company strategy aimed principally not at expanding and improving productivity - all of which could have been done under enterprise bargaining - but rather was aimed fundamentally at eliminating unions from the workplace. That would result in far more unbalanced power between employees and employers when the matter was renegotiated some time later. It is quite clearly a question of blackmail when the company will not enter into collective enterprise agreements with workers. They were told that if they wanted a pay rise, the only way that could be achieved would be by entering into an individualised workplace agreement. It is not simply an issue of productivity. This state of affairs has been found to be discriminatory against those workers who want to bargain collectively.

This country has ratified various international conventions which enshrine the right to collective bargaining. It now appears that practices of companies such as CRA contravene those international treaties. The financial blackmail about which I have spoken, and the reality that there was no way of engaging in productivity bargaining or gaining a wage increase other than through the individualised contracts, is not the only reason for this move by workers to individualised contracts. There is a very real fear among many of the people working for CRA at its Hamersley and Argyle operations, and also those at the Western Mining Corporation Ltd sites around the goldfields, that if they do not sign the workplace agreements, not only will they no longer have access to the wage increases but also there is the possibility of discrimination and retaliation if they remain on the award. Of course, the company is not silly enough to sack them immediately, and they have limited protection under the Workplace Agreements Act.

However, there is a profound fear of a much more subtle discrimination and retaliation. There is substantial evidence of this. CRA this week was taken into the Industrial Relations Commission in Western Australia because of its activities at Dampier Salt Ltd, and it admitted it discriminated in favour of its contract employees in the allocation of overtime. Overtime, which has been an important part of the working conditions in the north west towns, has basically been removed from those people who remain on the award.

There are also concerns that other excuses will be found for sacking people. I was at Kambalda last week and met with people who gave me a range of examples of workers who had been sacked, in their view principally because they remained on the award. The company made allegations of breaches of occupational health and safety provisions, but these breaches had been standard practice of the company both before and subsequent to the sacking. It is a thin veneer that could be easily stripped back to show the real reason for sacking these people is that the company wanted to get rid of troublemakers, who wanted to stay on the award or under the collective system. These people also are concerned that they have little prospect of promotion. That is certainly borne out by the experience of award workers at Argyle, and there is general marginalisation of award employees as all new employees are forced into workplace agreements. Again, it undermines the whole notion of choice about which we hear CRA talking so often. We know there is a huge turnover of staff at many sites in which workplace agreements are entrenched - certainly at Tom Price and a number of Western Mining sites in the goldfields. It is not surprising that so many people have signed these agreements, because it is the only way they can get a job.

The next issue of principle being systematically undermined in this State is equal pay for equal work. I have said previously that those workers who signed workplace agreements received a 5 per cent wage increase. At Argyle that pans out to a pay differential between $7 000 and $8 000 per annum for people doing identical work. Again, complaints have been made about the same level of disparity of income for identical work done at Hamersley and Kambalda nickel sites. That is a patently unfair practice. It also strikes me as being very unwise. Many people have contacted us and told us of the friction that could be created in the workplace by this differential in pay. People are very angry and hostile because they are being paid less to do the same work. That practice breaks down the team work that is essential for good productivity. The Industrial Relations Commission found that statements by Comalco that it valued workers on workplace agreements more than those on collective agreements because they had a greater commitment to the company, were not to be taken at face value. The commission found that the work values must be assessed by objective standards.

Workplace agreements have resulted in two different consequences of unequal pay: In mining companies which have adopted a long-term strategic plan to deunionise, which we have described, those on workplace agreements receive more than those on awards or other agreements. At the other end of the spectrum, where a lack of industrial muscle is obvious and where there is no tradition of unionisation, the opposite has occurred. In the retail and service sectors, people who are on awards, and who remain in employment because of the limited protection under the Act that they cannot be sacked, receive a higher rate of pay than those on workplace agreements doing identical work. Inequality of pay is occurring from two different directions.

Hon Peter Foss: Does that mean the award must go down on the basis of the decision today?

Hon A.J.G. MacTIERNAN: Absolutely not.

Hon John Halden: Are you advocating that?

Hon Peter Foss: I was curious.

Hon A.J.G. MacTIERNAN: I do not think that was the implication.

The decision today made it clear that practices which are endemic under workplace agreements in this State, are discriminatory and have led to unequal pay for work of

equal value. These findings are a vindication of the Opposition's claim that this legislation is not only fundamentally inequitable but also provides a framework for undermining that inequity. Discrimination and inequality of pay clearly offends our international treaty obligations and provide a basis for federal intervention.

HON PETER FOSS (East Metropolitan - Minister for the Environment) [3.52 pm]: I will try to make this topic slightly more interesting than Hon Alannah MacTiernan did, although that will be extremely difficult. I noticed that she managed to drive away *The West Australian* reporter in about two minutes flat. The urgency motion is not a major item, nor does it carry the consequences argued by Hon Alannah MacTiernan. Under our Western Australian Workplace Agreements Act workers are able to use the union to bargain for collective and individual workplace agreements. Within the Act are provisions for various options that were referred to.

Hon A.J.G. MacTiernan: How frequently does that happen?

Hon PETER FOSS: It has always been within the terms of our Act that workers who wish to can have an enterprise bargaining award and that the federal Act overcomes workplace agreements. Hon Alannah MacTiernan may be complaining about what she sees as the behaviour of a particular employer, but the federal decision is not in any way inconsistent with our legislation. Our legislation recognises workers' rights to use their union and their right to a collective agreement. We have always recognised that federal awards could overrule workplace agreements. More importantly the Asahi case, to which Hon Alannah MacTiernan should have referred, again recognises that under the Federal Act, if no or few members are within a workplace, the right to carry out bargaining on behalf of those people in that workplace is not automatic.

Hon A.J.G. MacTiernan: We are not talking about that.

Hon PETER FOSS: The attitude of Hon Alannah MacTiernan reveals why members opposite as a group have lost touch with the workers. We spoke to workers from the Water Authority and one of their concerns was that people who were going to work for private contractors would receive less desirable terms of employment and conditions and they would not get the same sort of the payment if they were made redundant. They wanted full redundancy pay. Interestingly, some of the private contractors who wished to take over the skills, employment and service of the people working for the Water Authority so valued their services that they were prepared to employ them under significantly better terms and conditions and pay them considerably greater amounts of money than the redundancy pay. Who complained?

Hon Tom Helm: In your view.

Hon PETER FOSS: No. Mrs Michelle Roberts, the opposition spokesperson on water, complained that some of those workers - horror shock - were being paid excessive amounts of money and she thought it unfair. Is it not outrageous that those people were worth being paid extra, but they were not sticking with their mates? We all know that the strength of the union is in worker's sticking together and that the union is more important than the individual! Notwithstanding that the individual concerns of the workers of the Water Authority were to make certain they maximised the payment they received when transferring to private contractors, who complained when they received more than the union thought they should? Their representatives in this Parliament complained.

Hon A.J.G. MacTiernan: You are misinterpreting the situation.

Hon PETER FOSS: Mrs Roberts thought it was most unfair that some of those contractors so valued the skills of the Water Authority workers they offered them outrageous amounts of money in excess of what other people received.

Hon A.J.G. MacTiernan interjected.

Hon PETER FOSS: Hon Alannah MacTiernan can say Mrs Roberts was misreported and that she did not mean to say that at all and that she is very pleased to see those workers doing so well as a result of the offer made by private contractors.

Hon Tom Helm interjected.

Hon PETER FOSS: That is the way it appeared in her press release - she does not seem to like the idea. I can understand that. The last thing members opposite want is for people to be paid more money. They want them lined up and standing in a row. They do not want anyone to be paid more money. Why do members opposite think so few workers are members of unions in Australia and so many people have left the unions in Australia? They know that they have reached the stage where a main concern of union officials is about union officials. That is obvious.

The four senior officials of the ACTU had between them six years of work in the workplace; that is 18 months on average apiece, before they became professional union officials. The situation with the unions now is that it is far more important to be a professional organiser -

Hon John Halden: How did you work out 18 months, six years?

Hon PETER FOSS: Four people over six years on average amounts to 18 months.

Hon John Halden: How do you know they have six years left?

Hon PETER FOSS: They had six years between them before they became professional union people. The spent six years doing the job and the rest of the time being professional union people. Six years between four people is an average of 18 months.

Hon John Halden: How many years of work did you have in another field?

Hon PETER FOSS: I was a lawyer. My point is this: There was a time when union officials were workers. They got together as workers to look after their fellow workers because they had experience in the workplace. The current union officials have not had that experience. They are professional agitators. They are mainly interested in protecting their own positions. It is not surprising to see the Australian Council of Trade Unions trying to orchestrate that some workers are being paid more than others.

Hon A.J.G. MacTiernan: No, we are not.

Hon PETER FOSS: Let us look at what the ACTU did. I have not heard a word of condemnation about the secondary boycotts that took place in this State. When have those opposite criticised the ACTU for stopping work in the Port of Fremantle? What has that to do with a dispute at Weipa? What is the relationship there? Why are those opposite not telling us about the significance of the lost hours of production? The Minister for Transport told us about that situation.

As of this morning, the miners down at Collie are on strike. What has that to do with a dispute concerning CRA Ltd? It just shows that it is not about workers employed by CRA at all; it is about the ACTU trying to make certain that it preserves its power base. We all know what that is and it is very clear what is: People in this union are not there because they are concerned about workers; they are concerned because it happens to be their profession. The union officials have had that job since they started work. If they lose their power, if people are able to act independently, to negotiate on their own behalf, to get better pay, it is an outrageous thing to happen; it should be stopped. The best way to stop that happening is to make sure that any person should be paid the same as a union member. That is what those opposite want to happen.

Hon A.J.G. MacTiernan: Do you know what has happened?

The PRESIDENT: Order! When I call order, I ask members to stop interjecting.

Hon PETER FOSS: Despite my concern that I would not be able to make my speech as interesting as that of Hon Alannah MacTiernan, who drove everybody to sleep, I have managed to touch a raw nerve, to get members opposite bubbling along a little. We can always tell when we have touched a raw nerve because the ALP members jump up in the air. Nothing touches their sensibilities and their sensitivities as much at this topic. Whenever we point out that the ACTU could not give a darn about the workers, those opposite always get terribly sensitive.

Hon N.F. Moore: Is there a preselection coming?

Hon PETER FOSS: Yes, we can see when the puppet masters are hard at work. That is what got the ACTU going in this instance.

HON JOHN HALDEN (South Metropolitan - Leader of the Opposition) [4.03 pm]: It is with pleasure that I speak after the Minister for the Environment because he is always so provocative that he gets it wrong. His knowledge of how unions work is quite extraordinary but, nevertheless, wrong. I will concentrate not on how workers have been discriminated against by a private sector employer but on how in one specific area the Government has discriminated against its own workers in very much the same way.

We need look no further than the discrimination in the Education Department. It started with what was the remote teaching service. There was never an effort to negotiate an enterprise bargaining agreement only a workplace agreement with that service. The terms of the document were that if the majority of teachers at a school voted in favour of a workplace agreement, everyone must have one. There was never any choice. That was withdrawn because it breached the Act. This Government had a desire to introduce a workplace agreement. Not only were there to be increased pay and conditions but also different and increased allowances were to be paid. There were significant benefits but no choice whatsoever - teachers either took it or they left it.

Hon W.N. Stretch: Your nose is getting bigger.

Hon JOHN HALDEN: A separate teaching service had to be created so that everybody who was employed would be a new employee, for whom the only choice would be a workplace agreement. It did not stop there.

We then had the teachers' dispute. The Minister for Education said that the Government could not afford to pay anything. It then proceeded to offer what was quaintly called over-award payments for a contract of employment. The same sort of work was involved and an EBA or a workplace agreement could have been negotiated. However, to divide workers and to hive them off from the union and to cause as much internal dispute within the union - the catastrophic outcome of all of this was that ultimately it was at the workplace - workers were offered different amounts to perform similar duties. Workers who are prepared to agree to those over-award payments will receive an increase of 7.5 per cent now and another 7.5 per cent 15 months later. Those who are not prepared to accept that will not even obtain increases of 5 per cent now and 5 per cent later.

We now have a situation where the administrators and principals have been encouraged to sign workplace agreements before the end of this month when the federal award comes in. The Government quite blatantly says that if the agreements are signed, they will get increases of 12 per cent followed by 8 per cent.

Hon N.F. Moore: How terrible.

Hon JOHN HALDEN: What are those people who do not sign being offered? I am advised it is nothing; not even the 5 per cent plus 5 per cent increases.

Hon N.F. Moore: What is that?

Hon JOHN HALDEN: The offer of 5 per cent now and 5 per cent later.

Hon N.F. Moore: What do you mean?

Hon JOHN HALDEN: Although the offer has not been made, that is all the teachers can hope for.

Hon N.F. Moore: No-one has said anything about five by five.

Hon JOHN HALDEN: The Minister has made no offer to the principals who will not sign an agreement. That is a classic. A head of department, principal or deputy principal must take 12 per cent now and 8 per cent later or nothing for doing exactly the same job. At the moment it is an increase of 20 per cent or nothing. That clearly breaches the decision of the Full Bench of the Australian Industrial Relations Commission today, discriminates against workers, and has nothing to do with productivity that could be negotiated under an EBA. The Minister and this Government know that. It is an issue of blackmailing employees into signing contracts of employment or workplace agreements.

There has been clear discrimination and it has all been designed to eliminate or decrease the power of the union representing this group of workers.

It does not end there. Last Wednesday the Minister told us that he was prepared to negotiate an EBA with cleaners and that the secretary of the Federated Miscellaneous Workers Union in Western Australia had not been back to him to negotiate it. The secretary wrote to the Minister and said that she asked at the meeting to which the Minister referred to be given a copy of the Arthur Andersen report and the detailed costings, and the union would negotiate an EBA. What did the Minister do? He said that the union could not have the document. Of course, the union is not prepared to negotiate an EBA when it does not know what it is competing against. The Arthur Andersen report is a concoction of figures that cannot be substantiated. The $8m figure for savings is as rubbery as a lacker band. There is no fairness. That was further exemplified when I asked the Minister in this place last Thursday about the $8 that had been granted to cleaners and gardeners under the decision of the Industrial Relations Commission. That pay rise has not yet flowed through to the workers, yet the Minister quite blatantly said in this place that those who signed their contracts of employment or workplace agreements had received that pay rise already. There is distinct discrimination in what people get from this Government in their employment - the dollars in their pocket and their terms and conditions. The Government has discriminated throughout the system and, as a result, the standard of education in this State has diminished.

These situations are not restricted to the private sector. They are part of this Government's approach to industrial relations. Without doubt, there has been an effort by the Government to discriminate against its own work force on the basis of pay and conditions. The department blackmailed people and offered them different money for the same work. It refused to negotiate an enterprise bargain agreement. It has refused on every front to accept what has been announced today; that is, that in this country's system of industrial relations, particularly that under the federal award - I concede the Minister's point that there is different state legislation - the area of education is likely at the beginning of next month to be under the federal system. The Minister then might have the odd problem or four!

Hon N.F. Moore: You talk to the union about it.

Hon JOHN HALDEN: I think I might. If the Industrial Relations Commission is to pursue and maintain the line that our industrial relations system is based on collective bargaining and equal pay for equal work, then the practices of this Government which are clearly highlighted in this department will breach the decision that the commission made today. Quite clearly that will not be tolerated by the commission. I suggest the Government will have more problems than it will know what to do with. I do not know how the Government managed to work its figures on the pay rise. We will never know that, because originally it could not afford anything and then all of a sudden it could afford anything that came into its head. It is likely that if the Government has offered a 7.5 per cent plus 7.5 per cent pay rise it will have to give that to everybody.

Hon N.F. Moore: It was on the table.

Hon JOHN HALDEN: I concede that point.

Hon N.F. Moore: Do you know why it is not there today?

Hon JOHN HALDEN: Why is that?

Hon N.F. Moore: The federal industrial commission ordered us not to make it available.

Hon JOHN HALDEN: I cannot deny the fact of that, but the Minister never offered those figures. We had significant increases in pay, allowances and conditions to remote teachers who were not on workplace agreements. The Minister offered it only to those people who would do what he wanted. He would not offer it to people who wanted to remain in the award system. The Minister knows that something like one-third of the teachers in remote areas wanted to remain under the award system; in fact, it may have been a little more than 40 per cent.

Hon N.F. Moore: About 97 per cent signed up.

Hon JOHN HALDEN: About 97 per cent did not sign up. The Minister would not give me the figures in this place, so I rang his office and his staff gave them to me. It was between one-third and 40 per cent. If those people did not take workplace agreements they had to move out, no matter what their skills or desires may have been. We have today a benchmark decision by the Australian Industrial Relations Commission, which has reinforced international conventions and has again set forth very clearly the principles of industrial relations in this country. Whether or not the members opposite like it, the reality is that collective bargaining is again being enshrined in our system. No matter how long or how hard they work to deviate from that and to discriminate against people, it will not work.

HON N.F. MOORE (Mining and Pastoral - Minister for Education) [4.14 pm]: The honourable member who just sat down clearly does not understand what has been occurring between the Education Department and its employees in the last 12 months. His fundamental misunderstanding is manifest in his description of the position with the administrators. Last year the various principals' associations approached the Government and said, "We would like to negotiate a collective workplace agreement independently of the union." I did not approach them; they approached me. We said, "Fine, go for your life. The legislation allows you to do that." That is what they did. Eventually they negotiated a collective workplace agreement with the Government which involved a 20 per cent pay rise. It also involved a number of trade-offs, which the administrators were prepared to accept.

Hon John Halden: At this moment I know all of that.

Hon N.F. MOORE: It is a pity the member did not acknowledge it. This is not some Government shoving this down the throats of people who are unwilling to accept 20 per cent.

Hon John Halden: You didn't give $100 000 to pursue it!

Hon N.F. MOORE: We gave them some assistance to put their case together. That is our job; I am the first to admit that and the first to take credit for it. The principals' associations requested that we enter into a collective workplace agreement with them, because they were sick of the teachers' union. When Hon John Halden was in government the teachers' union treated these people like absolute dirt. The principals received nothing from the teachers' union.

Hon John Halden interjected.

Hon N.F. MOORE: If Hon John Halden will just keep his mouth shut -

The DEPUTY PRESIDENT (Hon Barry House): Order! The Leader of the Opposition has had 10 minutes on his feet with very few interjections. I expect him to convey the same courtesy to the Minister.

Hon Sam Piantadosi: What do you mean? The Minister was interjecting all the time.

The DEPUTY PRESIDENT: Order!

Hon N.F. MOORE: The administrators offered to enter into an agreement, which was reached. It is now out to the administrators for them to accept. Administrators are accepting it in very large numbers. I think about 1 000 was the figure I heard this morning.

Hon John Halden: You said they wanted it.

Hon N.F. MOORE: Of course they wanted it. They have individually accepted the collective workplace agreement entered into between their associations and the Education Department.

Hon John Halden referred to the Australian Industrial Relations Commission's ruling today. I will refer him to one which occurred yesterday in Western Australia, before Commissioner Frawley on behalf of Justice Monroe who is hearing the education dispute.

The teachers' union said to him last Friday, "We do not believe that the workplace agreement with the administrators should proceed. We ask you to order the Education Department to desist." The union did this about two weeks ago in respect of TAFE lecturers, who had also accepted workplace agreements, when the union asked the commissioner to order the Department of Training to desist. Both yesterday and two weeks ago the industrial relations commissioner said, "You may proceed with the workplace agreements in the education system." He ruled that they are not in contravention of any order or any other condition which might exist. The federal Industrial Relations Commission said, "You can proceed with the administrators' package."

Several members interjected.

Hon N.F. MOORE: I have listened to Hon John Halden, perhaps he might settle down.

Hon John Halden: You have not said anything new yet.

Hon N.F. MOORE: Let us look at the teachers' dispute. We have been trying since the beginning of the year to effect an enterprise agreement. I am quite happy to sit down with the teachers' union and enter into an enterprise bargain. That is our first preference over a workplace agreement. We sat down and went through it several times. The union kept saying no deal and no trade-offs. Hon John Halden and Hon Alannah MacTiernan know as well as I do that the whole concept of enterprise bargaining is trading one matter with another. Outside the arbitration system it allows two parties to get together and do a deal. The union kept repeating no trade-offs. It said, "We can't give you anything, but we want the money." There cannot be a bargaining situation in which one side says it will not bargain.

Commissioner Coleman from the state commission then became involved. He said to both sides, "Come and talk to me," and they did. He came to see me and said, "This looks like a package which both sides should agree to." I said, "That is fine by me, but I cannot afford to give all the money you want to give them. Let us make it 7.5 per cent plus 7.5 per cent, and we will be able to afford it, but we want these trade-offs in exchange." He said, "I agree." He took it to the teachers' union and said, "This is a good package, and you should agree to it." The teachers union said, "No." Commissioner Coleman said, "What about putting it to your members and letting them have a secret vote?" The union said, "No." This package was put together by an industrial commissioner in order to try and help to put an enterprise bargain in place and the teachers' union refused to do anything about it.

Hon John Halden interjected.

The DEPUTY PRESIDENT: Order!

Hon N.F. MOORE: I said to the teachers, "The union will not give it to you. I have a 15 per cent pay offer on the table. You can have it if you want it." We put it out for those teachers who wanted it. Back came 6 500 who said, "Yes, we want it." The reason it is still not on the table is because the federal commission ordered us not to continue to offer it. I am prepared to give them 15 per cent. The Australian Industrial Relations Commission - not me - gave them 5 per cent with trade-offs. The State School Teachers Union said that was a victory for the union. Good grief! I am happy in the context of this debate to have an enterprise agreement with the teachers' union - that has always been my position - but I cannot get one from the union.

Hon John Halden interjected.

Hon N.F. MOORE: It takes two to tango, Mr Halden. Hon John Halden should applaud the remote teaching package. It is the best deal that has been offered to teachers in remote parts of Western Australia; it is a magnificent deal.

Hon John Halden interjected.

Hon N.F. MOORE: Words escape me. The union Hon John Halden seeks to defend on this occasion will not negotiate trade-offs. Some trade-offs in the remote teaching package are significant; however, they fit in with the working conditions of those

schools. Hon Tom Helm would know better than most the circumstances in remote Aboriginal schools. The trade-offs necessary for that to occur would never have been agreed to by the teachers' union. The union would not agree to anything. Even today it issued a stop press to administrators saying, "Do not sign." It says that if the teachers hang off for long enough, they will get more than 20 per cent and there will be no trade-offs. That is rubbish. Mr Lindberg will not get any more than 20 per cent, and trade-offs are required. That is the deal. If the union goes to the federal commission and gets a federal award, as Hon John Halden suggests it wants, and it gets an arbitrated decision, it will rue the day it did not take Mr Quinn's advice.

Hon John Halden: You have rubbished him.

Hon N.F. MOORE: I have renewed respect for Mr Quinn because he said to the state executive of the teachers' union that it should accept the package; that it would not get any better than this anywhere, including the federal commission. The executive knows that, and I know that - but not Mr Lindberg. Mr Lindberg continues to run the line that there will be no trade-offs; that teachers will get a minimum 20 per cent pay rise and all these goodies for nothing. He is living in fairyland, because that will not be available, even under the federal industrial relations system. As Hon John Halden and Hon Alannah MacTiernan know, the whole concept of enterprise bargaining is that the parties must bargain. It takes two sides to work out an agreement. I agree with that. It is a pity that some unions and some of Hon Alannah MacTiernan's constituency does not. Is the teachers' union on Hon Alannah MacTiernan's preselection committee?

This year I would have been delighted to have an enterprise agreement negotiated with the teachers' union. That has been my aim all along. I could easily have gone to workplace agreements for a start. However, I had no choice after a while but to do so, because the union would not negotiate. State council decisions that Hon John Halden knows of were that teachers were not permitted to trade off anything, and its negotiators worked on the basis that they could not trade off anything. How can we negotiate when there is nothing to negotiate? Teachers who have accepted the offer have 15 per cent in their pockets, and those principals who have accepted have 20 per cent. I think it is a very good deal.

HON P.R. LIGHTFOOT (North Metropolitan) [4.23 pm]: I suppose the contest between Hon Tom Helm and me as to who should rise to his feet the quickest and get your call, Mr Deputy President (Hon Barry House), is symptomatic of the union movement today. The union movement is simply too slow. It is not the unionists, but the people running the union movement, like Hon Tom Helm, who cannot get to their feet fast enough.

The logistics of the union movement today are designed to perpetuate the union, not look after the unionists. Most of the unionists are happy with enterprise bargaining. Most are happy with the conditions they get throughout the length and breadth of Western Australia. However, the problem is exemplified by the people on the other side. What has happened to the once great Australian Labor Party? When we look at the other side we can see what has happened to it: It has been hijacked by people who do not have a background in the trade union movement. It has been hijacked by school teachers and lawyers who could not do a proper job in the free enterprise sector of the community.

Several members interjected.

The DEPUTY PRESIDENT (Hon Barry House): Order! Hon Phil Lockyer, Hon Doug Wenn, Hon Alannah MacTiernan and Hon Tom Helm will come to order.

Hon P.R. LIGHTFOOT: Thank you, Mr Deputy President. I appreciate being able to speak in a civilised tone without raising my voice to such penetrating decibels, because of the loudness of those on the other side, merely to get my point across. What I was saying is true: The union movement has been hijacked with people with vested interests. Look at Mr Kelty. He looks like a cream puff on toothpicks. This chardonnay soaked caviar-eating leader of the trade union movement was a disgrace in the past few years. Who are his mates? They are multimillionaires, not ordinary unionists. Who are the Opposition's mates? Apart from a few notable exceptions on that side, they are rich

people; people who came from rich practices in the days when there was some respect in the trade union movement. Take someone like Kim Beazley senior, who was a respected man.

Hon Doug Wenn: He still is.

Hon P.R. LIGHTFOOT: Yes, he still is.

Hon Sam Piantadosi: You got that wrong again.

Hon P.R. LIGHTFOOT: I got the tense wrong, but he still is a respected man.

Several members interjected.

The DEPUTY PRESIDENT: Order!

Hon P.R. LIGHTFOOT: There has been a metamorphosis of the working class.

Point of Order

Hon TOM HELM: I have been studying the motion before the House. I would be interested if you could advise, Mr Deputy President, where it mentions Hon Kim Beazley senior or anything the member has mentioned in his speech in reference to this motion. Not even Hon Peter Foss is able to give him the right direction; he has not got back to the motion.

The DEPUTY PRESIDENT: Order! There is no point of order. However, the member on his feet must keep that in mind.

Debate Resumed

Hon P.R. LIGHTFOOT: I will keep it in mind. I return to what I was saying. As I recall, when Kim Beazley senior entered Parliament he said that he represented the cream of the working class. When he left it, he said that he left the dregs of the middle class. That is what has happened. There are a few notable exceptions that came up through the union movement who are honest brokers; perhaps not the most articulate on that side, but they believe in what they are doing for their fellow working man. However, members opposite have hijacked the union movement. That is what is wrong today with the Industrial Relations Commission. Decisions are being made in the Industrial Relations Commission to perpetuate the union itself and not improve the lot of the working class. It is true. Today the once great ALP is represented by the dregs of the middle class - by the chardonnay soaked caviar-eating people who rub shoulders with millionaires.

Several members interjected.

The DEPUTY PRESIDENT: Order! Members cannot get their point across if nobody can hear what they are saying because there are too many interjections - and there are too many interjections. Members should let the member on his feet say what he has to say without interjections.

Hon P.R. LIGHTFOOT: The urgency motion moved today by Hon Alannah MacTiernan fails to have any attraction, like the member herself, to me. It is not something the member could extrapolate will necessarily flow to the workers in Western Australia, because the workers in Western Australia know that this Government cares. They know that enterprise bargaining is one of the greatest things introduced in post-war years. They know they are the best paid of all workers in the nation.

Point of Order

Hon SAM PIANTADOSI: I think the Opposition has adequately made the point throughout the member's speech that he is straying far and wide of the motion. I do not know whether he has read it. I also draw your attention, Mr Deputy President (Hon Barry House), to the time.

The DEPUTY PRESIDENT: There is no point of order.

Debate Resumed

[Motion lapsed, pursuant to Standing Order No 72.]

SITTINGS OF THE HOUSE - EXTENDED AFTER 11.00 PM

Extended after 6.00 pm on Thursdays

On motion without notice by Hon George Cash (Leader of the House), resolved -

That for the remainder of this session the House continue to sit beyond 11.00 pm on Tuesdays and Wednesdays and 6.00 pm on Thursdays.

STANDING ORDERS SUSPENSION - TO ENABLE BILLS TO BE INTRODUCED WITHOUT NOTICE; TO PASS THROUGH ALL STAGES

On motion, by leave and without notice, by Hon George Cash (Leader of the House), resolved -

That for the remainder of this session standing orders be suspended so far as will enable any Bill -

(a) to be introduced without notice; and

(b) to pass through any or all stages in one sitting.

HOSPITALS AND HEALTH SERVICES AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon George Cash (Leader of the House), read a first time.

Second Reading

HON GEORGE CASH (North Metropolitan - Leader of the House) [4.33 pm]: I move -

That the Bill be now read a second time.

Many of the provisions in this Bill were included in the Hospitals Amendment Bill 1994. That Bill was amended in the other place in order to comply with Standing Order No 230(c) because it affects Bills that give effect to an agreement with the Commonwealth. These provisions are now reintroduced in this Bill. The amendments in this Bill may be grouped as follows -

to enable public hospitals to provide health services and to give effect to the Medicare Agreement;

to remove the limitation on the maximum number of members of an agency board;

to enable a public hospital board to enter into contracts with the private sector for the performance of its functions; and

to provide for penalties to be enforced in contracts in case of non-performance.

The amendments to the Act to enable public hospitals to provide health services complete the amendments to the Act that were introduced last year in the Hospitals Amendment Bill 1994. These amendments now remove any doubt about the ability of hospitals to provide health services.

The amendments are necessary also because under an agreement with the Commonwealth, health services are provided through hospitals in a pilot project. In the longer term it is envisaged that health services will be provided through hospitals rather than through departmental structures. Since hospitals are community based it is expected that delivery of these services will be more oriented towards community needs. Another implication of this approach will be that staff relations will be rationalised and become more flexible so that more opportunities will be available to hospital staff. The amendments relating to the Medicare Agreement give effect to that agreement. The Bill will include in the principal Act the Medicare principles and commitments in the terms of that agreement. These are -

All eligible persons are to be given the choice to be treated as public patients whether or not they have private health cover;

access to public hospital services is to be based on clinical need; and

to the maximum extent possible the State is to ensure that public hospital services are provided equitably to all eligible persons, regardless of their geographical location.

The State and the Commonwealth give the following commitments -

Information is to be available on the health services that eligible persons can expect to receive in public hospitals.

Improvements are to be made in the efficiency, effectiveness and quality of hospital service delivery.

The Bill now presented must therefore be seen in the context of the Health Services (Quality Improvement) Act, which came into operation on 6 September, and the Health Services (Conciliation and Review) Bill, which the Minister for Health introduced into the Parliament on 31 August 1995. These should indicate Government's wider agenda on the provision of health services.

This Bill will not confer rights but will make an explicit statement of the aims the Government seeks to implement in health care. In order to ensure that the Commonwealth does not unilaterally affect the administration of hospitals through the Medicare principles, provision is made for the new section introduced by the Bill to be repealed by proclamation. The Bill provides for the removal of the limitation on the maximum number of members of an agency board. This will allow more interests to be represented on an agency board so that it is more representative of the interests it is to serve. To bring more flexibility to the management of public hospitals and to introduce the private sector into hospital management, the Bill will confer power on a hospital board to enter into contracts for the performance of its functions. The Government is determined to find savings in the administration of public hospitals and to use those savings in the better provision of health services. The relevant section will be revised to make it clear that this may be done.

The Bill will enable penalties to be enforced in cases of non-performance of a contract entered into for the purposes of the Act. In common law it is necessary for loss to be proved when claiming damages for breach of contract. In the case of a contract for the construction of a hospital or for the provision of a health service, it is difficult to prove that a loss has occurred. In fact, budgeted expenditure will not have been incurred if the hospital is not constructed on time or a health service has not been provided in terms of a contract; however, the community would have lost a service. The Bill will allow damages to be claimed in appropriate cases when it is envisaged at the time the contract is entered into that it is possible to do so. Where a penalty clause is included in the contract the clause will apply notwithstanding the common law rule. The Bill is part of the Government's wider program to revise health legislation. The Health Act and the Hospitals and Health Services Act are being revised with a view to introducing new Bills for those purposes in the near future. I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

WATER CORPORATION BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Minister for Water Resources), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Minister for Water Resources) [4.40 pm]: I move -

That the Bill be now read a second time.

The Water Corporation Bill is the first of a suite of five Bills which will give effect to the Government's policy for the restructuring of the water industry in this State. I understand the process was first suggested by the Water Authority of Western Australia in 1989 when the authority realised that it was no longer publicly acceptable for the water utility also to be a regulator. Since that time the authority has worked on developing changes which not only included establishing an independent regulator but also addressed the creation of a statewide water resources management body. In late 1994 the Government decided to establish an implementation group to bring about these changes, and work commenced in early 1995. Together the Bills lay the foundation for sweeping reform of the management of water resources and the provision of water related services in the State. It will bring about a clear separation of water resource management from water resource utilisation, which is fundamental to the rationale for reform.

The Water Authority, which has a virtual monopoly over the statewide responsibility for conservation of water resources and the provision of water related services, including water supply, sewerage, irrigation and drainage, responsibilities which are not always in harmony with each other, will be replaced with three single purpose entities: Firstly, a Water Corporation with a sharp focus on providing the water services utility functions of the Water Authority with a strong emphasis on customer service; secondly, a commission which will be dedicated to the protection and conservation of the State's water resources; and, thirdly, a coordinator who will provide independent advice to government and supervise the maintenance of proper standards of water service providers through a licensing regime. The latter two bodies will ensure that the water utility is not at one time the regulator watchdog and the utiliser of the water resource.

This restructuring will also pave the way for new entrants into the water services industry to compete with the Water Corporation. The Water Corporation, like its competitors, will be required to obtain the appropriate water services operating licences from the coordinator, whose independence will ensure that the public interest is protected at all times. These reforms will satisfy the State's obligations with respect to the Council of Australian Governments' agreements and the Hilmer reforms with respect to the water industry.

To place this new legislation in its proper perspective a brief review of the present position is warranted. At present the Water Authority is charged with the responsibility of administering the right and interests of the Crown in, and in relation to, water in the State. In general terms that duty embraces two distinct functions: First, assessing, developing, utilising and conserving water resources; and second, planning, managing and coordinating throughout the State the provision of water services, namely water supply, sewerage, drainage and irrigation.

The Water Authority does not have responsibility for water supply schemes run by the water boards at Busselton and Bunbury, which are established under the Water Boards Act, or for a small number of local and private schemes. It is not responsible for sewerage schemes operated by local authorities under the Health Act or for private sewerage schemes such as those supporting mining operations.

The duties of the Water Authority broadly outlined above and its powers are sourced from the Water Authority Act 1984; the Metropolitan Water Authority Act 1982; the Metropolitan Water Supply, Sewerage and Drainage Act 1909; the Country Towns Sewerage Act 1948; the Country Areas Water Supply Act 1947; the Land Drainage Act 1925; the Rights in Water and Irrigation Act 1914; the Water Supply, Sewerage and Drainage Act 1912; and the Water Boards Act 1904. These Acts, together with the common law, provide both the management structure and the law regarding water rights in this State. The current suite of Bills deals only with the management structure. As a policy decision the Bills have been drafted to have as little impact as possible on the law of water rights. That is currently the subject of considerable public consultation. Following a Cabinet decision in March this year, a water industry restructure group was established under the chairmanship of Hon Peter Jones to oversee the preparation of

legislation to underpin the reforms which the Government believes are necessary for an efficient and viable water industry and for the effective management of the water resources of this State.

As I foreshadowed in my opening remarks, the proposed legislative package comprises: Firstly, a Bill to establish a corporation being a corporatised entity to undertake the provision of water related services; secondly, a Bill to establish a water resources commission to assess, allocate, develop and conserve the State's water resources; thirdly, a Bill to establish a regulatory agency under the control of a coordinator to provide independent advice to the Government on water issues, and to administer a licensing regime to ensure the delivery of water services to the community of a high standard; fourthly, a transitional and consequential Bill to vest the functions and powers of the Water Authority derived from the various water Acts listed above in the corporation, the commission and the coordinator where appropriate, and to cater for a wide range of transitional issues such as the distribution of the Water Authority's assets and liabilities between the new agencies and the movement of staff; and, finally, a Bill to establish a plumbing services corporation to assume the role of the Water Authority with regard to the licensing of plumbers and other related matters. This Bill will come before the Parliament later in this session. The sum total of the changes will result in the disaggregation of the Water Authority in that its assets and liabilities will be distributed between the new agencies, and appropriate arrangements will be made for the transfer or redeployment of its staff.

The first piece of the legislative package is the Bill before the House. This Bill will create a corporatised entity to carry out the water utility functions of supply of water, the collection and disposal of sewage and surplus water and the provision of works required for those purposes. It will pave the way for a new competitive environment for the water industry and for the cultural changes which are necessary to allow this environment to prosper. The thrust of the legislation is to position the corporation so that it is able to compete against potential new entrants to the water services industry and at the same time permit the Government, as owner of the corporation, to provide broad policy direction. It must be stressed, however, that this structural reform process must not be perceived as a step along the path towards privatisation. That process, which would remove the corporation from government ownership and place it in the control of private shareholders, is not being considered by the Government.

The corporatisation of government businesses is not new to this State and members will be aware that a similar path was taken some 12 months ago with the disaggregation of the State Energy Commission of Western Australia by the creation of two new corporatised entities - Western Power and AlintaGas - and the establishment of a regulator, the Coordinator of Energy. As was the case with Western Power and AlintaGas, the legislation to establish the water corporation reflects the adoption of the principles of clarity of objectives, management autonomy and authority, strict accountability for performance and competitive neutrality, all of which are fundamental to achieving the benefits of corporatisation.

As to the principle of clarity of objectives, the authority at present pursues various goals which have the potential to conflict; for example, the need to allocate water resources in areas where it is a major user. The corporation will not have that dilemma but will have a clear mandate to supply water. In pursuing its mandate the corporation will not be ignoring conservation and environmental responsibilities. The statement of corporate intent to which reference will be made later will set out, on an annual basis, the measures which the corporation proposes for the protection of the environment. The corporation, in this regard, will also be subject to the supervision of the coordinator by virtue of the licence issued to it under the new regulatory legislation to which I have already referred. The corporation will be expected to achieve certain financial and performance targets. There will be clear authority for management to seek opportunities, within the scope of the corporation's functions and powers, to improve productivity, to provide optimum service to customers and to reduce costs. How these objectives will be achieved will be explained later.

The second corporatisation principle, management autonomy and authority, recognises that good management has at its core the ability of the manager to make key decisions about the entity under its control. It recognises the healthy tension that should exist in management between the ambitious pursuits of commercial goals and the need to exercise prudent restraint. The corporatisation process sets up a framework for the balance between these two opposing forces by minimising detailed external controls but at the same time ensuring that there is ministerial overview and input in respect of major strategic issues. The new structure will provide that the board of the corporation is accountable for operational policy and performance. Furthermore, there will be ample opportunity for the Minister to ensure that government policy is reflected in the way management of the corporation is conducted. The role of the Minister and the Treasurer in the management of the corporation will be dealt with later.

The third principle of strict accountability goes hand in hand with autonomy and authority. The legislation provides for rigorous accountability and for mechanisms to monitor and assess performance. As explained later there are provisions for sanctions to be imposed on the corporation and for the Minister to exercise powers not dissimilar to those which members of a company under the Corporations Law would have in general meeting. Under the terms of the corporation's operating licence it will be required to enter into contracts with its customers which enshrine the rights to which customers will be entitled and the services which the corporation is to deliver to those customers. The terms of this customer contract will be set by the coordinator through negotiation with the corporation.

The final principle, that of competitive neutrality, is addressed by ensuring that the corporation does not enjoy any special competitive advantage or, for that matter, is encumbered with any competitive disadvantage. For example, the corporation will not be an agent of the Crown and will be required to obtain relevant operating licences from the coordinator in the same way as any other water provider. The corporation will also be liable for payment to the State of rate and tax equivalents which further equalises its footing with its potential competitors. The directors of the corporation will have no special immunity and will be exposed to a liability regime which is similar to that of directors of public companies.

The incorporation into the legislation of the principles of corporatisation outlined above is achieved by a number of measures. The legislation contains corporate governance provisions similar to those in the Corporations Law. For example, directors are required to act honestly, to use reasonable care and diligence, and not to make improper use of information or position. The directors are exposed to civil proceedings if they are in default of their duties. The directors face disclosure requirements similar to those faced by directors under the Corporations Law and likewise are prohibited from taking loans from the corporation. The legislation counterbalances the directors' duties by providing defences similar to those in the Corporations Law. The corporation is clearly distinguishable from a corporation set up under the Corporations Law by the fact that its functions and powers are defined in the Bill. The primary function of the corporation is to supply water, collect and dispose of waste water and surplus water, and to operate an appropriate infrastructure to support those functions. It will be permitted to use its expertise and resources to provide consultative and advisory services and to develop and market relevant technology in areas related to those functions. To the extent that it will provide services previously provided by the Water Authority, the corporation will require powers with which the Water Authority was endowed under certain of the water Acts referred to earlier. Those powers will be vested in the corporation by virtue of the Water Agencies Restructure (Transitional and Consequential Provisions) Bill to which reference has already been made. Throughout the legislation there are mechanisms to ensure that the Minister has appropriate levels of control over the performance of the corporation but with minimal involvement in its day to day operations. For example, the corporation must obtain ministerial approval before it commits to any transaction or undertaking exceeding in value 0.25 per cent of the written down value of its assets or $15m, whichever is the greater. This test is coupled with a provision requiring the corporation

to consult the Minister before embarking on any major initiative or taking any action that is likely to have significant public interest. This obligation to consult the Minister enables the Minister to exercise his powers to approve the proposed conduct with or without conditions or to use his direction powers as a means of demonstrating disapproval of proposed conduct.

As mentioned earlier, the corporation must pay to the State the equivalent of all municipal rates and any amount that would be paid to the Commonwealth if the corporation were liable to commonwealth tax. It is recognised that it is necessary for the Treasury arm of government to be aware of the corporation's fiscal activity as part of the management of the State's overall finances. For this reason the legislation provides that the Minister must seek the concurrence of the Treasurer in a number of instances including the formulation of the strategic development plan and the statement of corporate intent, the determination of dividend policy and the amount of any dividend, the establishment of borrowing limits, the issuance of any government guarantee and the amount of guarantee payable.

At the core of the corporation's accountability requirements is the need for the corporation to prepare each year a strategic development plan and a statement of corporate intent. The strategic development plan covers a rolling five year period. The plan sets out economic and financial objectives and operational targets. It must also address matters such as competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure, customer service arrangements, relevant government policy and personnel requirements. A draft of the plan must be prepared for the Minister's consideration and agreement three months before the commencement of each financial year. If there is no agreement, the Minister has power to achieve finality by giving directions to the board in that regard, in which event the direction must be tabled in Parliament. The disciplines inherent in the preparation of the strategic development plan ensure that government policy is incorporated and the plan is finalised in a timely manner.

The statement of corporate intent is an adjunct to the strategic development plan. This document is, in effect, the compact between the Government and the corporation; it must specify an outline of objectives, including continuity of the provision of water services, and the maintenance of assets to ensure the delivery of an optimum service to customers. It must also specify performance targets, measures to be taken to protect the environment, an outline of activities to be performed during the forthcoming financial year, an outline of borrowings, details of the dividend and accounting policies, and the type of information to be given to the Minister, including information to be given in quarterly and annual reports. The nature, extent and costing of community service obligations must also be addressed in the statement of corporate intent. Tariff proposals are also an inherent part of the statement of corporate intent, and in respect of the setting of tariffs, the Minister will receive independent advice from the coordinator as part of the overall process. The processes for the approval of the statement of corporate intent also are similar to those for the strategic development plan. The statement of corporate intent plays a vital role in the evaluation by government of the performance of the corporation for each financial year.

The funding of community service obligations deserves particular mention. Community service obligations generally embrace social or non-commercial objectives and may have a significant impact on the corporation's financial performance. These obligations may be funded from the consolidated fund or by reduction in the amount of dividend the corporation may otherwise be required to pay to government or by making some other appropriate form of allowance. In this context, the existing tariff policy which ensures that there is ministerial supervision of the amount paid by consumers for water services will be retained.

The legislation fosters a relationship between the Minister and the corporation based on agreement not confrontation. However, in circumstances where agreement cannot be reached, the Minister has the power to break a deadlock by giving directions to the corporation. All directions must be tabled in Parliament within 14 days of a direction

being given. There is provision for consultation with the board where a direction is given and for referral to the Treasurer if the board considers a direction not to be in the commercial interests of the corporation. Directions must also be set out in the corporation's annual report.

Mention has already been made of the fact that the corporate governance regime is similar to that contained in the Corporations Law. The corporation will also be subject to accounting and financial reporting obligations similar to those which corporations under the Corporations Law are obliged to observe, but will not be subject to the full requirements of the Financial Administration and Audit Act. It will, however, be subject to the audit provisions of that Act, and will come under the authority of the Auditor General. As the corporation will not have the status of an agent to the Crown it must observe all state legislation including the Freedom of Information Act, the Parliamentary Commissioner Act and the Equal Opportunity Act. The legislation recognises that as the corporation is government owned, it is required to observe minimum standards of staff management and of staff conduct and integrity similar to those established for public sector bodies under the Public Sector Management Act. I commend the Bill to the House.

Debate adjourned, on motion by Hon Sam Piantadosi.

PLANNING LEGISLATION AMENDMENT BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon George Cash (Leader of the House), read a first time.

Second Reading

HON GEORGE CASH (North Metropolitan - Leader of the House) [4.55 pm]: I move -

That the Bill be now read a second time.

This Bill is aimed at bringing the planning and environmental evaluation procedures together at an early stage of the development process and providing the Environmental Protection Authority with powers under the Environmental Protection Act to assess the environmental issues raised by town planning schemes. A Bill aimed at the same outcome was brought before the Legislative Assembly in August last year, but was withdrawn in November because that Bill, with all of its suggested amendments, became overly complex, confusing and hard to understand. However, the Minister advised the Parliament at that time that the Government remained committed to the principle of environmental evaluation taking place up-front and being coordinated with the town planning process.

This Bill amends the Environmental Protection Act 1986 and the five planning Acts that provide for the preparation of various types of town planning schemes. The number of Acts being amended to introduce the new process makes this a particularly difficult Bill to read and consider in context with the principal Acts. However, it is important to make the amendments in this way to maintain the integrity of both the land use planning and the environmental assessment systems. I will outline to the House the reasons that this Bill is necessary. Legal opinion and case law have clarified that the rezoning of land through the making or amending of town planning schemes is not covered by the environmental impact assessment provisions of the Environmental Protection Act.

The legal advice given to the Government has been supported by a case before the Full Bench of the Supreme Court of Western Australia. In this case a writ of mandamus was taken out against the EPA, the Chairman of the EPA and the State of Western Australia to require the EPA to assess a draft land use and management plan for the Burrup Peninsula. In a unanimous decision the Full Court found that such a plan did not come within the ambit of section 38 of the Environmental Protection Act. It is, however, at the rezoning stage and not the subdivision or development stage of the land development

process that environmental assessment is most appropriate. It is no longer acceptable for the Government, through the planning assessment process, to approve the use of land for a particular purpose and then, after investment and development decisions have been made based upon that land-use approval, for the Government, through the environmental assessment process, to decide that land cannot be used for the purpose previously approved. It is essential that the environmental assessment is done up-front with the planning assessment so that the community has as much information as is reasonably practicable before it when determining the most appropriate use of land.

The process that will be established under this Bill will cover all town planning schemes and amendments to those town planning schemes of the Western Australian Planning Commission, local government authorities, and the East Perth and Subiaco redevelopment authorities. Throughout the Bill these different types of town planning schemes - which include local town planning schemes, redevelopment schemes and regional planning schemes - are referred to as "schemes" and the various planning agencies responsible for these schemes are referred to as "responsible authorities". The responsible authority in preparing a scheme will have to make all reasonable endeavours to consult anyone who appears likely to be affected by that scheme. Such a general requirement exists in the Environmental Protection Act, and the same requirement will in the future apply under all planning Acts. An example of the impact of this provision on the WA Planning Commission in preparing an amendment to the metropolitan region scheme is that currently only affected landowners are individually consulted on proposed amendments. However, if, say, the affected land is in the buffer zone of an industrial area, the commission will be required to consult with the owners and operators of the businesses in that industrial area. Immediately upon initiation, all schemes will be required to be referred to the EPA with appropriate information to enable consideration of the need for environmental assessment. The only exception to this requirement is that the environmental assessment of a regional scheme will exempt assessment of a local scheme made or amended merely to comply with the assessed region scheme.

This Bill clarifies that local schemes must be brought into line with the region scheme. If the EPA decides not to assess the environment issues raised by a scheme, it may provide informal advice and the responsible authority will continue with the current planning assessment process provided for in planning legislation. However, if the EPA decides that it does need to assess the environmental issues raised by a scheme, it will issue instructions for an environmental review to be undertaken by the responsible authority.

[Questions without notice taken.]

Hon GEORGE CASH: The decision of the EPA in this regard will be published in the usual way and the instructions made public to allow anyone to appeal against the requirements for the environmental review. The responsible authority is then required to undertake the environmental review and to gain clearance from the EPA that the completed review does actually comply with the instructions given. Upon gaining EPA clearance on the environmental review, the scheme, including the environmental review, is advertised for public exhibition under the current provisions of planning legislation.

The responsible authority must refer submissions on environmental aspects of the scheme received during the public exhibition period to the EPA for its consideration. After the expiry of the public exhibition period, the EPA will have before it -

the scheme;
the environmental review of that scheme;
the public submissions on environmental aspects; and
the responsible authority's response to those submissions,

To undertake its environmental evaluation of the scheme, the EPA may also make such investigations and inquiries as it thinks fit. Having assessed the environmental aspects of the scheme, the EPA's report and recommendations will be submitted to the Minister for the Environment and published in the usual manner to allow anyone to appeal against the content of the report. The Minister for the Environment will consult with the Minister for Planning over the conditions to be applied in the scheme, in the same way that the

Minister for the Environment is currently required under the Environmental Protection Act to consult with relevant Ministers over the conditions to be applied on a proposal. The environmental conditions incorporated in the scheme through this process are binding on the responsible authority. Monitoring and enforcement powers have been suitably strengthened for this purpose. Should a dispute arise between the Minister for Planning and the Minister for the Environment over any decision requiring their agreement during the conjoint assessment process, the matter will be able to be resolved by the Governor in the same way that such disputes are already handled under the Environmental Protection Act.

In drafting this Bill much attention was given to the effect on environmental protection policies of decisions made by the Minister for Planning, the Minister for the Environment, or indeed by the Governor, under the process being established. The logical outcome to this deliberation is that the latest decision will prevail, which means that if an EPP is approved that is in conflict with an existing scheme, decisions made under that scheme must comply with the EPP; this will apply even if the scheme has been assessed by the EPA. However, if a scheme which is fully assessed and cleared by the EPA is in conflict with an existing EPP, a review of the EPP will be automatically triggered and during that period of review, decisions made under the scheme must be in accordance with the provisions of the newly assessed scheme rather than the old EPP.

The general community and individual landowners will be the primary beneficiaries of the new process to be established under this legislation. The community can have greater confidence in the land use planning process making the right decision on the most appropriate use of land because of the requirement for environmental consideration of the proposed land use. Once the Government as a whole has determined the most appropriate use of a particular piece of land, the owner of that land will benefit from the certainty of knowing that the environmental factors have also been taken into consideration and the land use will not be changed without good reason.

The new process is specifically intended to ensure that all assessment is done "up-front" to provide certainty in the system. Therefore, subdivision or development proposals submitted to the responsible authority for consideration under an assessed scheme will not be referred to the EPA for environmental impact assessment. Notwithstanding this intention, there may occasionally, due to extraordinary circumstances, be times when referral of subdivision or development is required at a later stage in the land development process for one of the following reasons -

(a) It is likely to have a significant detrimental, and not previously anticipated, impact on the environment and it -

raises environmental issues not identified in any assessment of the scheme; or

it does not fully comply with the environmental conditions of the scheme,

in which case it must be refused or submitted to the EPA for consideration as an ordinary proposal;

(b) the EPA calls it in for assessment due to it being likely to have a significant effect on the environment and the EPA did not have sufficient scientific or technical information to enable up-front assessment of the environmental issues raised by the proposal;

(c) it is a prescribed type that is required to be referred to the EPA for assessment; or

(d) the Minister for the Environment refers it to the EPA due to public concern.

In preparing this Bill the Minister for the Environment has worked with our colleague in another place, the Minister for Planning, to accommodate the various concerns that were raised over the previous Bill brought before the Legislative Assembly on this matter. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

WATER RESOURCES COMMISSION BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Minister for Water Resources), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Minister for Water Resources) [5.43 pm]: I move -

That the Bill be now read a second time.

This Bill is the second in the suite of five Bills which will give effect to the Government's policy for the restructure of the management of water resources and distribution of water services in this State. The first of these Bills, the Water Corporation Bill, has already been introduced to the House. The Water Resources Commission Bill is complementary to the Water Corporation Bill, but it is also in sharp contrast to it. The creation of this commission gives legislative recognition for the first time in this State - a State that has more arid land than any other in the Commonwealth - to the importance of placing water resources under the management and control of a single purpose state government agency. Whereas the focus of the corporation will be largely on providing water services such as water supply, sewerage, drainage and irrigation in a commercial environment, the commission established under this Bill will have a clear mandate to allocate the State's "water resources" which embrace all watercourses, lakes, wetlands, estuaries, rivers and aquifers and underground drainage, surface and surplus water, and to concentrate on the assessment, conservation, protection and management of those water resources and their environment.

The new commission will provide a better focus on water resources management and protection, balancing the planning and use of water along principles of sustainable development and providing a more efficient combination of planning and management of both underground and surface water resources in the one agency. It will also provide a more complete and unfragmented appreciation of multiple uses of water, including its role in aesthetics, conservation and recreation as well as consumption. It will be involved in integrated catchment management, which in turn will enable more effective waterway management and multipurpose use. The commission will ensure that environmental, cultural, economic and social interests are given due weight in water resources management decisions and that those wide community interests are not overwhelmed by the water services responsibilities of the corporation. I will give a more concise description of the commission's functions and powers later.

The structure of the commission will be on traditional legislative lines. It will be an agent of the Crown and will have a board, consisting of a chairman, the chief executive officer and five other members who are required to have relevant experience, and will be appointed by the Minister. The board will have extensive powers to delegate functions internally, but where the board wishes to delegate functions externally, the Minister's approval will be required. In addition to the functions outlined above, the commission will have responsibilities to manage, maintain and enhance the quality of water resources having regard to their beneficial uses; to plan for the use of water resources; to advise the Minister on all aspects of policy in relation to water resources; to coordinate activities, manage projects and provide practical and financial assistance to support conservation and management of water resources; to investigate and provide advice on flood management; and to develop strategies for and promote the efficient use of water resources. There are also provisions which ensure that government policy will be observed and that there is an appropriate flow of information to the Minister. A specific provision ensures that the commission has adequate powers to conduct proper inspections of water resources. The provision includes a power of entry which is balanced with a right of the occupier to compensation in certain circumstances where that power is exercised. There are also provisions which make it an offence to obstruct or interfere with a person exercising powers under the Act or to damage or remove or destroy investigative works under the Act.

Funding of the commission will be derived from the consolidated fund; moneys received by the commission in the performance of its functions; borrowings; and other money lawfully received. The commission may borrow from the Treasurer or, with the approval of the Treasurer, from any other lender. The commission will be subject to the provisions of the Financial Administration and Audit Act 1985 in respect of its financial administration and its audit and reporting requirements. In addition there are provisions extending to the commission certain protection against liability; providing for the use of the common seal; and making it an offence for a member of the board or the staff to breach confidentiality. The Minister must review the effective use of the operation of the Act at the expiration of five years from its commencement and report to Parliament on that review.

The legislation, in setting up the commission, will provide a substantial unified infrastructure to support the amalgamation of the significant contributions made to water resources management in this State by the Waterways Commission; the Water Resources Council; the water resource investigation, management and protection roles of the Water Authority and the water resource assessment functions of the Department of Minerals and Energy. In assuming the role of the Waterways Commission under the Waterways Conservation Act 1976, the Water Resources Commission will administer the management authorities established under that Act at the Peel, Leschenault and Wilson Inlets as well as those for the Avon River and Albany waters. The Swan River Trust will not be affected other than in a consequential way.

The commission, with the complement of functions and powers outlined above, will have the competence and expertise to undertake its important tasks, which will include the administration of the centrepiece of the legislation which controls the allocation of water in the State, the Rights in Water and Irrigation Act. The Water Corporation and the Bunbury and Busselton Water Boards will, like any other water user, be required to hold a licence issued by the commission under the Rights in Water and Irrigation Act. To the extent that the commission will undertake other functions of the Water Authority, the commission will have vested in it under the Water Agencies Restructure (Transitional and Consequential Provisions) Bill, the relevant powers of the Water Authority under the Water Authority Act 1984 and under other water-based legislation which are necessary to perform those functions.

The commission will utilise its powers in regard to committees to set up a number of advisory committees to deal with a variety of matters but particularly those aspects relating to the allocation and management of water resources, as a means of providing community and other input to its decisions. A new advisory body will be created as part of the amendments to the Waterways Conservation Act to be known as the River and Estuaries Advisory Council.

This council will consist of a member of the board of the Water Resources Commission appointed by the Minister; the chief executive officer of the commission; the chairman for the time being of the Swan River Trust; the chairman for the time being of each management authority; and not more than two other persons appointed by the Minister. As well as providing a link to the former Waterways Commission this council will provide important ongoing practical advice to the Water Resources Commission to assist its administration of the Waterways Conservation Act.

In setting up this commission the Government is addressing the considerable environmental and management challenges facing this State in the management and protection of its water resources, with a body which has behind it the accumulated knowledge and expertise of the various agencies it is absorbing and which is endowed with the powers to use that knowledge with the greatest impact. Furthermore, having regard to the multiplicity of existing water enactments that span nearly a century, the establishment of the commission ensures that there is a structure that will be able to effectively continue the reform of water resource management in this State. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

WATER SERVICES COORDINATION BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon Peter Foss (Minister for Water Resources), read a first time.

Second Reading

HON PETER FOSS (East Metropolitan - Minister for Water Resources) [5.50 pm]: I move -

That the Bill be now read a second time.

This is the third in the series of five Bills which will give effect to the Government's policy for the restructure of the water industry in this State, and is a major component of that policy relating to the regulation of water-related services provision including water, sewerage, irrigation and drainage.

The legislation already introduced into Parliament provides for the separation of the Water Authority of Western Australia into a Water Corporation and a Water Resources Commission. The Water Corporation will carry on the utility functions of the Water Authority, namely water supply, sewerage, drainage and irrigation. The Water Resources Commission will combine the water resource management functions of the Water Authority with the function of the Waterways Commission, the Western Australian Water Resources Council and the hydrogeology and ground water investigation branch of the Department of Minerals and Energy.

The Bill now being introduced provides for the vesting of certain powers in the Coordinator of Water Services. Provision must also be made for the allocation of those activities currently performed by the Water Authority of Western Australia which can no longer be appropriately performed by, or demanded of, the new corporatised water utility or the water resources management organisation. Essentially these matters fall into two main areas -

(a) policy and planning advice in respect of the commercial and economic matters associated with the provision of water-related services; and

(b) regulation of matters associated with the provision of water-related services.

The Bill breaks new ground in this State in that it establishes a regulatory regime for the provision of water services the predominant purpose of which is to ensure that consumers of water services are assured of quality water services distribution systems and a high level of customer service. The Bill also addresses other important matters such as the provision of independent advice to government on policy issues related to services such as the water services needs of the State; the introduction and encouragement of competition and efficiency in the water services industry; ways of promoting open access to water service systems; ways of achieving greater efficiency in the use of water and charges for the provision of water services; and regulation of standards relating to plumbing fittings. In addition, the coordinator is authorised to become involved in research relevant to water services, to promote development of commercial applications relating to water generally and by-products from the treatment of wastewater. Further details of these aspects of the Bill will emerge as this summary of the provisions of the Bill proceeds.

The Water Services Coordination Bill provides for the appointment of an official: A Coordinator of Water Services. Although the Bill does not dictate the form of organisation embodying this position and the support staff, it is the Government's intention that an Office of Water Services be established as a public service department. The Office of Water Services will be independent in its advice and operations, but will be provided with some administrative support by the proposed Water Resources Commission. The functions of the coordinator are to assist the Minister in planning and coordinating the provision of water related services in the State, to provide the Minister with wide ranging independent advice on policy relating to the provision of water services, and, as outlined above, to establish and administer a licensing regime for

provision of water services in controlled areas. The requirement to obtain an operating licence extends to the Water Corporation, the Bunbury and Busselton Water Boards and local authorities providing sewerage services. It is proposed that the existing areas which have been declared as areas for the purposes of the various Water Acts will form the controlled areas for the purposes of the licensing regime. The coordinator will also monitor and report publicly on the operation of the State's water industry and its participants. The coordinator will protect the interests of customers with respect to the levels of service provided and prices charged by water service utilities, including the Water Corporation, the Bunbury and Busselton Water Boards, and other licensed water services providers. The coordinator may delegate functions and the Minister has a reserve power to give directions with respect to the performance of the coordinator's functions. This directions power is similar to the general directions power in the Water Corporation Bill and also provides for the tabling in Parliament of directions, where given. The coordinator must provide information to the Minister as and when requested.

The Bill sets out the procedure which must be followed to obtain an operating licence, and schedule 1 sets out the terms and conditions which the coordinator is able to include in an operating licence. It should also be noted that the Governor has a power to exempt any person from the licensing requirement contained in the Bill. This exemption power will enable local authorities which provide drainage services which are currently in operation to be exempted from the need to obtain an operating licence. It will be a condition of every operating licence that the licensee, subject to certain limited exceptions, will:

provide the water services referred to in the licence;

provide for an asset management system in respect of its assets which must be independently reviewed on a regular basis to ensure its effectiveness;

subject itself on a regular basis to an independent operational audit on the effectiveness of the measures taken by the licensee to maintain the quality and performance standards referred to in its licence; and

comply with the minimum technical standards for the provision of water services which will be published by the coordinator in the *Gazette*.

The Bill contains detailed provisions relating to the enforcement of the terms and conditions of the operating licence, which involve fines of up to $100 000 which may be imposed by the Minister, and, in sufficiently serious circumstances, cancellation of the licence by the Governor. The Bill includes appellate provisions which ensure that the licensee is not deprived of "natural justice".

The Bill also makes provision for regulations which will prescribe the circumstances under which compensation will be paid to customers of a water services provider if the provider fails to meet certain standards of performance in connection with the delivery of water services, and the level of compensation payable. Examples of the standards of performance that may be prescribed include the time taken to restore the water supply after a burst main under the control of the provider, or the time taken by a provider to respond to a valid customer complaint. The level of compensation will not exceed $100 in each instance for the breach of any performance standard.

An important aspect of the Government's policy in the area of water industry reform is to enable other providers of water services to enter the water services market in competition with the Water Corporation. By establishing a licensing regime, this Bill facilitates that objective. An important adjunct of that objective is to ensure that private providers have access to certain of the powers which are currently enjoyed by the Water Authority. These powers, which are contained in the various water Acts, will be vested in the Water Corporation under the Water Agencies Restructure (Transitional and Consequential Provisions) Bill 1995, which is part of the suite of legislation of which this Bill forms part. Examples of these powers include the power of entry onto land and the power to construct and maintain works. Water boards will continue as at present using the powers conferred on them under the Water Boards Act.

The Bill contains mechanisms which will enable certain of the rights and powers vested in the Water Corporation to be conferred by regulations on private providers, with or without modification. These mechanisms strike a balance between allowing private providers to have the powers they require to conduct their operations and protecting the rights of consumers. They reflect the Government's view that not all private providers should have, as of right, all of the powers conferred on the Water Corporation, which, despite the corporatisation process, is a Government owned corporation.

As the coordinator has the responsibility for monitoring the performance of water service providers, particularly with respect to the terms and conditions of operating licences granted to water service providers, the coordinator has the ability to designate inspectors for that purpose. The Bill includes provision for penalties for breaches emanating from these inspection provisions which include obstruction of inspectors and failing without reasonable excuse to comply with certain requests made under the Bill which empowers inspectors to carry out a wide range of inspections and investigations. Consistent with the functions to be undertaken by the Coordinator of Water Services, there is a wide power to obtain information in relation to the quality of services provided to customers by water service providers, the financial viability, management of assets and the technical standards applicable to the construction of infrastructure assets. There is a qualified exemption to the requirement to provide information where disclosure would result in the disclosure of commercially sensitive information. Penalties also apply for failure without reasonable excuse to comply with the coordinator's request or for giving false or misleading information. The coordinator and any persons performing functions under the Bill are bound by strict confidentiality, breach of which may result in penalties or imprisonment.

Having regard to the coordinator's broad advisory functions, which cover a wide spectrum of water services matters, the Minister may establish committees to advise on a particular matter to be chaired by the Coordinator of Water Services or his nominee. The Minister must review the operation and effectiveness of the Coordinator of Water Services at the expiration of five years from the commencement of the legislation and report to Parliament on that review.

As I mentioned at the outset, this Bill breaks new ground in that it not only sets the groundwork for competition in the provision of water services within the State with the aim of bringing about downward pressure on the charges consumers will pay for these services, but also opens a new era for consumers in that customers' needs will become of paramount importance to providers of water services and the failure by those providers to meet those needs will be backed by appropriate legislative sanctions. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

WATER AGENCIES RESTRUCTURE (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL

Receipt and First Reading

Bill received from the Assembly; and, on motion by Hon George Cash (Leader of the House), and read a first time.

Second Reading

HON GEORGE CASH (North Metropolitan - Leader of the House) [5.58 pm]: I move -

That the Bill be now read a second time.

The Water Agencies Restructure (Transitional and Consequential Provisions) Bill is the fourth in a series of five Bills necessary to restructure the water industry in Western Australia. The legislation already introduced into the Parliament provides for the separation of the Water Authority of Western Australia into a Water Corporation and a Water Resources Commission. It also provides for the establishment of the office of

Coordinator of Water Services which will administer a licensing regime for water providers. The Water Corporation will carry on the utility functions of the Water Authority; namely, water supply, sewerage, drainage and irrigation. The Water Resources Commission will combine the water resource management functions of the Water Authority with the functions of the Waterways Commission, the Western Australian Water Resources Council and the hydrogeology and ground water investigation branch of the Department of Minerals and Energy.

The legislation now before this House serves as the link between the existing Statute law relating to the water industry and the new Statute law represented by the Water Corporation Bill, the Water Resources Commission Bill, the Water Services Coordination Bill and the Plumbing Services Corporation Bill, which will come into operation as of 1 January 1996. This Bill fulfils a number of essential functions in the restructure process which can be summarised as follows -

(a) It dissolves the Water Authority of Western Australia, the Waterways Commission and the Western Australian Water Resources Council;

(b) it vests in the Water Corporation the powers of the Water Authority necessary for the corporation to perform the water utility functions that were previously carried out by the authority;

(c) it vests in the Water Resources Commission the powers of the Water Authority and the Waterways Commission necessary for the commission to perform the water resource conservation and management functions of the Water Authority, the Waterways Commission and the Western Australian Water Resources Council;

(d) it facilitates the division of the Water Authority's assets and liabilities between the Water Corporation and the Water Resources Commission and facilitates the transfer of staff with the retention of pre-existing benefits, including, in the case of the staff of the authority, their benefits under the enterprise bargaining agreement dated 1993 and accruals;

(e) it will rename the Water Authority Act as amended the Water Agencies (Powers) Act; and

(f) it will repeal matters relating to the licensing of plumbers as these will be covered by the Plumbing Services Corporation Bill.

Sitting suspended from 6.02 to 7.30 pm

Hon GEORGE CASH: Before I turn to the provisions of the Bill in more detail, I wish to outline to this House the approach which has been taken in preparing the Bill. At present the powers of the Water Authority are sourced from nine Acts which span almost a century. Many of those powers must now be granted to the new corporation and the new commission. The task of incorporating in the Water Corporation Bill and the Water Resources Commission Bill new provisions derived from those existing Acts to deal with those powers would have been incapable of accomplishment within the time frame for the introduction and passing of the restructure legislation. For these reasons, the technique of vesting in the corporation, the commission, and the coordinator the relevant powers they require under those Acts has been adopted. This is the same technique that was used in the restructure of the State Energy Commission of Western Australia, where certain powers previously enjoyed by SECWA under its own Act and under certain state energy legislation were vested in the two energy corporations, AlintaGas and Western Power. Additionally the decision to use the vesting technique means that the current water law will not be amended, beyond amendments of a purely transitional and consequential nature required by the restructure, unless the amendment in question is unavoidable. That approach has kept ancillary law reform to the absolute minimum. I will, as this speech progresses, highlight those changes which have been made which are not of a strictly transitional and consequential nature.

The dissolution of the Water Authority and the vesting in the Water Corporation, the Water Resources Commission and the coordinator of the various functions and powers of

the Water Authority under the Water Authority Act is provided in part 2 of the Bill. In order for the corporation to be able to carry out the utility functions of the authority and for the commission to carry out the water resource conservation and management functions of the authority, those agencies must have conferred on them the same operating powers which the authority enjoyed under the Water Authority Act. The amendments contained in part 2 of the Bill achieve this and also ensure that the powers vested in the Water Corporation and the Water Resources Commission are no greater than those enjoyed by the Water Authority under the Water Authority Act.

Parts 2 to 12 of the Bill contain amendments to the Country Areas Water Supply Act 1947, the Country Towns Sewerage Act 1948, the Land Drainage Act 1925, the Metropolitan Water Authority Act 1982, the Metropolitan Water Supply, Sewerage, and Drainage Act 1909, the Rights in Water and Irrigation Act 1914, the Water Boards Act 1904, the Water Supply, Sewerage and Drainage Act 1912, the Western Australian Water Resources Council Act 1982 and the Waterways Conservation Act 1976. The amendments transfer from the Water Authority and the Waterways Commission the administration of these Acts to, where appropriate, the Water Corporation, the Water Resources Commission and, in some instances, the Coordinator of Water Services. The various powers vested in those agencies under this process are, except to the extent mentioned later in this speech, no greater than those which were capable of being exercised by the Water Authority, the Waterways Commission, and the Western Australian Water Resources Council in relation to these Acts. Part 13 of the Bill makes a number of consequential amendments to various other Statutes which are affected by the proposed restructure. In the main, those amendments consist of changes to the Water Authority Act under its new title, the Water Agencies (Powers) Act, and identify whether the corporation or the commission is to perform certain water related functions under those Acts.

Part 14 of this Bill provides for the systematic allocation and transfer of the assets and liabilities of the Water Authority to either the Water Corporation or the Water Resources Commission, or both. I point out that provisions are not required in the Bill for the allocation and transfer of the assets and liabilities of the Waterways Commission, the Western Australian Water Resources Council or the hydrogeological and ground water investigation branch of the Department of Minerals and Energy to the Water Resources Commission because that will be a "government to government" transfer. The legislation provides for the substitution of the Water Corporation for the Water Authority in state agreements, the preservation of third party rights in respect of any debt paper issued by the Water Authority or any state guarantees given for the benefit of the Water Authority. The Water Authority is required to complete necessary functions where those rights cannot be effected by this Bill. The Bill exempts from state tax and facilitates the registration of any instrument necessary to give effect to the transfer process. The legislation also provides for the devolution of the assets and liabilities of the Waterways Commission and the Western Australian Water Resources Council to the Water Resources Commission.

The Government recognises that there must be continuity of the services to the community which the Water Authority and the Waterways Commission provide. Part 14 of the Bill also provides for the transfer of staff from the Water Authority, the Waterways Commission, the hydrogeological and ground water investigation branch of the Department of Minerals and Energy to, where appropriate, the Water Corporation, the Water Resources Commission or the Office of Water Services; certain administrative acts such as the presentation of the final annual report of the Water Authority; the ability of the new bodies to complete anything commenced by the former bodies; and the devolvement on the new bodies of any immunities enjoyed by the Water Authority. The Water Authority, the Waterways Commission and the Western Australian Water Resources Council are to continue in existence each through a single representative appointed by the Minister to perform any necessary transitional functions of those agencies. The Minister is, under the Bill, empowered to attend to any unforeseen administrative matters which are not covered by the legislation.

Although I do not intend to take the House through each of the amendments which are made by the Bill, I consider it important to explain briefly the instances where proposed amendments go beyond the vesting of powers as outlined. The first of those changes that I would like to discuss is an amendment to the Rights in Water and Irrigation Act. It is government policy that the provisions of part 3 of the Act, which contains a licensing regime for the use of certain waters in the State, applies to Crown agencies, the corporation and private providers of water. The Act has therefore been amended to ensure that part 3 binds the Crown. This has the result that Crown agencies such as Westrail, Main Roads and the Education Department must apply for and obtain licences under part 3 of the Act if they wish to use water covered by those provisions. This amendment formalises the current practice of Crown agencies obtaining licences under this Act.

As a flow on from the Government's policy which I have just outlined, amendments have been made to sections 11 and 45 of the Country Areas Water Supply Act, sections 14 and 57EA of the Metropolitan Water Supply, Sewerage and Drainage Act and section 46 of the Water Boards Act to make it clear that the corporation and water boards must each obtain a licence under part 3 of the Rights in Water and Irrigation Act for the use of water to which part 3 of that Act applies. An amendment has been made to the Water Boards Act which imposes a requirement on water boards to obtain an operating licence under the proposed Water Services Coordination Act. That amendment is required to ensure that all providers of water services, as defined, including water boards, hold an operating licence and come under the regulatory control of the Coordinator of Water Services and the proposed Water Services Coordination Act. It is also government policy that the Water Resources Commission is to have the potential to levy charges in respect of the licences it issues under part 3 of the Rights in Water and Irrigation Act. An amendment to section 27 of the Rights in Water and Irrigation Act will allow bylaws to be made enabling the commission to charge a royalty on water used or taken under a licence.

As members will recall, the Water Services Coordination Bill establishes a regime under which customers of a water services provider can be paid compensation not exceeding $100 if the provider fails to meet certain standards of performance in connection with the delivery of water services. A necessary precursor to a compensation provision of this kind is an obligation on providers to provide a service. However, section 39 of the Country Areas Water Supply Act, section 65 of the Water Boards Act and section 46 of the Metropolitan Water Supply, Sewerage and Drainage Act provide that it is not compulsory for a relevant agency to supply or continue to supply water. It is proposed therefore to repeal those provisions. However, the obligation to provide a service is subject to a number of exceptions including force majeure.

Finally, amendments are proposed to the Waterways Conservation Act to create the Rivers and Estuaries Council. The role of that council was stated in the second reading speech for the Water Resources Commission Bill. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

SENTENCING BILL
SENTENCING (CONSEQUENTIAL PROVISIONS) BILL
SENTENCE ADMINISTRATION BILL

Committee

Resumed from 16 November. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Minister for the Environment) in charge of the Bill.

Sentencing Bill

Progress was reported after clause 15 had been agreed to.

Clause 16: Court may adjourn sentencing -

Hon N.D. GRIFFITHS: This clause contains provisions which were part of my motion

of referral to the Legislation Committee. I simply point out to the committee and those who will interpret the concluding words of the Legislation Committee with respect to the clause, namely those in paragraph 6.2, that judicial officers are expected to sentence offenders expeditiously. This provision provides a maximum time in which an offender must be sentenced, which reinforces the duty to sentence expeditiously. My concern was the potential for non-expeditious sentencing. I do not wish to take the point any further.

Clause put and passed.

Clause 17: Court's powers on adjourning -

Hon N.D. GRIFFITHS: This clause seems to be legislation for the sake of legislation. The Bill is not a real code. So much is left out of it that it reflects badly on the legislative performance of the Government.

Clause put and passed.

Clause 18 put and passed.

Clause 19: Sentence by another judicial officer -

Hon PETER FOSS: I move -

> Page 13, lines 10 and 11 - To delete subclause (3) and substitute the following subclause -
>
> > (3) If possible, the latter judicial officer must consult the former judicial officer before dealing with the matter.

Hon N.D. GRIFFITHS: The Opposition agrees with the deletion of subclause (3).

Amendment (words to be deleted) put and passed.

The CHAIRMAN: The question is that the words to be substituted be substituted.

Hon N.D. GRIFFITHS: The principle of sentencing by another judicial officer following trial in the exceptional circumstances set out in subclause 1(a) and (b) is proper and has the Opposition's support. However, to move on from there and say that a judicial officer has ceased to be a judicial officer, but then plays a role in that part of the judicial process which is the subject of clause 19 is inappropriate. I suggest that it is inappropriate when the person concerned goes out of office. If the successor is talented enough to deal with it when the predecessor dies, so be it. It is inappropriate also if the person is not able to deal with a matter within a reasonable time because of an incapacitating illness or another exceptional reason. The most important point is that the judicial officer concerned has ceased to deal with the matter and, in fact, in many of these instances may no longer be a judicial officer. Examples exist in our jurisdiction of a judge trying a matter and being incapacitated because of heart trouble, but coming back on the scene and carrying on with his or her judicial duties down the track - and no doubt it will happen again. That is fine but this is wrong because the person is no longer concerned with it. Notwithstanding the undoubted integrity of all concerned, it is a backdoor way of dealing with things.

These matters should always be up front. It is the decision of the person making and imposing the sentence that may be appealed against, and it is that decision that will be the subject of comments in this place or in the community generally. The point is even more significant when one is talking about a former judicial officer; that is, somebody who has retired or gone out of office, yet will be consulted about a matter of great importance. The trial process is very important and part of the trial process is sentencing. Members will see in this Bill that those who sentence have great power. They have power to deprive people of their liberty indefinitely - effectively for the term of their natural life. To have that dealt with in the way that is proposed in this amendment is inappropriate. The Australian Labor Party in this Chamber will voice its opposition to it by dividing on the matter.

Hon PETER FOSS: I suppose the objection raised by Hon Nick Griffiths is consistent with his objection to clause 15. However, he seems to assume that any information provided by the former judicial officer will be prejudicial to the person being sentenced,

whereas I do not see that as always being the case. In any event, it is appropriate that things other than the official record are available to the latter judicial officer. Many things happen during the course of events that are not recorded in the transcript, the judgment, or the direction to the jury that may create important impressions that should be taken into account; for example, matters such as demeanour. All sorts of other people provide information to the judge; however, in the end the judge remains responsible.

When I became Minister for Health I was grateful for up to date information given to me by Hon Ian Taylor. It was a necessary part of the handover. I was extremely grateful that he was able to assist me from time to time. I would never have thought to say that the decision was other than mine or that anybody could be held responsible other than me. I recognised that any decision I made as Minister was mine. I have heard the President in this place say that members can consult with the Clerks, but it is the members' decision what they do on the advice. The President will not take as an excuse from anybody if they get something wrong that they asked the Clerks. People may take advice from anywhere they see fit; however, in the end it is their responsibility. As members of this Chamber we recognise that. Certainly I recognise it as a Minister and I am sure the judicial officer would recognise it. It would be unfortunate if an important source of information which would have been taken into account had there not been a change in judicial officer were missed out on because of that change. The process is imperfect as it is without losing that opportunity.

Ultimately, the basic difference is to be found in the argument Hon Nick Griffiths raised when the Committee was debating clause 15. If he takes the same view on this clause he is being entirely consistent. I do not see us agreeing on this amendment. We have been through this argument and to that extent I accept the points the member raised. I understand the philosophical objection, but the alternative is worse.

Amendment (words to be substituted) put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Ayes.

Division resulted as follows -

Ayes (14)

Hon George Cash	Hon Peter Foss	Hon N.F. Moore
Hon E.J. Charlton	Hon Barry House	Hon M.D. Nixon
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon B.M. Scott
Hon B.K. Donaldson	Hon P.H. Lockyer	Hon Muriel Patterson *(Teller)*
Hon Max Evans	Hon Murray Montgomery	

Noes (10)

Hon J.A. Cowdell	Hon John Halden	Hon Doug Wenn
Hon Cheryl Davenport	Hon Mark Nevill	Hon Tom Helm *(Teller)*
Hon Val Ferguson	Hon Sam Piantadosi	
Hon N.D. Griffiths	Hon Bob Thomas	

Pairs

Hon I.D. MacLean	Hon Kim Chance
Hon Derrick Tomlinson	Hon Tom Stephens
Hon W.N. Stretch	Hon A.J.G. MacTiernan

Amendment (words to be substituted) thus passed.

Hon PETER FOSS: I move -

Page 13, after line 23 - To insert the following new subclause -

(7) This section does not affect any power of a judicial officer to adjourn a matter so that it can be dealt with by another judicial officer.

Hon N.D. GRIFFITHS: The Opposition agrees with this amendment. The issue is entirely different from the matter dealt with in the previous amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 20: Pre-sentence report: court may order -

Hon N.D. GRIFFITHS: Because of the reference in this clause to what is foreshadowed in part 12 of the Bill, the Opposition does not agree with it. Notwithstanding that, the Opposition will not divide on this clause. I do not propose to comment further on this clause, but the Opposition will refer to it when the Committee debates part 12 of the Bill.

Clause put and passed.

Clause 21: Pre-sentence report: content -

Hon N.D. GRIFFITHS: Last Thursday I invited Hon Peter Foss to give a commentary on the legislation to enable those people who interpret what the Committee is debating to be appropriately guided. In a very kind way he suggested that I should make that commentary. I do not wish to take up that invitation, but given that this Bill is not really a code I again observe that the words in this clause do not add anything to the law as we know it. I suppose the Minister's response will be that somebody who does not know that this clause does not add anything to the law can say, "Well, here it is - this is what courts do." All it does is to set out what courts do. Nothing further need be said on this clause unless the Minister wants to set out for those people interested what courts do when they seek pre-sentence reports.

Hon PETER FOSS: The member is correct in saying that, firstly, this is not a code and, secondly, it adds little to the law as it stands. It has been a user friendly consumer awareness practice of parliamentary drafting and legislative style to fully set out how the area being dealt with works. Although we do not need to deal with everything that comes into the question of sentencing, it is important that some of the major steps are set out to enable a person reading this Bill to obtain a reasonable idea about how the process works.

Clause put and passed.

Clause 22: Pre-sentence report: preparation -

Hon J.A. COWDELL: I remind members of the report of the Standing Committee on Legislation on this matter and refer them to that committee's comment that in the normal course of events offenders should have access to pre-sentence reports. The committee accepts that it is important that it be open to judicial officers to impose restrictions. I have evidence from the Aboriginal Legal Service, in particular with respect to the availability of pre-sentence reports to the offender. The comments of the Acting Chief Justice are noted regarding the fact that the court may impose conditions on the availability of pre-sentence reports; for example, to protect the identity of informants. Obviously that is a legitimate protection but certainly with respect to, say, subclause (5) it may be more effective to say something like "A court shall make a pre-sentence report available on such conditions as it thinks fit" to tip the balance in favour of access. The reports should be available but there obviously may be conditions imposed to protect the identity of the informant.

Hon PETER FOSS: The practice of the court is generally to make pre-sentence reports available. This is classic wording for discretion. It is appropriate that the matter be left to judicial discretion.

Hon N.D. GRIFFITHS: I note the comments by Hon John Cowdell and what the Legislation Committee says in its report. I do not want to go over that to any great extent. However, I should point out some aspects of this clause. There are no amendments to it on the Notice Paper and I will not be moving any amendments. The clause is not being opposed. I am flagging a future treatment of this provision so that those who make policy can take on board my views, I trust, sooner rather than later.

Under subclause (1) the chief executive officer must ensure that pre-sentence reports are made by appropriately qualified people. That is not the sort of wording I like to see in a Statute. It is, I suppose, implicit in proper administrative practice that the function will be carried out properly, and if it is to be carried out it will be done by properly qualified people. That sort of wording concerns me. Much of what is said in the clause is declaratory of current practice. In considering the preparation of pre-sentence reports I would like policy makers to give greater consideration than appears to have been given so far to the Victorian "Sentencing Committee Report 1988", volume 2. No doubt they have given it some consideration but looking at this provision I believe that if they have given it consideration they have not given the matters raised in it sufficient weight. In dealing with the subject of pre-sentence report preparation I propose to raise some of the issues that I think are pertinent to the area of sentencing in Western Australia.

I refer to page 588 of the Victorian report under the heading "Importance and Relevance of Pre-Sentence Reports". I will make reference to it fairly briefly to raise points so that they can be noted for future reference. I say that now so that the relevance of my comments can be understood. In its discussions the sentencing committee refers to the factual basis for the exercise of discretion. It points out that pre-sentence reports can be both a source of disparity for sentencing and a means of overcoming disparity. It points out the role of gate-keeping in respect of sentencing options on the part of those who prepare pre-sentence reports. I differ from the view in that respect because the decision ultimately is the decision of the judicial officer. It points out a number of practical problems with pre-sentence reports. Some may be of the view that pre-sentence reports are used as a substitute for a proper plea in mitigation. I am not an advocate of that view but sometimes that is the impression given. Sometimes an impression is given that the pre-sentence report almost writes the sentence. I do not suggest that that is ever so, other than by the impression given that pre-sentence reports are matters which seem to be given great credibility by those sentenced, the counsel involved, and the judicial officers.

The Victorian report has a number of interesting comments about the ability of report writers to establish facts found by the court. I will not refer to the discussion in detail. There are real practical difficulties which have the potential to undermine the value of pre-sentence reports. I have already made mention of their significance in the sentencing process. Given the matter that I specifically brought before the Legislation Committee relating to this clause, noting what Hon John Cowdell has said and the Minister's response, it is appropriate that I quote from a part of the report on page 597 entitled "Access to Reports". This refers to Victoria but it is also relevant to Western Australia. Almost certainly in the vast majority of cases it is merely a matter of perception but from time to time these issues have arisen in Western Australia. No doubt they will arise in future. Insofar as they do come up they are matters that we should be mindful of; and down the track, if appropriate, we should put in place proper legislation to minimise the occurrence of errors. There is no point in absolute laws; we cannot change human behaviour to the nth degree. It states at page 597 -

> Another matter of concern, particularly to lawyers appearing for defendants, is their lack of access to reports prepared about their clients. While as a matter of legal principle it has been held that access should be given to lawyers this is by no means universally applied in the courts. The difficulty this presents is that the lawyers do not know the basis on which advice is given to the court, and cannot adequately contest it.

The report states -

> In those cases where access is given, quite often it is on the morning of the continuation of the hearing, and for a short time only.

This would occur rarely in Western Australia, but the matter has some relevance. It continues -

> The effect of this is that the offender's lawyer has little opportunity to adequately seek instructions, and find any necessary witnesses to contest any factual basis or opinion contained in the report and which is in dispute. It would be possible in

such circumstances to obtain a further adjournment to allow that to occur, however, particularly in the case where the offender is in custody, such a continuation of the hearing would not be desirable. It also presents practical, logistic problems for the courts where judges and magistrates are moved around from court to court and into different areas where the courts work.

I raise that matter so that the Committee is mindful of the practical difficulties which occur. Those instances are extreme, but when they happen, they are a matter of regret. In this Bill, we are dealing with real effects on people; therefore, the matter should not be taken lightly. I look forward to the time when we enact legislation dealing with pre-sentence reports which picks up the substantive recommendations at page 607 of the Victorian "Sentencing Committee Report 1988". Some of these matters are picked up by the clause, but not in the form put in these recommendations, nor to the degree that is desirable. One of the recommendations is that -

> The author of a pre-sentence report must, a reasonable time before the sitting of the court at which the sentencing is to take place, send a copy of the report to:
>
> - the prosecutor,
>
> - the legal practitioners representing the offender, and
>
> - if the court has do directed, the offender.

That may present a practical difficulty where a pre-sentence report is asked for by a judicial officer in the morning or early afternoon of the list and a prisoner is stood down for the preparation of the pre-sentence report, which is then given orally. That rarely occurs, but the Bill will allow that practice to continue. As a matter of general principle, the pre-sentence report procedure should be more user friendly than it is currently and as the Bill sets out with respect to persons who are about to be sentenced and those who represent them.

Hon PETER FOSS: I suppose the problem is what do we put in and what do we leave out? Section 97 of the Victorian Sentencing Act 1991 states that a pre-sentence report may set out all or any of the following matters which on investigation appear to the author of the report to be relevant to the sentencing of the offender and are readily ascertained by him or her; and it refers to age, social history, and other matters. If we included that in this Bill, Hon Nick Griffiths would say we do not need that because that would probably be done anyway.

Hon N.D. Griffiths: Quite so.

Hon PETER FOSS: Section 98 states that a pre-sentence report must be filed with the court no later than the time directed by the court, and that the author of the pre-sentence report must, a reasonable time before sentencing is to take place, provide a copy of the report to the prosecutor and the legal practitioners representing the offender. Again, that will probably happen anyway. Hon Nick Griffiths may say that it should be included in this clause because it should not be left to the practice of the court. It is a matter of how prescriptive we are and how much we leave to the judicial officers, and I suppose different people have different ideas about what it is important to say specifically rather than leave to the practice of the court. In some instances, we may go too far one way, and in other instances we may go too far the other way. This will always be part of the process of legislation.

There is a small error in subclause (4), which I think might be handled by the Clerk. It states that -

> A written pre-sentence report must not to be given to anyone . . .

The word "to" should not be there.

Clause put and passed.

Clause 23: Information about an offender's time in custody -

Hon N.D. GRIFFITHS: This matter was sent to the Legislation Committee for its

consideration. The Legislation Committee states in its report that there is no reason in principle why the CEO should not also provide the relevant information to the defence if so requested. I regret that will not be enshrined in legislation. The Legislation Committee said also that, the defence should in any event be aware of the length of time an offender has spent in custody. In that regard, I differ with the Legislation Committee. In an ideal world, it would be aware, but very often it is not aware. The conclusion of the report states that if it was not so aware, the information would become available to it when the court was informed of it. In my view, as a matter of practice, at the very least, the information should be provided to the CEO at the earliest opportunity.

Clause put and passed.

Clause 24: Victim impact statement -

Hon N.D. GRIFFITHS: This is a substantial re-enactment of a piece of legislation that we passed last December, although I note when comparing section 4(1) of the Victims of Crime Act with clause 24(1) of this Bill that the words "including a court determining an appeal" have been deleted. I have no difficulty with that. Those words were superfluous. I suppose they were enacted because of the legislative processes of this Chamber in December 1994, which I suspect we are about to repeat in November and December 1995. My comments are also pertinent to succeeding clauses.

A difficulty with victim impact statements is the degree of credence given to them by the courts in the role they play in the sentencing process. I trust the Minister will note my philosophy on sentencing, which I set out at reasonable length at clause 15 so that I would not have to repeat the matter throughout the numerous clauses in the Bill where that view should be put forward for consideration; namely, if something adverse is to occur to an offender, it should be subject to the rules of evidence that our society has developed over a considerable time. We should not accept hearsay save for matters of proper exception.

Hon PETER FOSS: This will work out over time. I can remember sitting in court waiting for a matter to come on and ahead of me was Leo Wood arguing for a plea of mitigation on an indecent dealing charge on the proposition that it was not indecent dealing, but exceeding the speed limit. I spoke to Leo Wood afterwards, and said it was a remarkable plea in mitigation and I wondered why they had pleaded guilty. He said, "You should have heard the facts if we hadn't pleaded guilty!"

Part of the process is the tendency for the impact on the victim to be somewhat mitigated where a harsher examination of those facts would follow if somebody else were to test the facts put forward by the defendant's lawyer. That is where the victim impact statement is important, so that the victim has a role in determining how those facts should be put forward to the court. I accept the member's point that the balance between those matters and what procedures should be put in place would be appropriately dealt with by the courts. Earlier the member quoted cases that came before the judge for sentencing and how the law had grown from there. That is equally the case with victim impact statements. At this stage, rather than our seeking to codify that law, it is appropriate for judges to develop that law.

Clause put and passed.

Clause 25 put and passed.

Clause 26: Victim impact statement: use in court -

Hon N.D. GRIFFITHS: Subclause (2) is appropriate and covers to a degree the issues that I raised in clause 24. I have a misgiving about allowing too much judicial discretion in that part of the process. I take on board the Minister's comments just uttered, and it is appropriate at this stage if I merely point out that it is a matter which should be the subject of some vetting as time goes by. This Chamber and the other place may consider this matter again as we get closer to the next century.

Hon Peter Foss: I agree.

Clause put and passed.

Clause 27: Mediation report: court may order and receive -

Hon J.A. COWDELL: The Legislation Committee was unsure of the precise need for subclause (3) and its report questioned whether a mediator has power to compel mediation. The official government response by the Attorney General accepts that some of these provisions may be vague but everything will be solved by regulations. Despite that comforting assurance I welcome the Minister's indicating the reason for subclause (3).

Hon PETER FOSS: The Government is not suggesting that subclause (3) should be a matter for regulation. Clause 27 has three parts. If a court considers it would be assisted in sentencing the offender by a mediation report, it may order one. A court committing an offender to another court for sentence may order a mediation report for the assistance of the other court. The difference between a mediation report and a mediation is that we can have a mediation without a report, but we cannot have a report without a mediation. Although we could have a report if in fact there has been an attempt at mediation, and nobody has been willing to mediate, the report would not be on the mediation, but on the fact that there has been no mediation.

Hon N.D. GRIFFITHS: The Opposition will oppose clauses 27 to 30. By way of interjection the Minister inquired whether these matters should be dealt with together. I have no objection to that if it will facilitate debate and the proceedings of the Committee.

The DEPUTY CHAIRMAN (Hon Cheryl Davenport): Order! Are you proposing that the debate should revolve around the four clauses?

Hon N.D. GRIFFITHS: Yes. If that occurs, we will divide once rather than four times.

The DEPUTY CHAIRMAN: It is up to the Committee.

Hon N.D. GRIFFITHS: I am merely trying to accommodate the Committee. I do not want to take up time by doing this.

The DEPUTY CHAIRMAN: I am in the Committee's hands.

Hon Peter Foss: I am happy for us to do it that way and for the question on each clause to be put individually.

The DEPUTY CHAIRMAN: I still need to put each question separately.

Hon N.D. GRIFFITHS: With the Committee's leave perhaps we can debate these clauses together and then the questions can be put separately.

I note that there are members of the Legislation Committee present. When I moved my motion for the matters to be referred to the Legislation Committee with the agreement of the Chamber and the concurrence of the Minister, I did that because I wanted the matters to be considered. I did not have a hard and fast view of mediation then nor do I have one now. The Legislation Committee notes my view that I considered that great care should be taken in legislating in the area and that the provisions may go too far too soon. That is one of those examples of me being a conservative when it comes to legislation, but so be it. My concern was allayed by the fact that the matter was being considered by the Legislation Committee.

Other than speaking to the Legislation Committee and raising question marks, I do not think that I added a great deal to the committee's knowledge on mediation. The committee went further and explored the avenue of mediation. It referred to the view of the Aboriginal Legal Service that the circumstances in which a court can or should order a mediation are not clear. It agreed with me that there should be no power to compel mediation. I note the point raised by the Minister about the distinction between ordering a mediation report as opposed to mediation.

Hon Peter Foss: They cannot be ordered. They happen to occur as a matter of course in certain events.

Hon N.D. GRIFFITHS: I understand that. Given the capacity to order a mediation report, and noting the wording of clause 28, which observes that such a report deals with

any mediation or attempted mediation, in the context that a mediation report reports "on the attitude of the offender to mediation", those words do not sit comfortably with the concept of there being no compulsion to attend mediation. A person can be sentenced, noting the very wide range of sentencing open to a judicial officer, and part of that process would be a report which deals with the person's attitude to mediation. However, it is suggested that there is no power to compel. There may not be power to compel, but there is an awfully big stick to persuade. To my mind, that detracts from any notion of voluntariness in respect of mediation.

For the record, it is important that Hansard records those matters with which a mediation report will deal. According to clause 28(2)(a), that is -

> on the attitude of the offender to mediation, to the victim and to the effects on the victim of the commission of the offence; and

according to clause 28(2)(b) -

> any agreement between the offender and the victim as to actions to be taken by the offender by way of reparation.

The concept of reparation is better left to that part of the Bill which deals with it. I mention it now because it is included in clause 28. Clause 28(2) undermines the concept of voluntariness as it applies to mediation. The Government recognises the problem, but its response is, I regret to say, inadequate.

Recommendation 7 of the Legislation Committee is -

> That the mediation provisions of the Bill be reconsidered and more detail about the mediation system be included in the Bill. In particular, the Bill should contain provisions relating to:
>
> (a) principles of mediation;
>
> (b) which types of matters may be subject to mediation or an order for mediation;
>
> (c) the role of the victim;
>
> (d) powers of mediators; and
>
> (e) who should be entitled to receive a copy of any mediation report.

I have explained that, in dealing with the question of mediation, I prefer to be guided by the Legislation Committee because I suspect that, in its time considering the matter, it acquired a degree of expertise relatively quickly.

The Government's response is inadequate. It recognises the problem and that is good, but it does not go far enough. Because of that, and because there are inadequacies, it is better at this stage that the clauses should not be agreed to. The Government can then give the matter full and proper consideration and bring back changes in another Bill which I can assure the Minister will be appropriately considered by the Opposition. We are concerned to get it right. There are no votes in it for any of us, but we are embarking on a relatively new process and putting down words that may not be revisited for some time. There is a need for matters to be dealt with. Bearing in mind the words of the Government's response, its inadequacy is patent. I refer to the comments on clauses 27 to 30 in the Government's recommendations. Clarification of the principles and process adopted as current practice by the Victim Mediation Unit of the Ministry of Justice has been sought. The Legislation Committee, at paragraph 9.2 on page 4 of its report, stated -

> The Committee has informally been advised by the Victim Offender Mediation Unit (VMU) on the current mediation process.

It then went on to refer to that process. The response goes on to state that, given that the provisions for mediation are new in Western Australia and may require some alteration as the effects become known, the Government favours proceeding by way of regulation rather than by legislation. That is an important matter. It is so important that the

Government wishes to provide primary legislative provision, as set out in clauses 27 to 30, yet it favours proceeding by way of regulation rather than by legislation. For a start, that is an inadequate result. At the very least, the matter is sufficiently important to be dealt with by way of legislation, not regulation. The Government needs a bit of an incentive to deal with it in that way, and that is by defeating the clauses and by saying to the Government, with charity in our minds, noting the forthcoming festive season, that its words will be very good, but let us have them in a Statute, not in a regulation.

I note that what is proposed to be put in the regulations is provision for the principles of mediation, the matters to be subject to mediation, the role of the victim, the powers of mediators, and so on. They are important matters which the Legislation Committee said should be included in the Bill, just as it said that entitlement to reports should be included in the Bill. We can argue about each of those matters and about the forthcoming principles of mediation, the role of the victim, the powers of mediators and entitlement to report and so on, but that is not my role this evening. The crucial issue is that the Legislation Committee's recommendations have not yet been put into words relating to their application. The same is true with respect to the Government's response. The issue is whether this important aspect of sentencing should be the subject of primary legislation or whether it should be dealt with by regulation. I see no difficulty whatsoever in the Government's agreeing with what we propose. The Minister is concerned to respond. I do not propose to say anything more on the matter, unless the Minister says something to which I should respond. My colleague Hon John Cowdell might also wish to say something.

Hon PETER FOSS: Hon Nick Griffiths' suggestion is extraordinary. This mediation is taking place all over Australia, and it is taking place without any legislation whatsoever. If we defeat those clauses, we will go back to mediation taking place without any legislation whatsoever. All the fine principles that Hon Nick Griffiths believes should be incorporated in primary legislation would not be incorporated in anything. It is extraordinary for him to say that he objects to the matter being in regulations and that he wants it spelt out in legislation. If he cannot have it in an Act, he will not have it at all. That seems to be a contradiction in logic. We could go back to having nothing at all, but where would protection be then? There would certainly be less protection than there would be by incorporating it in the Act. By saying, "Leave it out altogether" one ends up with nothing and is back to the current situation.

Queensland and Victoria are also looking to incorporate this matter in legislation. At this stage we are putting it in and recognising it as part of the process, as opposed to having it on the basis on which it operates at the moment. The suggestion that we walk before we run and do it under regulation is a reasonable transition period between having nothing in legislation and prescribing every single detail.

Earlier today, Hon Nick Griffiths said that day to day procedures are unnecessarily incorporated in the Act. He does not think that the procedure needs to be set out; we can leave it to the process that is carried out by the court to determine such matters. Now he is saying that we must prescribe something which is still in its infancy. That is an illogical way to proceed. Let us go from our current situation in which we have nothing at all in the legislation, to a complete system of victim mediation, and to saying, "Right, we will have it. We have seen some basic things there, and the rest we will put in regulations. We have a legislative program, so as we try it and see how things work out, we will be able to look at it more carefully." When we try to bring in legislation, Hon Nick Griffiths will probably say, "This is unnecessarily prescriptive. We already know how it operates; it should be left to that process."

We are the first State in Australia to put this matter into legislation. It is probably appropriate to proceed cautiously. The idea of regulations is excellent. It enables the process to be responsive. As Hon Nick Griffiths knows, many matters with regard to court processes are in statutory instruments. The rules of the Supreme Court and the criminal rules greatly affect people's rights, yet we have no problem with their being in a form of delegated legislation.

Hon N.D. Griffiths: Is the Minister referring to the practice rules?

Hon PETER FOSS: Yes, and the rules of the Supreme Court. They are quite substantive statutory measures, but they are in delegated legislation. Such procedural matters are appropriately put in a form of delegated legislation, especially in the early days. The victim offender mediation unit wishes to make a correction to the committee's report in respect of the way in which it conducts its activities. With regard to clause 9.4 of the committee's report the VMU states -

> Mediators are not automatically members of the WA Dispute Resolution Service. The VMU is a member organisation and mediators employed by the VMU may apply for accreditation.

The rest of the paragraph is accurate.

I am sure that the committee, had it had the opportunity to hear from the Government, would have considered seriously the possibility of this being handled in regulations. As I said, it was an unfortunate part of the process that the Government was not heard. I have spoken to the chairman of the committee and indicated on behalf of the portfolios that I represent both directly and indirectly in this Chamber that I will ensure, for the better deliberation of the committee, that it will have the opportunity to hear the Government's attitude or response prior to its coming down with a report. There is a difficulty if the committee does not hear the arguments from the other side in that it will be making its decision having heard only half the evidence and half the argument. It would have been better had we been able to put forward the matters in the Government's response to the committee directly so that when undertaking its deliberations the committee had before it that information as well as the other evidence, particularly that of Hon Nick Griffiths. Certainly, when I was a member of the Legislation Committee we made a point of calling the officers of the department to ensure that we had an understanding of what was intended by the legislation before we made our decision. I am sure that the deputy chairman would acknowledge that. I find it totally incomprehensible why we would go to having no legislation whatsoever in preference to having delegated legislation.

Hon J.A. COWDELL: I am sure that Hon Bill Stretch will agree with me that the Legislation Committee was supportive of the mediation role. However, there was a strong sense that the clauses defining that role were sloppy and could have been improved. The committee's report offers suggestions for improvements and, of course, recommendations for making mediation reports more widely available. However, legitimate concerns were raised by Hon Nick Griffiths about erring towards compulsion in clauses 27 and 28. I am not sure that the Government's solution of relying upon regulations is the best way to go. There is certainly support for the role of mediation here and a belief that the Government could do better with the clauses we have before us.

Hon N.D. GRIFFITHS: I find the remarks of Hon Peter Foss somewhat contradictory. We have legislation before us but the Government is saying that it will solve the problems in regulations. The real problem is with the legislation before us at the moment, particularly clause 28. I refer to my earlier comments, which have not been answered. My concerns about clause 28 are that it undermines the concept of voluntary participation in the mediation process - it is not compulsory, but here is the persuasive big stick. I foreshadowed that we would divide on each and every clause, but that would be inappropriate. I point out that the Opposition proposes to divide on only clause 28.

Clause put and passed.

Clause 28: Mediation report: content -

Hon PETER FOSS: I suggest that Hon Nick Griffith move to delete the words "to mediation" in line 15.

Hon N.D. GRIFFITHS: I have listened with interest to what Hon Peter Foss has had to say. In the light of his invitation, I move -

> Page 17, line 15 - To delete the words "to mediation,".

The subclause will then read -

(a) on the attitude of the offender to the victim and to the effects on the victim of the commission of the offence;

I find the Minister's invitation constructive and I thank him for it.

Hon PETER FOSS: I accept the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 29 to 34 put and passed.

Clause 35: Reasons for imprisonment must be given -

Hon N.D. GRIFFITHS: This clause is the subject of two proposed amendments. The first will lead to subclause (1) stating that a court sentencing an offender to a term of imprisonment must give written reasons why no other available sentencing option was appropriate. It is a very serious step to take away someone's liberty and there is no good reason for such a step not to be recorded. The current provisions of section 19A(1a) of the Criminal Code state at page 53 that -

> A court that imprisons an offender for a term of 6 months or less shall give written reasons why no other form of punishment or disposition available to the court in the case was appropriate;

It then refers to some exceptions. The clause before the Committee is an improvement which is heading in the right way. I suggest my proposed amendment would get us there. I ask the Committee to accept my invitation to take us to the end of the journey. Therefore, I move -

> Page 20, line 12 - To delete the words ", or an aggregate of terms of imprisonment, of 12 months or less (**"the term imposed"**)".

Hon PETER FOSS: I must disagree with Hon Nick Griffiths. His proposal is a retrograde step because for a long time the imposition of a minor term of imprisonment was seen as a relatively reasonable alternative to some of the other options. It was seen as a different aspect of a similar proposition. There was concern that it was too easy to impose a short term of imprisonment. We knew that once the term reached a certain point, the courts did not impose a substantial term of imprisonment without a very good reason. I am quite convinced a court would not impose a term of 12 months or more without very good reason, and it would have formed the view there was no other alternative. Unless there has been an amazing change of attitude on the part of courts, I do not believe they would impose terms of 12 months or more unless they reached the view there was no alternative.

I must confess I have not read the *Hansard* debates of 1992 when the legislation was amended and I am relying on memory, but the whole idea of Hon Joe Berinson moving this amendment was to concentrate on that end to make it different from the other end. That drew the attention of people imposing such penalties to the fact that it was a serious penalty, even though it was at the lower end of the sentencing options. It was to get people out of the habit of regarding small sentences as an easy option. There was no problem with longer sentences. The court recognised that once the term exceed a certain period, it was a serious penalty and it was not imposed lightly. However, there was a different attitude to shorter periods, especially in the lower courts, to periods of six months, three months, or even three days.

Hon N.D. Griffiths: Until the rising of the court.

Hon PETER FOSS: Exactly. Hon Nick Griffiths has picked up the attitude in one. It was felt that this end needed the spotlight on it. It was not that the Government did not think every court should think about every sentence. However, it was convinced that the courts were thinking about the top end, and their attention needed to be directed to the bottom end. Although I agree entirely with Hon Nick Griffiths' sentiments, that is not where the problem lies. The intention of this provision is to spotlight the attitude of the court to those lower end sentences, to indicate that although they may seem small they

are still important. The Government is now suggesting the increase to 12 months, not because it is moving towards abolishing those terms but, with the new sentencing options available, the Government believes there are genuine alternatives to those periods of imprisonment between six and 12 months. With the new sentencing options there must be very good reason to sentence anyone for that period. Previously, the Parliament said that there must be good reason to imprison anyone for less than six months and now, with the alternatives, the spotlight can legitimately be put on this issue again so the courts must direct their attention to sentences of up to 12 months. I am sure judges will still think seriously about sentences of more than 12 months. They always give reasons for imposing terms of imprisonment. This provision will have a spotlight effect and it will be salutary. We are dealing with an historical situation. I hope all judges take the attitude the member is suggesting. I do not for one moment suggest that Hon Nick Griffiths' comments are wrong, but from an historical perspective it is important that the clause be drafted this way to achieve the spotlight effect. There is no difference between us in terms of the principle of sentencing. I had the benefit of being in this place and hearing the reason for the introduction of the provision in the first place by Hon Joe Berinson. We are extending that spotlight principle because of the new provision.

Hon N.D. GRIFFITHS: Save for the issue of the spotlight, the arguments put forward by Hon Peter Foss are consistent with the proposition that the amendment I have moved be acceded to. I have no desire to move the spotlight from that area where I hope it will now shine. However, I suggest the amendment will enlighten the sentencing process further. If it is passed, it will enlighten the judiciary so that it is aware that this Chamber and, I hope, the other place are firmly of the view that a person's liberty is so important that written reasons in the fairly reasonable manner suggested in the clause be provided. It will not be a great hardship for the judiciary. Therefore, notwithstanding the comments by the Minister, I will persist with the amendment.

Amendment put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Murray Montgomery): Before the tellers tell I cast my vote with the Noes.

Division resulted as follows -

Ayes (10)

Hon J.A. Cowdell	Hon John Halden	Hon Doug Wenn
Hon Cheryl Davenport	Hon A.J.G. MacTiernan	Hon Tom Helm *(Teller)*
Hon Val Ferguson	Hon Sam Piantadosi	
Hon N.D. Griffiths	Hon Bob Thomas	

Noes (12)

Hon E.J. Charlton	Hon Peter Foss	Hon Murray Montgomery
Hon M.J. Criddle	Hon Barry House	Hon N.F. Moore
Hon B.K. Donaldson	Hon P.R. Lightfoot	Hon M.D. Nixon
Hon Max Evans	Hon P.H. Lockyer	Hon Muriel Patterson *(Teller)*

Pairs

Hon Kim Chance	Hon I.D. MacLean
Hon Mark Nevill	Hon Derrick Tomlinson
Hon Tom Stephens	Hon W.N. Stretch
Hon Graham Edwards	Hon B.M. Scott

Amendment thus negatived.

Hon N.D. GRIFFITHS: I move -

Page 20, lines 17 to 23 - To delete subclause (3).

I note the difference between the Minister and me regarding the last matter concerning spotlighting. Subclause (3) has three legs to it. The term imposed is mandatory under

written law. It should not be a matter of great hardship; it should be a matter of the judicial officer's saying what was the written law. It is consistent with other provisions in the Bill to enlighten people about what will happened in the sentencing process. People should be encouraged to do their work thoroughly. That applies to judicial officers as much as it applies to other people.

The next leg concerns "the aggregate of a term imposed and any other term of imprisonment that the offender is serving or has yet to serve is more than 12 months". Again, a person's liberty is at stake. I see no reason why the spotlight should not be applied in those circumstances.

With the third leg, the term is imposed under section 79 of the Prisons Act 1981, which I gather is not often considered, although we had cause to consider it earlier this year. Section 79 deals with a number of matters, most, if not all, of which should be subject to the spotlighting approach. Clearly that dealing with a fine is not a matter that concerns us, but a person's being dealt with under section 79(1)(a)(i) or (iii) or 79(1)(b) is deserved of the spotlight that the Minister was advocating. Being confined to a punishment cell is considered to be a very serious punishment indeed by a serving prisoner. Spending a bit of time in the "choker", as perhaps some should, is considered to be considerably more onerous than serving a greater time in the general prison environment.

These are serious matters, and they affect people greatly. The matter set out in section 79(1)(b) of the Prisons Act are many, some of which go to the efficient functioning of prisons, but they can give rise to lengthy terms of imprisonment. Again, it fits the spotlight to refer to sections 79(1)(b) in the case of an offence under sections 10(2), 27(5), 70(c), 85(2), 92(2) or 94(6) relating to imprisonment for a term not exceeding 12 months or a term to be cumulative upon any term or terms of imprisonment that the offender is undergoing or is liable to undergo. That matter should be the subject of written reasons. The policy reason that it is not, is not appropriate.

Hon PETER FOSS: First, I will deal with the question of mandatory sentences. The whole idea is to put a spotlight on them so that the person thinks before imposing a sentence. It is rather unnecessary to propose that requirement where the person is obliged by the Crown to impose a mandatory sentence.

Dealing with the question of the person who is imprisoned, what alternative is there for a person who is already in prison? Will he get a community service order or a fine? He is in gaol. The person has already shown himself to have some disrespect for the processes of gaol. The regulated instance is a totally different matter. We are not just depriving a person of his liberty; that has already been done. This is the appropriate way to deal with the matter after that liberty has been removed. These people have shown already that they have not been affected by that and have broken the rules of the prison. The Opposition has changed its view since 1992, and everyone is entitled to a change of mind. In 1992 the Parliament accepted the position of the then Government, and I happen to think it is still correct.

Hon N.D. GRIFFITHS: There are ways of dealing with prisoners instead of increasing imprisonment terms set out in the Prisons Act.

Hon Peter Foss: It is not unusual.

Hon N.D. GRIFFITHS: I invite the Minister to read the Prisons Act. We are talking about the spotlight with respect to the previous amendment. The Minister's defence is restricted to the Prisons Act on the facts sheet. He has not dealt with the other matters. I will persist with the amendment. It is appropriate. The Parliament enacted legislation in 1992. The Government now chooses to revisit it in 1995. In many other contexts the Minister seems to have changed his stance to that which he adopted in 1992. I restrict myself to this context and suggest to the Chamber that the amendment proposed is an improvement to the legislation.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell, I cast my vote with the Noes.

Division resulted as follows -

Ayes (10)		
Hon J.A. Cowdell	Hon John Halden	Hon Doug Wenn
Hon Cheryl Davenport	Hon A.J.G. MacTiernan	Hon Tom Helm *(Teller)*
Hon Val Ferguson	Hon Sam Piantadosi	
Hon N.D. Griffiths	Hon Bob Thomas	

Noes (13)		
Hon George Cash	Hon Peter Foss	Hon N.F. Moore
Hon E.J. Charlton	Hon Barry House	Hon M.D. Nixon
Hon M.J. Criddle	Hon P.R. Lightfoot	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon P.H. Lockyer	
Hon Max Evans	Hon Murray Montgomery	

Pairs

Hon Kim Chance	Hon I.D. MacLean
Hon Tom Stephens	Hon Derrick Tomlinson
Hon Mark Nevill	Hon W.N. Stretch
Hon Graham Edwards	Hon B.M. Scott

Amendment thus negatived.

Clause put and passed.

Clause 36: Issue of warrant of commitment -

Hon N.D. GRIFFITHS: I agree with this clause. I know some members opposite would like another division because they enjoy sitting in here and want others to join them. It is a matter of regret that it is considered necessary to have such a clause. It is a firm direction from the Parliament to the courts to do their job. Insofar as courts have not done that, they deserve to be censured. I am pleased that the Parliament is moving to give that direction. I regret the perceived necessity.

Hon Peter Foss: It is already in section 149 of the Justices Act.

Clause put and passed.

Clause 37: Correction of sentence -

Hon N.D. GRIFFITHS: I note the provisions of section 166B of the Justices Act, which has operated efficiently. A similar provision proposed in this clause will be of benefit.

Clause put and passed.

Clause 38: Imprisonment by justices: magistrate to review -

Hon N.D. GRIFFITHS: This is one of the clauses that was included in my motion of referral to the Legislation Committee. The Legislation Committee states in recommendation 8 that clause 38 remain unaltered in the Bill. Consistent with my observations to the Committee during the short title debate, this clause will not be opposed. However, I point out my regret that the Legislation Committee did not choose to go as far as I advocated to it. It is inappropriate that in Western Australia justices of the peace have the power that clause 38 will permit them to continue to have. It is a power which I regret has on many occasions been exercised to the accurately perceived disadvantage of many people, particularly those in relatively outlying areas. There are many good justices of the peace, and my comments are not meant to be a criticism of those people who provide a great service to the community on a voluntary basis, but they should not have the power that clause 38 provides for them. The Government in putting forward clause 38 in the terms it does I suggest recognises the problem. It seems however that justices of the peace will continue to have the power, but that power should be reviewed.

This clause is one of the most important matters in this Sentencing Bill. The question of

justices of the peace having the power to imprison is an important issue particularly to Aboriginal people because, as a matter of practice, they are on the receiving end of the power of justices to imprison. The Government recognises the fault in the process and seeks to put in place a review procedure. However, the review procedure set out in clause 38 has a number of weaknesses. I refer to subclause (1). I do not like any part of the sentencing process not involving the right to be heard; of people being sentenced behind closed doors; people receiving evidence of a hearsay nature; and the process not being open to those being sentenced or those acting as agents on their behalf.

I find the process in subclause (2) extraordinary. It reads -

> The review is to be based on an examination of the court papers relevant to the offence (or copies or faxes of them) in the absence of the parties and is not to involve a hearing.

I could take the time in the Chamber to go through this clause subclause by subclause. I do not propose to do so. I have referred the matter to the Legislation Committee, which has considered it. I reiterate my regret that the Legislation Committee has not chosen to take the legislation further by adopting my view on the matter. I foreshadow that we will sooner rather than later revisit this clause, because the practices set out in this clause are arguably unworkable. They have not been put into place and, therefore, we do not know for sure, but I suggest they will be unworkable. In any event, they will be queried from time to time as decisions by justices are reviewed and sentences of imprisonment are not reviewed favourably and overturned by the reviewing magistrate.

On behalf of the Australian Labor Party I oppose this clause. I do not do so because, as Hon Peter Foss has said, it is nice to be consistent and I made my comments. At the moment the importance of the Legislation Committee and its potential role is greater than whether a particular point of view with respect to this Sentencing Bill is carried today or at a later stage. Because we wish to constructively support the Legislation Committee, I do not oppose in stronger terms than I have what I consider to be an inappropriate clause.

Clause put and passed.

Clause 39 postponed until after consideration of clause 58, on motion by Hon Peter Foss (Minister for the Environment).

Clause 40 put and passed.

Clauses 41 to 43 postponed until after consideration of clause 101, on motion by Hon Peter Foss (Minister for the Environment).

Clause 44 put and passed.

Clause 45: Spent conviction order: making and effect of -

Hon N.D. GRIFFITHS: I am concerned about subclause (6)(b). A spent conviction order for a conviction does not prevent subsequent proceedings against the offender for the same offence. For example, a person has been dealt with, yet it is proposed that there be subsequent proceedings against the offender for the same offence. What is the reason for those words?

Hon PETER FOSS: The purpose is that if the occasion for the making of the spent conviction order is, for instance, a community service order, and the person during the course of that breaches the community service order, the person is brought back again before the court and sentenced for the offence which had the spent conviction order made against it because of the imposition of the community service order as an alternative.

Hon N.D. GRIFFITHS: A spent conviction, as I read it, does not seem to give rise to a community service order. Which part of the Bill provides for a community service order to occur together with a spent conviction?

Hon PETER FOSS: That is covered under clause 39(2). It is to allow for the situation when a CRO is imposed and a spent conviction order is made, and the person does not observe the terms of the CRO.

Clause put and passed.

Clause 46: Release without sentence -

Hon N.D. GRIFFITHS: This provision has the support of the Opposition. It is wider in its operation than section 669 of the Criminal Code. I trust that it will be a sentencing option that courts will use with frequency. I note the high rate of imprisonment and the relatively harsh sentencing that occurs in Western Australia vis-a-vis some other jurisdictions.

Clause put and passed.

Clause 47 put and passed.

Clause 48: CRO: nature of -

Hon N.D. GRIFFITHS: Part 7 of the Bill deals with conditional release orders and I am interested to know what resources will be allocated to supervise them. How many full time employees will be involved? I am concerned about this part of the sentencing process and that it will be under-resourced. I have similar concerns about a number of clauses in the Bill dealing with the sentencing process and I will raise my concerns when we debate those clauses. I raise this concern in a general way and I trust the Minister will see fit to respond if he has the data. If he does not have the data, I trust that he will cause it to be made available to me within a reasonable time. I move -

Page 31, line 21 - To delete the figure "36" and substitute the figure "24".

Although I and other members were party to the postponement of a couple of clauses a few moments ago, it is appropriate that I make reference to the sentencing regime. The Committee is progressing through this Bill and as it proceeds the sentencing options become more serious. The Committee has just dealt with the release of an offender without sentence and now it is dealing with a conditional release order. Clause 48 provides a relatively minor sentencing option - namely, a conditional release order - and subclause (3) states that it must be set by the court but must not be for more than 36 months. A CRO is not as serious a sentencing option as a community based order. Clause 62(5) states that a CBO must be set by the court and must be for at least six months and not more than 24 months. However, in this clause the term for a CRO must not be for more than 36 months. Intensive supervision orders are covered by clause 69, subclause (6) of which states that an ISO must also be set by the court and must be for at least six months and not more than 24 months.

My reason for moving this amendment is twofold. First, CBOs and ISOs have a maximum of 24 months; therefore, consistency is desirable. Secondly, an offence subject to a CRO is not as serious as an offence subject to a CBO or an ISO. Therefore, it is illogical that the maximum period for a CRO should be greater than the other two forms of order. I trust the Committee will agree to the amendment. If it does not, I would be interested to hear why it should not be agreed to.

Hon PETER FOSS: The answer to Hon Nick Griffiths' first question was answered by his second question: There will be no additional resources for CROs because there is no supervision of them. I refer members to clause 50(1), which outlines the method of dealing with them. I suppose the most important aspect of the CRO, to distinguish it from an ISO, is that it is not supervised. It comes down to putting a person on trust and calling him in if and when necessary.

Hon N.D. Griffiths: It needs to be assessed.

Hon PETER FOSS: It does, but the nature and circumstances are such that it does not require extra people. However, there will be seven extra FTEs to undertake the supervision that will be required by this Bill. It is not a question of putting a person under a supervised process for 24 or 36 months, but it allows them to set his own standards. The longer period will encourage the court to use it more than it would if there were a shorter time. I do not feel strongly about the amendment and I will neither support nor oppose it. I will leave it to the member to make his decision on what effect it will have in the time from when the court moves to using a CRO to the next order. By a

person having a longer period to supervise himself, it will give the court greater encouragement to use it. The shorter the time, the less reluctant the court may be to accept it. I do not have a strong feeling one way or the other on this amendment. I will remain silent on the vote.

Hon N.D. GRIFFITHS: I thank the Minister for his neutrality. Given the nature of the CRO and having regard to a subsequent clause, it is appropriate that the Committee support my amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 49: CRO: requirements -

Hon N.D. GRIFFITHS: I have an amendment on the Notice Paper and if I move it and it is passed subclause (1) would read -

> A court making a CRO may impose any reasonable requirements on the offender it decides are necessary to secure the good behaviour of the offender.

It is not necessary for me to move that amendment. I put it on the Notice Paper to remind myself to raise the fact that sometimes requirements may not be reasonable, and when requirements are not reasonable their lawfulness is open to question. It is very difficult for someone the subject of an order such as this to question it. It is better to consider the word "reasonable" with respect to the word "requirements" rather than to suggest "reasonably necessary to secure the good behaviour of the offender". I have made my point. It is an example of an amendment placed on the Notice Paper to flag a concern. I will not be moving each amendment that I have placed on the Notice Paper.

Hon PETER FOSS: I was going to say that I believe that the amendment is unnecessary because the word "reasonable" must be implied. If unreasonable requirements were imposed they would be challenged.

Clause put and passed.

Clause 50 put and passed.

Clause 51: Ensuring compliance with CRO -

Hon PETER FOSS: I move -

> Page 33, after line 21 - To insert the following new subclauses -
>
> (4) If under subsection (1) a court makes an order requiring there to be a surety for an offender, and within 7 days after the order is made a person has not been approved as a surety, the offender is to be taken before the court.
>
> (5) On the reappearance of an offender under subsection (4) the court may amend or cancel the order requiring a surety, or amend the CRO, or cancel the CRO and impose a fine for the offence despite section 39 (3).

The recommendation of the Legislation Committee was that a provision similar to that in section 49(1) of the Bail Act relating to relief from forfeiture for surety be included in this clause. The recommendation is accepted but a slightly different approach is recommended because of the concerns raised by the Aboriginal Legal Service and possible discrimination against impecunious persons. Under 51(1)(c) an offender of the surety does not necessarily have the deposited amount but may give a written undertaking instead. The recommendation suggests that it is a provision similar to section 49(1) of the Bail Act, although it is believed the provisions for a surety should be included in this clause. While the provision is welcome, the Government considers that such a provision would be more appropriate under the provisions of clause 52. In addition, the Government chose to put all the matters for enforcement in respect of both the offender and the surety on the same footing as provided in the Bail Act. This consistency will assist judicial officers. Parliamentary Counsel drafted the necessary amendments to give effect to the changes.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 52: Enforcing a CRO -

Hon N.D. GRIFFITHS: I do not propose to move my amendments.

Hon PETER FOSS: I move -

Page 34, lines 8 to 18 - To delete subclause (2) and substitute the following subclauses -

(2) If an offender in respect of whom an order under section 51 has been made -

(a) commits an offence during the term of his or her CRO; or

(b) breaches his or her CRO,

the court that imposed the CRO, on its own initiative or on an application by the Crown -

(c) subject to subsection (3), must order that the full amount agreed to be paid or deposited by the offender be paid or forfeited (as the case may be) to the Crown; and

(d) subject to subsection (4), must order that the full amount agreed to be paid or deposited by any surety be paid or forfeited (as the case may be) to the Crown.

(3) Sections 57(2) and 59 of the *Bail Act 1982*, with any necessary changes, apply in respect of a court making an order under subsection (2) in respect of an offender as if the court were making an order under section 57(1) of the *Bail Act 1982* in respect of a defendant.

(4) Sections 49(1) and (2) and 59 of the *Bail Act 1982*, with any necessary changes, apply in respect of a court making an order under subsection (2) in respect of a surety as if the court, under section 49 of the *Bail Act 1982*, were enforcing the payment to the Crown of any sum payable by a surety under a surety undertaking made under that Act.

This is a further implementation of the recommendations of the Legislation Committee.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 53: Considerations when imposing a fine -

Hon N.D. GRIFFITHS: I do not oppose the clause. Perhaps I am equivocal about my misgivings. The clause is reasonable. If a court is of the view that it cannot fine an offender under this clause, noting the criteria spelt out, it does not follow that the court will move down the sentencing options and deal with something which is more serious.

Point of Order

Hon P.R. LIGHTFOOT: The member's debate at this stage, particularly with reference to this clause, falls well within Standing Order No 100; that is, irrelevancy in debate. It is not for the member to say that a section is reasonable. That is irrelevant. It is not for the member to say in several minutes something that can be said in several seconds. That is tedious. The member has been going on for some time this evening in a manner which is both repetitive and tedious. I ask you, Madam Deputy Chair, to draw his attention to Standing Order No 100.

The CHAIRMAN (Hon Cheryl Davenport): The Committee has made significant progress. I will allow the member to continue.

Committee Resumed

Hon N.D. GRIFFITHS: I like to speak at a reasonable rate so that members have the

opportunity to understand the import of my words. I am looking at the operation of this clause. I note its relationship to the payment of compensation and an incapacity to pay a fine. It may be that in the course of operating under this clause, a court will impose a nominal fine, although that would be an inappropriate practice. The need to impose a fine for the most part would be dealt with by the payment of compensation because compensation acts as a monetary disincentive. It is a punishment. I am concerned about problems with respect to courts perhaps moving down the scale when fines are considered appropriate. However, for the criteria set out it will not be done, and compensation is awarded, taken into account, and an offender may find himself being the subject of a nominal fine, although the courts when dealing with the offender under this clause decided that a fine was inappropriate. Perhaps my misgivings are not matters of serious concern, but I am concerned about the interplay of those three aspects. If the Minister has some words of reassurance which will be of assistance in regard to how this clause will operate in those circumstances, that will be beneficial.

Hon Peter Foss: I am not sure that I can add anything more. What reassurance does the member want?

Hon N.D. GRIFFITHS: I seek reassurance that the court will say, in dealing with such a matter, that given the amount of compensation which has been paid, a fine is no longer appropriate and the matter will be dealt with by way of a conditional release order or a spent conviction. It clearly should not be dealt with by the exercise of a sentencing option which is more serious than the imposition of a fine.

Hon PETER FOSS: The aim is to give the appropriate priority to the payment of compensation. The problem is that if the court imposes a fine and a compensation order, the possibility of the compensation being paid is fairly remote, so the court will be directed to an alternative method of dealing with the matter.

Clause put and passed.

Clause 54 put and passed.

Clause 55: Apportionment of fine in certain cases -

Hon PETER FOSS: I move -

Page 36, lines 5 to 17 - To delete the clause and substitute the following -

Apportionment of fine between joint offenders

55. (1) If a court sentencing 2 or more joint offenders decides to fine them it may apportion between them as it thinks fit the fine it would have imposed if there were only one offender.

(2) If the statutory penalty for the offence is a mandatory fine or includes a minimum fine, a court apportioning a fine under subsection (1) must apportion at least the mandatory fine or the minimum fine, as the case requires.

(3) In this section -

"joint offenders" means persons who are each convicted of an offence because a legal relationship between them (such as being co-owners of property) results in each of them being criminally responsible for the act or omission constituting the offence.

This clause was re-examined as a result of comments made by the Aboriginal Legal Service, which believed that the drafting was unclear. The matter was referred to Crown Counsel, and this amendment was drafted to clarify the intent of the clause.

Hon N.D. GRIFFITHS: I agree with the proposal that the clause as currently drafted be deleted.

Clause put and negatived.

Hon N.D. GRIFFITHS: The Opposition opposes the amendment because the policy

behind it is unsound. This clause deals with the apportionment of criminality. A person who commits an offence should not have the sentence diminished because someone else is involved. It has always been considered serious if a person commits a robbery, but it is considered more serious if a person commits that offence in company. It is considered serious if a person commits aggravated sexual assault, but it is considered more serious if a person commits that offence in company.

Hon Peter Foss: That hardly applies to this clause. How are they joint offenders if they have a legal relationship, such as being joint owners of property?

Hon N.D. GRIFFITHS: A person who commits an offence should be subjected to the sentencing processes and the relevant aspects of the Criminal Code, and the sentence should not be diminished because he committed that offence in company with another person.

Hon PETER FOSS: The example given by the member indicates that he does not understand the clause, which refers to a legal relationship between joint offenders, such as being the co-owners of property. A husband and wife who own a property jointly may be prosecuted for failure to clear a fire break. If the appropriate fine for that offence was $100, should they be fined $200 because they owned that property jointly? If the property was owned by eight people, should they be fined $800? It seems a bit strange that the number of people who own the property should determine the size of the penalty for the infringement. An offence is an offence. It is inappropriate that a random feature, such as the number of owners of a property, or whether they happen to be married and own the property jointly, should determine the size of the penalty.

An employer might be legally responsible for an offence that was committed by one of his employees. Should the fact that he is a single employer, a partnership of two, or a partnership of 16, affect the size of the penalty for that offence? The answer is no. Quite plainly, under these circumstances, the appropriate fine would be apportioned. I would agree in the example given by Hon Nick Griffith.

Hon N.D. Griffiths: I was graphically demonstrating the principle of dealing with criminality.

Hon PETER FOSS: In the examples I gave I would find extraordinary difficulties in saying that one should multiply the fine by the number of people being held responsible for it, whether as property owners or employers vicariously liable. This is an important clause and should be supported.

Hon N.D. GRIFFITHS: We are dealing with how criminal behaviour will be treated. Criminal behaviour is treated in accord with what the offender does or fails to do. That person should not have treatment meted out to him any the less because someone else acts with him.

Hon Peter Foss: Or more?

Hon N.D. GRIFFITHS: Earlier I gave examples of how we treat people who act in concert.

Hon Peter Foss: This case is not a case of acting in concert.

Hon N.D. GRIFFITHS: In certain instances we do increase sentences because people act in concert, and that invariably relates to the examples I gave. I am dealing with the words of this clause, and then with the Minister's examples. The Minister is not able to deal with the basic principle of how one deals with an offence. We are talking about a court deciding to fine offenders and apportioning between them as it thinks fit the fine that it would have imposed if there were only one offender. By virtue of what the Minister is proposing, even though people may be culpable they will receive a lesser fine.

Hon Peter Foss: It covers only a legal relationship.

Hon N.D. GRIFFITHS: The offence results from their criminal responsibility.

Hon Peter Foss: And the legal relationship between them.

Hon N.D. GRIFFITHS: The fact that they are criminally responsible does not arise from the legal relationship.

Hon Peter Foss: It does. It says that the legal relationship results in each of them being criminally responsible. Hon Nick Griffiths is trying to say that it does not say that; it does.

Hon N.D. GRIFFITHS: The Minister has it wrong. He cannot have someone being criminally responsible by virtue of some co-ownership provision. Something else must occur which makes them criminally responsible. This clause deals with how people become joint offenders for the purpose of apportionment. The Minister's amendment is better worded than the previous clause; however, it is still not well worded. The amendment is bad in principle.

Hon Peter Foss: Will the member deal with the examples that I gave?

Hon N.D. GRIFFITHS: In so far as a person is found guilty of an offence and his or her co-offender happens to be a spouse, it should not follow that the sentence imposed on the individual is imposed on the spouse by virtue of the fact that they hold property in common. Individuals are sentenced, not families. Families feel the effect of sentencing; however, individuals are sentenced. Criminal responsibility is an individual matter and the individual must be dealt with on his or her merits.

Hon Peter Foss: I am glad you have put that on the record.

Hon N.D. GRIFFITHS: So be it.

New clause to be substituted put and a division called for.

Bells rung and the Committee divided.

The DEPUTY CHAIRMAN (Hon Murray Montgomery): Before the tellers tell I cast my vote with the Ayes.

Ayes (14)

Hon George Cash	Hon Max Evans	Hon Murray Montgomery
Hon E.J. Charlton	Hon Peter Foss	Hon N.F. Moore
Hon M.J. Criddle	Hon Barry House	Hon M.D. Nixon
Hon Reg Davies	Hon P.R. Lightfoot	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon P.H. Lockyer	

Noes (11)

Hon J.A. Cowdell	Hon John Halden	Hon Bob Thomas
Hon Cheryl Davenport	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon Val Ferguson	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*
Hon N.D. Griffiths	Hon J.A. Scott	

Pairs

Hon I.D. MacLean	Hon Kim Chance
Hon Derrick Tomlinson	Hon Tom Stephens
Hon W.N. Stretch	Hon Mark Nevill
Hon B.M. Scott	Hon Graham Edwards

New clause thus passed.

Clause 56: Assault victim may be awarded fine -

Hon PETER FOSS: I move -

> Page 36, line 20 - To delete the words "of which assault is an element" and substitute "involving an assault of another".

The amendment makes it clear that the provision applies in the case of assault generally.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 57 put and passed.

Clause 58: Imprisonment until fine is paid -

Hon PETER FOSS: I move -

That the clause be deleted.

It is appropriate for me to move that we defeat the clause and I will then move the amendment.

Hon J.A. COWDELL: The Opposition agrees that the clause should be defeated, but my motive for that is different from that of the Minister. In arguing for the defeat of clause 58, I argue for the adoption of recommendation 10 of the Legislation Committee report where it recommends that clause 58 be deleted. The Legislation Committee acknowledges -

> that the provision might give judicial officers some flexibility in sentencing but it is concerned that the option of sentencing an offender to imprisonment even after exercising the option to fine rather than imprison an offender is contradictory. The Committee notes the proposed amendment to clause 58 of which the Minister for the Environment gave notice in a supplementary notice paper dated 17 October 1995, but nevertheless considers that the consequences of non-payment of fines are dealt with adequately by clause 59.

With regard to clause 58, the Legislation Committee sees no need for an enforcement alternative which is imprisonment until a fine is paid. We believe that that goes against the whole trend of recent government legislation on the reduction of imprisonment.

I want to refer to the Government's response to the thirty-sixth report of the Legislation Committee. In the report, the Government notes that this is merely one of three enforcement alternatives available through the legislation. The committee felt that this alternative was not necessary. I note the Government's comments to the effect -

> Moreover consultation with the Chief Justice and court administrators confirms that this provision is regarded as extremely important and worthy of retention.

I would like to see the figures to show why it is "extremely important". One presumes that it is used often if it is so essential or the term "extremely important" is extremely misleading in that regard. I think it would refer to few rather than many cases. I refer members to the rationale in the Government's response which I believe provides the most conclusive argument why clause 58 should be defeated and why there should be no substitute. According to the report -

> The enforcement option under clause 59 is different to that provided by clause 58 in that the judicial officer can allow a period of time in which to pay whereas no such opportunity exists with clause 58.

Precisely. There should not be imprisonment until a fine is paid. There should be an opportunity to pay and imprisonment if, as outlined in clause 59, payment is not made. The report continues -

> Also, credit is received for any time spent in prison with the amount of the fine reducing as the period of imprisonment extends -

Fair enough -

> - whereas under clause 58 the offender must either pay out the amount in full or serve out the period set by the court.

I found that the Government's rationale for not accepting the committee's unanimous recommendation in that regard made compelling reading as to why the clause should be defeated altogether. The Government's report continued -

> It should be noted that imprisonment is the ultimate sanction for all fines imposed in courts, the new fines enforcement system merely limits its use by placing a series of filters before it. Where imprisonment is used to enforce an unpaid fine, imprisonment can be easily avoided by paying the fine. This sentiment is in line

with the principle that offenders must accept it is their responsibility to satisfy their fines.

The key point is that imprisonment is used to enforce an unpaid fine. In this case, there is imprisonment before a fine is paid. It is not enforcing an unpaid fine. I find the Government's argument a compelling argument as to why there should be no clause 58. I suggest that the Committee defeat the clause without substitute.

Hon PETER FOSS: Once again, I must lament the fact that the Legislation Committee departed from its earlier procedure of allowing the Government to appear before it and give its views. I regret having to do this again, but I must repeat that this is the problem that arises when the Government does not appear before the Legislation Committee. Hon John Cowdell rightly pointed out that it is not a process of enforcing a fine after it has not been paid because, under these circumstances, it is unlikely that there would be an opportunity to enforce the provision under clause 59.

I remember that when I worked in London, there was a marvellous system whereby people could park their cars anywhere. For foreigners working in London, the opportunities for the authorities to enforce parking fines were nil, so they never bothered. Foreigners used to park everywhere - on the pavements, against the double yellow lines, and so on; it was bliss. There was one rule for foreigners and another for Londoners. If one was a Londoner, the authorities would finally get one. However, they would never get a foreigner. Then a wonderful thing happened - the Denver boot. It was a huge metal clamp that was bolted to a car wheel so that it could not be driven.

Hon A.J.G. MacTiernan: That fixed the foreigners.

Hon PETER FOSS: Believe it or not, it fixed the foreigners. The only way that one could drive one's car was instantly to go to the police station and pay the fine.

I will read from a letter from the Chief Judge's Chamber of the District Court of Western Australia, which states -

> This recommendation that clause 58 of the Bill be deleted causes me great concern. This clause essentially reflects section 19(5) of the *Criminal Code* which as far as the superior Courts are concerned has been in operation for decades.
>
> This section was only ever available to the superior Courts because section 19(5) of the Code, prior to the Amendment 92 of 1994 related only to a conviction "upon indictment". It is with that experience and that basis that I speak. I still, with respect, maintain that this is an essential fining option.
>
> I acknowledge the fact that the provision can be seen to present a philosophical difficulty as the Honourable Mr Griffiths observes but the value of this section is in its practical effect.
>
> It has been used over the years in my experience (which now goes back for 14 years of sentencing), in a mature and selected way with most impact upon the more sophisticated offender.
>
> It has not been used to oppress those unable to pay fines but it has been used to collect fines for the State where the sentencer was of the view that a fine could certainly be paid and ought be paid immediately by the offender and before his release back into the community.
>
> The records will indicate that almost every one of these fines has been paid within days or hours of its imposition.
>
> I emphasise again, and I do so as strongly as I can, that clause 58 reflecting section 19(5) of the Code, as far as this Court is concerned, is an essential and very necessary power for the Court to have in appropriate cases.
>
> I emphasise that in my experience this section has been applied selectively and to the benefit of the administration of justice in this State.

> If the legislature wished to confine the operation of clause 58 to offences dealt with on indictment only, then that would not cause me any concern but it would cause me great concern if it were deleted.

Those are fairly strong words from the Chief Judge. As he points out, the measure is not designed to oppress people who cannot afford fines. It is to make certain that foreigners who certainly can afford fines are not let off scot-free simply because they are foreigners. Why on earth would we wish to delete what the judge has regarded as a highly beneficial clause in order to make certain that people do not escape the consequences of their acts? Hon Nick Griffiths said recently that a husband and wife should both be fined because the principle states that they should pay the costs of their delict.

In this case we say, "This person is about to leave the State; he will not pay his fine. We will use section 59. When he has gone, we will have no chance of enforcing it." We will say, "Foreigners, do not bother to pay the fine because we will let you off completely because there is no way we will get the fine off you." If, however, we concede that a fine is an appropriate remedy - the person can pay the fine, and if we do not do something about it he or she will leave the State - it is appropriate to say, "Rather than imposing a sentence of imprisonment on you, which is the other alternative, we will impose a fine." But is that the only way to prevent that person from escaping scot-free? No.

As I have said, it is unfortunate that the Legislation Committee did not have the benefit of hearing the Government speak. Obviously, it relied on the letter from the Chief Judge. The Chief Judge has now understood the full import of how it will be pressed. If there had been advocacy from the Government, he might have taken a different view. It is unfortunate that the Government was not heard on it. The Chamber is hearing from the Government now. It is an extraordinary proposition that we take away the Denver boot of fines and allow the situation that was flagrantly taken advantage of by many foreigners in the United Kingdom, knowing that they could never be caught. The matter has not been thought through. The report indicates a failure to consider or understand the matter properly. Hon John Cowdell's comments today indicate his failure to understand it properly. I urge the Committee to allow the proposition to be defeated and then to support the amendment vigorously.

Hon J.A. COWDELL: I am sure that I am all the better for understanding the Denver boot principle.

Hon N.D. Griffiths: It concerns me that if the United Kingdom had that provision, Hon Peter Foss would still be over there not paying his parking fines.

Hon J.A. COWDELL: It concerns me that we would have been denied his knowledge and advice over all these years if he had been languishing to pay off a fine.

The clause has considerable potential to impact in a deleterious way on impecunious people who need time to raise funds to pay their fines. There should be alternatives for those who are of an international persuasion or for foreigners, such as surrendering a passport without imprisonment as they attempt to hop the country. I still think that there is not much scope or use for that provision, and it may be dispensed with.

Hon J.A. SCOTT: Will the Minister indicate the extent of inundation of foreigners who are hopping the country and not paying their fines?

Hon Peter Foss: I do not know offhand.

Hon J.A. SCOTT: Considering the vehemence of his address, I wondered how important that matter was.

Hon N.D. GRIFFITHS: Hon Peter Foss expressed the views of the Chief Judge. I note that the Government does not go along with the Chief Judge in respect of the Legislation Committee's report. Let us face it: The Chief Judge has an opinion and he has expressed it. We can agree or disagree with it, but frankly the concept of this provision applying exclusively, or for the most part, to foreigners is wrong in practice. I note the observation that the Chief Judge conveyed to the Government in that letter, to which the Minister referred, that fines were paid in a matter of days or hours. As a matter of

practice, these sentences occur with people who reside in Western Australia for the most part. They occur in circumstances that can be adequately dealt with in what is envisaged in clause 59. Insofar as clause 59 does not deal with it, if the Minister is really concerned about foreigners he should look further on the Notice Paper to see my proposal with the concept of a passport offence.

There is a fundamental inconsistency in the view that the court finds that a fine is inappropriate but decides to send someone to prison until such time as the fine is paid. That is wrong in principle and it should be resisted in practice. Notwithstanding the comments of the Chief Judge, it is extremely oppressive. I invite the Minister to see the sentencing process and to consider when this occurs. It is oppressive in its operation; it causes people to spend, albeit for the most part a few hours, time in a most unhealthy environment - an environment that Hon Ross Lightfoot in another context referred to as being less than satisfactory.

A person comes along quite properly expecting not to go inside. He is sentenced to a fine and then told that he should get his affairs in order because he is staying until he pays the fine. That is not a proper way of sentencing; it is fundamentally inconsistent. The Government has failed to take on board the considerations of the Legislation Committee, which are very balanced. I note that the committee says that "on balance" it acknowledges that the provisions may give judicial officers some flexibility in sentencing, but it is concerned that the option of sentencing an offender to imprisonment, even after exercising the option to fine rather than imprison, is contradictory.

This clause goes against the consistency of the Bill. To be consistent the Government should be not only agreeing with the proposition that the clause be deleted but also not be advancing the new provision that it proposes. However, as Hon John Cowdell has pointed out, the Opposition will agree to the first part of the question - that the clause be deleted - but we will vote against the words that the Minister will move be substituted.

Hon PETER FOSS: It is interesting that, having only arrived at that decision "on balance" and now being aware of the vehemence with which the court dealing with the question of the first part - that is, to deal with the indictable offence -

Hon N.D. Griffiths: Is "vehement" an appropriate word?

Hon PETER FOSS: Yes. This refers to an indictable offence for which the penalty is or includes imprisonment and where this is happening at the time of sentencing. Surely it is quite appropriate that it be an option in sentencing. One has the choice between fining or imprisoning a person and deciding to imprison him until he pays a fine. The classic example is drug offences, where people who are convicted of trafficking in large quantities of drugs, instead of being gaoled, are fined. It is fairly important under those circumstances to ensure that the person is in custody already and that he is not released until such time as he has paid his fine. It would be an extraordinary proposition under those circumstances to say that that may not be the appropriate way for the court at the time of sentencing to decide the way that sentence should work. It is just giving flexibility.

There is the choice between a fine and imprisonment and the court actually applies something where it is both a fine and imprisonment, although the option in relation to the period of imprisonment is very much in the hands of the offender. The court gives him that opportunity to decide to pay the fine and be released, and that is extremely lenient. I am surprised that the member maintains his support for a decision of the committee which was made without hearing the Government, which was decided only on balance and which has been responded to by the court in such a strong way that I believe it should be given respect.

Clause put and negatived.

New clause 58 -

Hon PETER FOSS: I move -

Page 37 - To insert the following new clause -

58. (1) This section applies if a superior court or a court of petty sessions constituted by a magistrate -

(a) fines an offender for an indictable offence, the statutory penalty for which is or includes imprisonment; or

(b) fines an offender for an offence and the court is satisfied that -

(i) the offender is about to leave the State; and

(ii) the absence of the offender from the State would defeat or materially prejudice the operation of the *Fines, Penalties and Infringement Notices Enforcement Act 1994* in respect of the fine.

(2) If the court does not also impose a term of imprisonment on the offender, it may order the offender to be imprisoned until the fine is paid, but in any event for not longer than a period set by the court.

(3) The period must not be more than 24 months, but if the statutory penalty for the offence is or includes imprisonment for a lesser period, the period must not be more than that lesser period.

(4) The period is cumulative on any other period or term of imprisonment that the offender is serving or has to serve unless the court orders otherwise.

(5) The period is not a term for the purposes of Part 13.

(6) Service of the period discharges the offender from the liability to pay the fine.

New clause put and a division taken with the following result -

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Ayes (13)

Hon George Cash	Hon Barry House	Hon N.F. Moore
Hon E.J. Charlton	Hon P.R. Lightfoot	Hon M.D. Nixon
Hon M.J. Criddle	Hon P.H. Lockyer	Hon Muriel Patterson *(Teller)*
Hon B.K. Donaldson	Hon I.D. MacLean	
Hon Peter Foss	Hon Murray Montgomery	

Noes (11)

Hon J.A. Cowdell	Hon John Halden	Hon Bob Thomas
Hon Cheryl Davenport	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon Val Ferguson	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*
Hon N.D. Griffiths	Hon J.A. Scott	

Pairs

Hon Max Evans	Hon Kim Chance
Hon Derrick Tomlinson	Hon Tom Stephens
Hon W.N. Stretch	Hon Mark Nevill
Hon B.M. Scott	Hon Graham Edwards

New clause thus passed.

Postponed clause 39: Sentences for natural person -

Hon N.D. GRIFFITHS: I move the amendment on the Notice Paper with respect to page 23, lines 15 and 16 -

Hon Peter Foss: You cannot move that.

Hon N.D. GRIFFITHS: I can. This clause relates to the application of section 58 in a limited manner. More to the point, by including those words one could be seen to be encouraging the use of section 58 in circumstances fairly low down the order of seriousness.

Point of Order

Hon PETER FOSS: The reason for postponing this clause was for the policy on this point to be made, and the argument Hon Nick Griffiths is putting to support the point has been decided by the Committee. That decision was to consider the use of section 58.

The CHAIRMAN: That is correct. The substantive principle was decided on the last clause and, therefore, it is not in order to move that amendment.

Committee Resumed

Postponed clause put and passed.

Clause 59: Imprisonment if fine is not paid -

Hon N.D. GRIFFITHS: I move -

Page 38, line 23 - To delete "$50" and substitute "$200".

The Legislation Committee stated in its report on this clause, among other things, that although the committee considers that setting a monetary value of liberty is at best a difficult and essentially arbitrary task, it agrees that the amount of $50 set as the equivalent of one day's detention seems to be too low. It considers that the amount should be at least $100. Again, the first part of its recommendation is that the amount specified in clause 59 be increased from $50 to at least $100. The amount of $200 comes within the committee's proposal. It is not a great price to pay for a person's liberty. It is an amendment that will improve the law and demonstrate to people that even those who support the Liberal Party value liberty at a rate higher than $50 a day. Members of the Liberal Party preach some adherence to notions of liberty, but when it comes down to it they are more interested in putting people down. It is a proper amendment which will enhance this provision. It is consistent with the position of the Legislation Committee and deserves the support of this Committee.

Hon PETER FOSS: I protest at the garbage occasionally thrown in gratuitously in Hon Nick Griffiths' speech, and this nonsense about the Liberal Party and the price of liberty. The Government's reply is that in respect of the monetary value of one day's imprisonment the present value of $50 was first set in the Fines, Penalties and Infringement Notices Enforcement Act in 1994, and introduced on 1 January 1995. Prior to that the value was $25 for one day. Is the member telling me that because for years it had been $25 before the Liberal Party changed it to $50, for some reason the Labor Party had no regard for liberty? It has nothing to do with the Government, the Opposition or anything else. It is just that from time to time the value is changed. The member should cut out the rubbish. Why must he make ludicrous, stupid remarks that add nothing whatsoever to the debate? Let us debate the amount and stop the garbage about whether it is the Government or the Opposition. On the historical record it is rubbish, and the member knows it. Again, I think it is a problem of the process followed by the Legislation Committee that it did not bother to speak to the Government on this matter. Audi alteram partem, Mr Cowdell. Under the ordinary process of natural justice that is the appropriate procedure to follow and it was not done. If Hon John Cowdell had done that, he might have learnt about it.

Hon J.A. Cowdell: I remind the Minister that I am not the majority nor am I the chairman of that committee.

Hon PETER FOSS: I recognise that, but Hon John Cowdell is preaching about how wonderful he is and how we should follow his procedure. He has this one wrong. I have very kindly pointed out in this debate, in the nicest possible way to start with, that it might have been a good idea for any one of the committee to approach the Government. I am becoming increasingly irritated at being preached at. I know Hon John Cowdell is a pope in his lighter moments and is able to make infallible statements. Pope John Cowdell does an awful lot of good but he did not get it right this year.

Point of Order

Hon J.A. COWDELL: Is the Minister's address with regard to the Pope and so on pertinent to the clause?

The CHAIRMAN: Order! I think the member makes a valid point; the Minister should stick to the substance of clause 59.

Committee Resumed

Hon PETER FOSS: I am sick of having the Legislation Committee thrust down my throat, when it is continually put to me that I should do as the committee said. I must point out that the committee's process in this case was less than ideal. I suggested that in the nicest and politest way, and my politeness will reduce every time it is raised.

The CHAIRMAN: Order! That point has been made.

Hon PETER FOSS: When setting its value one must also consider how the value is viewed by fine defaulters. If the value is high, it actually encourages people to go to gaol instead of paying it. For example, people may ask why they should pay their fine of $100 when they can go to the lockup on a Saturday, for example, and not have to pay anything. The Government recommends there be no change to the value at this time, as the default rate has doubled in the last 12 months. The Government was not given credit for that in the committee's report because the committee obviously was not aware of that factor. The Government could have directed the committee to that point, had it been asked. There has not been sufficient time to assess that value in the context of the new fines enforcement system. The Government chose that the default rate remain as drafted.

One of the things we must do in examining any recommendation is to see how well it was thought through. It is quite clear that very important matters were not considered by the committee. I am sure if they had been they would have been reported in detail to indicate that Hon Nick Griffiths understood the consequences of raising them, that he knew how little time was in place and that it had been doubled as from 1 January. I am sure if Hon Nick Griffiths had known those things he would have considered them relevant and would have mentioned them. He obviously did not know about that and did not take them into account. Therefore this Committee should feel free to take those matters into account and to accept the suggestion urged upon it by the Government. If in the light of experience - I am sure we all support the idea of waiting to see how the current doubling has affected things - Hon Nick Griffiths may like the idea that there is a possibility of its being increased by regulation. Certainly we have addressed his principal concern by suggesting that the regulation will provide for a greater amount rather than a lesser amount. I hope that as well as rejecting this amendment we take the opportunity of seizing the other alternative proposal for dealing with the matter.

Amendment put and a division called for.

Point of Order

Hon P.R. LIGHTFOOT: I draw your attention, Mr Chairman, to the fact that there was only one voice from the Opposition in support of a division.

Hon N.D. GRIFFITHS: Hon John Cowdell also spoke as did I. I am sure members who happen to be closer to his voice are in a position to verify that.

Committee Resumed

The CHAIRMAN: I will put the question again.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell I cast my vote with the Noes.

Division resulted as follows -

Ayes (12)

Hon J.A. Cowdell	Hon John Halden	Hon J.A. Scott
Hon Cheryl Davenport	Hon P.R. Lightfoot	Hon Bob Thomas
Hon Val Ferguson	Hon A.J.G. MacTiernan	Hon Doug Wenn
Hon N.D. Griffiths	Hon Sam Piantadosi	Hon Tom Helm *(Teller)*

Noes (12)

Hon George Cash	Hon Peter Foss	Hon Murray Montgomery
Hon E.J. Charlton	Hon Barry House	Hon N.F. Moore
Hon M.J. Criddle	Hon P.H. Lockyer	Hon M.D. Nixon
Hon B.K. Donaldson	Hon I.D. MacLean	Hon Muriel Patterson *(Teller)*

Pairs

Hon Kim Chance	Hon Derrick Tomlinson
Hon Tom Stephens	Hon W.N. Stretch
Hon Mark Nevill	Hon Max Evans
Hon Graham Edwards	Hon B.M. Scott

The CHAIRMAN: It being a tie, under standing orders the vote is decided in the negative.

Amendment thus negatived.

Hon PETER FOSS: I move -

Page 38, line 28 - To delete "another" and substitute "a greater".

Hon N.D. GRIFFITHS: The Opposition supports this amendment; it is a welcome improvement. It means that, in future, matters will be somewhat more civilised than they have been in the past.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 60 and 61 put and passed.

Progress

Progress reported and leave given to sit again, on motion by Hon Peter Foss (Minister for the Environment).

ADJOURNMENT OF THE HOUSE - ORDINARY

HON GEORGE CASH (North Metropolitan - Leader of the House) [11.30 pm]: I move -

That the House do now adjourn.

Adjournment Debate - Industrial Disputes; CRA, Award Wages and Contracts

HON TOM HELM (Mining and Pastoral) [11.31 pm]: Members will recall that during a debate early this afternoon we were informed that it was all sweetness and light on the industrial front for those who work for CRA Ltd in this State and that they had nothing to worry about because of the decision of the Full Bench of the Australian Industrial Relations Commission that workers be treated equally. I was quite surprised at the inept performance by the Minister for the Environment representing the Minister for Labour Relations in another place. One could see that his heart was not in what he had to do, but he did the best he could. It was one of the worst performances I have seen from him. He usually makes me annoyed very easily. However, this afternoon I was not annoyed; in fact, I felt sorry for him.

It was brought to the attention of the House that the Minister for Labour Relations had stated that he had recently visited the Pilbara and met with workers from Hamersley Iron Pty Ltd who were very pleased with their individual contracts. He told members in the lower House that of the 600 workers at Hamersley Iron, only seven were still in the union and earning award wages. I do not know who informed the Minister or with whom he spoke; however, regardless of whoever it was, the Minister must be aware that there are more than 600 workers in Dampier, not to mention those in Paraburdoo, Tom Price, Marandoo and various other places in the Pilbara where people work for Hamersley Iron.

Hon A.J.G. MacTiernan: Not to mention the fact that everybody who starts there must take up a workplace agreement; they have no choice.

Hon TOM HELM: There are two aspects to that situation. There is only one option for prospective employees of Hamersley Iron: They work under individual contracts or not at all. I think the apologist for the Minister for Labour Relations - what is his official title?

The PRESIDENT: Order! The member should not be having a side conversation.

Hon TOM HELM: Mr President, I was asking you; I just happened to be turning the other way at the time.

The Minister handling this matter in the other place talks about choices. The Minister for the Environment told us that nobody was forced into those individual contracts. I have seen a letter sent out to some long serving members at Hamersley Iron who felt they were part of working with the new technology that is being introduced. In part, the letter said that those people would no longer fit within the corporate image that Hamersley Iron had chosen to promote within the workplace. They were told quite bluntly that they no longer had a place in the system there. Some of these employees had been there for 15 or 20 years. Having been there during the growth of the company from the basic concept in 1968 to a world-class organisation in the 1990s, it was painful for these people to be told they were no longer required. Strictly speaking, they were not given the sack; they were merely told that there was no place for them within the Hamersley Iron operation.

I know the second wave of industrial relations will be debated in the future. I refer to stories in the newspapers today and yesterday about CRA's award workers earning less wages than those on individual contracts. The Australian Manufacturing Workers Union, which used to be the mighty Metal Workers Union, has 43 paid-up members at Tom Price, out of a total of 69. This is supposed to be a workplace agreement site. Of the 42 workers at Paraburdoo, 30 are paid-up union members; of the 41 at Dampier, 32 are paid-up members. In other words, of a total of 152 workers at those three sites, 96 are financial union members.

Of those sites people on award wages, such as those in Weipa, earn substantially less than those on contract. This information has come from the financial returns. If people are on individual contracts, they are offered more overtime than are award workers. Award workers are given less time for rostered days off. Contract workers are expected to work additional hours while award workers must be asked to do them.

Hon E.J. Charlton: Sounds like an endorsement of the system to me.

Hon A.J.G. MacTiernan: The contract workers at Tom Price work 68 hours a week, and they are getting very snaky about it.

Hon E.J. Charlton: Are they all leaving?

Hon A.J.G. MacTiernan: There is a huge turnover, comrade.

Hon TOM HELM: We have previously been through the stage where there has been a huge turnover and we thought we were getting to a stable situation. However, Hamersley Iron is changing all that. The real pity of it is that the social fabric in these towns is being dismantled severely. Shift work is a slight casualty of the changing work pattern in Newman where, for example, the BHP workers who are employed on award wages are not as happy as those who work for Hamersley Iron and are on individual contracts.

This change to the hours of shift work is exacerbated by the fact that award wage earners are aware that contract people are earning more wages than they are, although the wage earners are working longer hours. Worse than that, one contract employee does not know what the other is earning. There are side issues associated with this philosophy. We must be aware that the statement in the decision of the Full Bench of the Australian Industrial Relations Commission today - that is, equal pay for equal work is a worthy concept and one Australia has followed for quite some time - is applicable to those who work for Hamersley Iron.

There is nothing wrong with people belonging to unions. There are examples of people belonging to unions even though they are employed under individual contracts. There is evidence that unions will not have a role to play in negotiations for people who are forced

to go onto individual contracts. That aspect and other matters raised today need to be answered. That is just one small aspect of Western Australia's involvement in the dispute that is taking place and that hopefully will be resolved between CRA and the Australian Council of Trade Unions.

Question put and passed.

House adjourned at 11.39 pm

QUESTIONS ON NOTICE

GOVERNMENT DEPARTMENTS - CHRISTMAS CARDS

118. Hon TOM STEPHENS to the Leader of the House representing the Premier:

For each department or agency within the Premier's portfolio area -

(1) What was the cost for printing, preparing and posting Christmas cards in December 1994?

(2) How many Christmas cards were -

(i) printed; and

(ii) posted,

in December 1994 at public expense?

(3) How many Christmas cards were sent to -

(i) other government departments or agencies;

(ii) Ministers; and

(iii) members of Parliament?

(4) Is a Christmas card mailing list maintained?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

Ministry of the Premier and Cabinet -

(1) $1 690.

(2) (i) 1 000
(ii) 714 sent (not necessarily posted).

(3) (i) 37
(ii) 24 (both state and federal)
(iii) 60.

(4) Yes.

Gold Corporation -

(1) The cost of printing and preparing Christmas cards was $2 950. Separate mailing costs were not kept, but the cost of freighting cards in bulk to overseas offices was $461.76.

(2) The number of cards printed was 2 800 and the number distributed (not necessarily by post) was 2 643.

(3) No figures on the numbers sent to state government departments and agencies and parliamentarians are readily available, but it is estimated the number in these categories would be no more than 1 per cent.

(4) Separate mailing lists are maintained by the group's offices in Australia and overseas.

Office of the Auditor General -

(1) $150.

(2) (i) 106/box - purchased through State Print.
(ii) 82.

(3) (i) 74
(ii)-(iii) Eight.

(4) Yes.

Western Australian Tourism Commission -

(1) $4 495.

(2) (i) 2 950
(ii) 2 173.

(3) (i) 120
(ii)-(iii) None.

(4) The Western Australian Tourism Commission has a number of database lists.

GOVERNMENT DEPARTMENTS - CHRISTMAS CARDS

525. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) What was the number and total cost to the Premier's ministerial budget allocation for Christmas cards that were sent out by the Premier last year?

(2) Did the Premier send cards to other Ministers?

(3) Who printed the cards?

(4) How many Christmas cards were unused?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1) Number of Christmas cards printed - 1 000; 714 sent (not necessarily posted); cost - $1 690.

(2) Yes.

(3) State Print.

(4) 286.

GOVERNMENT DEPARTMENTS - OFFICE ACCOMMODATION, RENTAL COSTS

709. Hon TOM STEPHENS to the Leader of the House representing the Minister for Resources Development:

(1) What was the total cost for the rental of office accommodation for each department and agency within the Minister for Resources Development's portfolio area for 1993-94?

(2) What rental costs other than for office accommodation were incurred by each department and agency within the Minister's portfolio area for 1993-94?

(3) What are the estimates for expenditure for 1994-95 for the rental of -

(i) office accommodation for each department and agency within the Minister's portfolio area; and

(ii) other rental costs?

Hon GEORGE CASH replied:

I am advised by the Minister for Resources Development; Energy in the following terms -

Office of Energy -

(1) $54 713.

(2) Given the account format and chart structure under program budgeting such detail is not readily identifiable.

(3) (i) $127 620 (Perth - $40 196, Leederville and country offices - $87 424).

(ii) Under the program budgeting structure, expenditures at this level are not provided for in a separate and identifiable allocation.

Western Power -

(1) $530 000, previously SECWA.

(2) $629 000, comprising $96 000 for country housing and $533 000 for workshops, depots, laboratories and storage together with office support.

(3) (i) $435 000.

(ii) $220 000, comprising $108 000 for country housing and $112 000 for depots, workshops and storage.

Department of Resources Development -

(1) $1 102 217.

(2) Given the account format and chart structure under program budgeting such detail is not readily identifiable.

(3) (i) $1 025 053.

(ii) Under the program budgeting structure, expenditures at this level are not provided for in a separate and identifiable allocation.

AlintaGas -

(1)-(2) Not applicable.

(3) (i) Office rent for the period 1 January 1995 to 30 June 1995 at AlintaGas totalled $183 370.

(ii) Other rental costs are of a minor nature.

GOVERNMENT DEPARTMENTS - OFFICE ACCOMMODATION, RENTAL COSTS

724. Hon TOM STEPHENS to the Minister for the Environment:

(1) What was the total cost for the rental of office accommodation for each department and agency within the Minister's portfolio area for 1993-94?

(2) What rental costs other than for office accommodation were incurred by each department and agency within the Minister's portfolio area for 1993-94?

(3) What are the estimates for expenditure for 1994-95 for the rental of -

(i) office accommodation for each department and agency within the Minister's portfolio area; and

(ii) other rental costs?

Hon PETER FOSS replied:

(1)

Minister for the Environment	1993-94	1994-95
Department of Conservation and Land Management	$466 753	$329 520
Department of Environmental Protection, Environmental Protection Authority, Office of Waste Management	$2 148 266	$2 301 300
Kings Park and Botanic Garden	Nil	Nil
Waterways Commission & Swan River Trust	$95 449	$134 042
Perth Zoo	Nil	Nil
Total	$2 710 468	$2 764 862

(2) Given the account format and chart structure under program budgeting such detail is not readily identifiable.

(3) (i) Please see table above.

(ii) Under the program budgeting structure, expenditures at this level are not provided for in a separate and identifiable allocation.

NATIVE TITLE ACT - STATE CHALLENGE, HIGH COURT DECISION
Costs

1104. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) What costs were covered by the State Government with regard to the challenges to the federal native title legislation?

(2) What was the total bill for this legal challenge?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1) In regard to the challenge to the federal native title legislation, the State Government covered the costs of legal fees and expenses.

(2) The amount incurred for the challenge to March 1995 was $964 451 made up of $909 311 for legal fees and $55 140 in expenses.

TELEPHONE ACCOUNTS - HOME, PAID FOR BY GOVERNMENT

1659. Hon TOM STEPHENS to the Leader of the House representing the Minister for Public Sector Management:

Are the home phone accounts of public servants, senior executives, members of the judiciary, Ministers or members of Parliament that are paid for either in whole or in part by the State, formally included in either the aggregation for Telecom or Pacific Star discount arrangements with the Government?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

Austel regulations do not permit home phone accounts, in the name of a private person, to access Government's discount arrangements, whether or not there are full, partial or internal cost recovery mechanisms in place between the private individual and the agency. Where the home phone account is in the name of a government agency and government is responsible for the payment to Telecom, these accounts have been included in Telecom's discount arrangements with government. The same regulations apply under the telecommunications management contract with ComsWest, a wholly owned subsidiary of Pacific Star Communications Pty Ltd. Only home phone accounts in the name of a government agency, where government is responsible for the payment to ComsWest, can be included in government discount arrangements.

POLICE - EUCLA CASE

2709. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the Eucla case -

(1) Is the Minister or the Commissioner aware of accusations made by Inspector W. Chilvers at this trial against the former Commissioner for Police and several senior - now retired - police officers?

(2) Has an investigation been commenced into these accusations?

(3) If so, who authorised this investigation, on what date was it commenced, and who is conducting the investigation?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

(1) Yes.

(2)-(3) I am advised by the Commissioner of Police that, arising from

correspondence from Mr R. Fairclough, the Commissioner of Police, in May 1995, transmitted the Eucla material to the Parliamentary Commissioner for Administrative Investigations for investigation of the issues raised principally because the complaints included allegations against senior officers. In addition, the Commissioner of Police has now referred the matter to Australian Federal Police officers for an independent assessment of all material and report directly to the commissioner.

GRAIN POOL BUILDING - ST GEORGE'S TERRACE, NINTH FLOOR, LEASE

2810. Hon TOM STEPHENS to the Leader of the House representing the Premier:

(1) What is the annual cost of the lease of the ninth floor of the Grain Pool Building at 172 St George's Terrace, Perth?

(2) What number of offices are provided as part of this lease?

(3) What number of those offices are currently occupied?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1) $28 200, gross rental.

(2) Three enclosed offices plus reception area, conference room, photocopy and storage rooms.

(3) All areas are occupied apart from one enclosed office.

CALM - MANAGED LAND AREA, SOUTHERN AND CENTRAL FOREST REGIONS

3165. Hon J.A. COWDELL to the Minister for the Environment:

(1) What is the total area of Department of Conservation and Land Management-managed land in the -

(a) southern forest region; and

(b) central forest region?

(2) What is the total area of CALM-managed land in each of those two regions in the following tenure/purpose categories -

(a) national park;

(b) conservation park;

(c) nature reserve;

(d) state forest;

(e) timber reserve;

(f) 5g reserve;

(g) miscellaneous reserve;

(h) freehold (Executive Director); and

(i) leasehold (Executive Director)?

(3) What is the total area of the following vegetation types in each of the tenure/purpose categories in each of the two regions -

(a) pure karri/karri;

(b) karri-marri and marri-karri;

(c) other karri types including mixtures with jarrah and with tingle species;

(d) jarrah (high quality);

(e) jarrah-marri and marri-jarrah;

(f) other jarrah types including mixtures with tingle species;

(g) marri;

(h) other forest; and

(i) non-forest?

(4) For each of the areas of forest listed in (3)(a) to (h), what are the areas in the following cutting status categories -

(a) old growth/virgin/no record of logging;

(b) selectively logged/logged other than clearfelled;

(c) even-aged regeneration following logging;

(d) cut-over, awaiting regeneration; and

(e) other (specify)?

The answer was tabled.

[See paper No 870.]

CHRISTIAN BROTHERS - KEANEY, REVEREND BROTHER FRANCIS PAUL

3175. Hon J.A. SCOTT to the Leader of the House representing the Premier:

(1) Did the Premier on 12 February 1953 recommend to His Excellency the Governor the distinction of the Order of the British Empire for Reverend Francis Paul Keaney in the birthday honours list, that recommendation occurring on SAWA Premier's Department AN 2/10 ACC 1704 File 58/53?

(2) Did the Under Secretary of the Department of the Premier in a note on that file dated 28 September 1953 observe that on the taking of office by a new Government that recommendations of 12 February 1953 were cancelled, but that Brother Keaney's distinction was included in the commonwealth honours list?

(3) Did the Director General of the Premier's Department in a letter on that file dated 30 June 1987 observe that the notes used for the state honours list formed the basis of the nomination for the Imperial Award bestowed upon Brother Keaney?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1)-(3) Yes.

POLICE - EUCLA CASE

3397. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

(1) Why was the investigation by Inspectors W. Chilvers and I. Robson into the Eucla police officers suspended in November 1990?

(2) Why was this investigation not recommenced?

Hon GEORGE CASH replied:

I have been advised by the Minister for Police in the following terms -

The Commissioner of Police has advised that -

(1) The then deputy commissioner suspended the investigation following a letter of complaint received from the police officers' solicitor.

(2) Investigating officers were instructed not to conduct any further investigations until the conclusion of the appeal case by Mr Winterburn against his conviction.

POLICE - EUCLA CASE

3410. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the Eucla case and the reply given to question on notice 2711 -

(1) What are the inquiries and charges outstanding against the Eucla officers?

(2) To whom do those charges refer?

(3) What are the bases for these inquiries or charges?

(4) When are they alleged to have been committed?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The Commissioner of Police has advised that -

(1)-(4) Departmental inquiries were outstanding in respect of Senior Constable M.S. Thompson on matters dealing with the Eucla inquiry alleged to have been committed in 1990. However, Senior Constable Thompson resigned from the WA Police Service on 18 October 1995. Since my reply to question 2711 and arising from correspondence received from Mr R. Fairclough, the Commissioner of Police in May 1995 transmitted the Eucla material to the Parliamentary Commissioner for Administrative Investigations for investigation of the issues raised. In addition, the Commissioner of Police has now referred the matter to Australian Federal Police officers for independent assessment of all the material and report directly to the commissioner.

POLICE - EUCLA CASE

3411. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the Eucla case -

(1) Who was interviewed by Detective Senior Sergeant Hooft at the request of the Director of Public Prosecutions in 1991?

(2) Did all of the people interviewed make a statement to Sergeant Hooft?

(3) If not, who made statements?

(4) Were all of these statements given to the DPP?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The Commissioner of Police has advised that -

(1) The following persons were interviewed in relation to the appeal by Mr Winterburn against his conviction -

Marion Sarah Hill
Arie Van Wageningen
Constable Johnson
Former Detective Sergeant Fairclough
Former Sergeant Johansen
Senior Constable Thompson
Senior Constable Goodfield
Former Constable Lee
Former Constable Brennan

(2)-(3) Statutory declaration were submitted but no statements were provided.

(4) Yes.

POLICE - EUCLA CASE

3415. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

Why was Sergeant G. Johansen not interviewed by any police officer about the Eucla case?

Hon GEORGE CASH replied:

The Minister for Police has provided the following reply -

The Commissioner of Police has advised that Inspector Rowtcliffe made arrangements to interview Mr Johansen; however, he refused to answer questions concerning the Eucla investigation.

EDUCATION DEPARTMENT - TEACHERS IN RURAL SCHOOLS
Staffing Practices Review

3464. Hon JOHN HALDEN to the Minister for Education:

(1) Have staffing practices that result in excessive numbers of young teachers being appointed to rural schools, and to difficult situations, been reassessed, in the Minister's term of office?

(2) If not -

(a) why not; and

(b) when will this occur?

(3) If yes -

(a) how have the staffing practices changed;

(b) has a financial allocation been made to attract experienced staff to rural schools; and

(c) has a strategy to enable teachers to make informed choices in their selection of schools been developed?

Hon N.F. MOORE replied:

(1) Yes. In line with the recommendations of the Tomlinson report on schooling in rural Western Australia, the Education Department has initiated strategies to address this issue.

(2) Not applicable.

(3) (a) The remote teaching service is a significant initiative aimed at managing and retaining experienced teachers in rural Western Australia. Appointment to remote community schools is by merit and this approach is designed to attract the most meritorious teachers. The department is also considering the concept of developing an incentives package for teachers to locate and remain in rural communities other than remote locations.

(b) Yes. The remote teaching service provides significant financial incentives to teachers taking up an appointment.

(c) Yes. The concept of developing school profiles has been included in the department's 1995-97 strategic plan. This will provide teachers contemplating appointments to the country with appropriate and more specific information on school needs.

POLICE - EUCLA CASE

3471. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

I refer to my previous question on notice 2684 where the Minister stated that police are not empowered to offer immunity. Given that Inspector Chilvers said

under oath in the trial in August 1994 that he did offer immunity will this matter be investigated?

Hon GEORGE CASH replied:

I am advised by the Minister for Police in the following terms -

The Commissioner of Police has advised as follows: The evidence of Superintendent Chilvers is contained in the transcript of court proceedings. The member's question is his interpretation of the evidence given in court. Police officers are not empowered to offer immunity. In the absence of the alleged cannabis, and Mr Grinevicious' purported possession of the drug some 17 months prior to the interview, Superintendent Chilvers was not able to instigate any action in respect of this issue.

HEAVY ENGINEERING - WORLD CLASS INSTITUTE ESTABLISHMENT

3609. Hon JOHN HALDEN to the Minister for Employment and Training:

(1) Has a world class institute of heavy engineering been established, in the Minister's term of office?

(2) If not -

(a) why not; and

(b) when will this occur?

(3) If yes -

(a) when did this occur;

(b) was the private sector invited to participate in the development of this facility, to enable private and public heavy engineering to develop facilities for servicing the State's own needs, as well as providing exports and import replacements;

(c) have both TAFE and the university sector been encouraged to establish a joint campus at the Institute so that a fully integrated, world class training institute develops alongside the manufacturing facilities;

(d) has the Government enabled the institute to retain profits from training programs and research/development to be utilised for continuing development of the Institute to a standard of world class excellence; and

(c) will the Minister provide details of the establishment of the Institute?

Hon N.F. MOORE replied:

(1)-(3) This initiative is currently under consideration.

ROYAL COMMISSION INTO USE OF EXECUTIVE POWER - VANSTONE, ANNE, QC, COUNSEL ASSISTING APPOINTMENT

3636. Hon MARK NEVILL to the Leader of the House representing the Premier:

(1) Who recommended the appointment of Mrs Ann Vanstone QC as counsel assisting Commissioner K. Marks in the Easton royal commission?

(2) What remuneration has Mrs Vanstone received to 31 August 1995?

(3) Would the Premier provide a breakdown of the remuneration into fees and various allowances?

(4) To which person or company has the remuneration been paid?

Hon GEORGE CASH replied:

The Premier has provided the following reply -

(1) I do not propose to provide information on the process of appointment.

(2) $134 727.73.

(3) Fees - $133 750. Reimbursements of expenditure - $977.73.

(4) A. Vanstone.

DIEBACK - NATIVE FORESTS

3640. Hon J.A. SCOTT to the Minister for the Environment:

What percentage of Western Australia's native forest is estimated to be effected by dieback in -

(a) production forest; and

(b) reserved forest?

Hon PETER FOSS replied:

The major area of dieback disease is in the western portion of the northern jarrah forest, close to the Darling Scarp. This has reduced the conservation values of the forest close to the scarp, and has limited the potential for viable conservation reserves in that area. Logically, reserves have been selected in areas where rates of dieback disease have been minimal. This selection process explains the difference in dieback infection rates as reported in the answer to this question. Figures provided are for CALM managed land within the three forest regions of Western Australia.

(a) 12 per cent - this is a broad estimate and includes low as well as high impact disease.

(b) Five per cent - this figure is less than for production forest because reserves have preferentially been selected in areas with low rates of dieback disease.

FAMILY AND CHILDREN'S SERVICES, DEPARTMENT FOR - CHILDREN'S SERVICES PROGRAMS REVIEW

3720. Hon JOHN HALDEN to the Minister for Education:

With reference to question on notice 215 of 1995, when will the review of the Department for Family and Children's Services' children's services programs be completed?

Hon N.F. MOORE replied:

The Minister for Family and Children's Services is responsible for the Department for Family and Children's Services, and any questions regarding the review of the children's services programs relating to that department should be referred to that Minister.

EDUCATION DEPARTMENT - DRUG ABUSE TASK FORCE REPORT

3756. Hon JOHN HALDEN to the Minister for Education:

With reference to question on notice 325 of 1995 -

(1) Has the Drug Abuse Taskforce reported yet?

(2) If not, why not?

(3) If yes -

(a) when did they make their report; and

(b) how has the Government acted upon the task force's report?

Hon N.F. MOORE replied:

The Drug Abuse Taskforce was established by the Premier and would provide the recommendations of its report also to the Premier. Any questions on the task force should be referred to the Premier.

WESTERN AUSTRALIAN HIGHER EDUCATION COUNCIL - STAFFING REDUCTION

3776. Hon JOHN HALDEN to the Minister for Education:

With reference to question on notice 802 of 29 March 1995, what has the staffing of the office the Western Australian Higher Education Council been reduced to?

Hon N.F. MOORE replied:

The Education Policy and Coordination Bureau provides the staffing to support the Western Australian Higher Education Council. In 1995-96 the FTE for the council is one.

EDUCATION DEPARTMENT - ABORIGINAL VOCATIONAL SCHOOLS FEASIBILITY STUDY

3797. Hon JOHN HALDEN to the Minister for Education:

With reference to question on notice 942 of 29 March 1995 -

(1) What is the budget allocation for the feasibility study on the establishment of Aboriginal vocational schools, in the 1995-96 Budget?

(2) Has the feasibility study started?

Hon N.F. MOORE replied:

(1) The feasibility study has no dedicated budget but will be undertaken by Education Department officers from the Aboriginal education branch. This will be done in conjunction with the appropriate officers from the WA Department of Training Aboriginal Service Bureau.

(2) The feasibility study has not yet commenced as the department is awaiting the outcome of the MCEETYA National Aboriginal Taskforce report and the associated nationally agreed funding priorities.

FAMILIES - TASK FORCE REPORT
Recommendations Implementation

3848. Hon N.D. GRIFFITHS to the Minister for the Environment representing the Attorney General:

What has been done to date to implement recommendations 76 to 81 of the report of the Taskforce on Families in Western Australia, May 1995?

Hon PETER FOSS replied:

Recommendation 76: The Criminal Law Amendment Act 1994 sets out principles to be applied by the court in sentencing offenders. A specific principle in respect of the matters raised in this recommendation is not considered necessary.

Recommendation 77: The Ministry of Justice corrective services division paediatric committee will be requested to consider this recommendation. Under the current policy, a baby may stay with its mother in prison until it reaches the age of 12 months although short extensions past that time are considered on their merits. Previously babies could stay in prison up to two years of age but it was found that the unnatural environment was counterproductive to the interests of the children and that the children were witnesses to conflict among mothers with differing child rearing styles.

Recommendation 78: Sentencing options provided in the Sentencing Bill will enable achievement of the intent of the recommendation.

Recommendation 79: The Ministry of Justice would be willing to look at enhanced contact especially where the father has been the primary care giver. Prisoners are assisted to maintain their parental responsibilities through referral to appropriate government agencies such as Family and Children's Services or non-

government agencies which specialise in the relevant area. Outcare Inc is partly funded by the Ministry of Justice to provide services to prisoners, to the families of prisoners and to ex-prisoners upon their release. The services include the family support centres at Canning Vale and Casuarina Prisons as well as accommodation and employment and training services.

Recommendation 80: Pre-release rehabilitation programs are made available to prisoners. Participation in a rehabilitation program may be ordered as a condition of a post-release order. The Ministry of Justice does not have a mandate in respect of newly released prisoners not subject to a post-release order.

Recommendation 81: The Ministry of Justice has a policy that all prisoners should be placed in a prison as close as possible to their family support provided this is consistent with their security rating. Additional medium security beds planned for Greenough and Roebourne Regional Prisons will provide more flexibility for placement of prisoners with family support in those areas. In cases where a prisoner's security rating currently precludes placement near family support, temporary transfers can be arranged to ensure that contact is maintained. In addition, prisoners separated from their family network are able to maintain contact by telephone where large distances are a problem, for cultural purposes or for therapeutic purposes such as marital counselling. A new automated telephone system, which permits prisoners to call approved numbers, will allow prisoners greater telephone access, limited only by the availability of the sets and ability of prisoners to pay.

FAMILIES - TASK FORCE REPORT
Recommendations Implementation

3851. Hon N.D. GRIFFITHS to the Minister for the Environment representing the Attorney General:

(1) Will the Attorney General be causing recommendations 64 to 67 of the Report of the Taskforce on Families in Western Australia, May 1995 to be implemented?

(2) If so, in each case, when?

(3) If not, in each case, why not?

Hon PETER FOSS replied:

(1)-(3) Recommendation 64: Yes. Legislation is expected to be introduced in either the current sitting or autumn sitting in 1996. Recommendation 65: No. Current offences and penalties for varying degrees of assault are appropriate. Recommendation 66: Yes, in part. Legislation in respect of seizure of firearms when a protection order is made against a person is expected to be introduced in either the current sitting or autumn sitting in 1996. The other matters fall within the portfolio responsibilities of the Minister for Police. Recommendation 67: These are matters which fall within the portfolio responsibilities of the Minister for Police. However, I understand that the current process of issuing firearm licences involves a check on whether the applicant has a current restraining order, or was the subject of a past restraining order.

ELECTORATE OFFICES - STAFF RESOURCES, ADDITIONAL

3883. Hon BOB THOMAS to the Leader of the House:

On Monday, August 28, 1995 during the Estimates Committee hearings with regard to the Department of Premier and Cabinet, the Leader of the House indicated that he would raise directly with the Premier, the issue of the need for extra staff resources in electorate offices -

(1) Has the Leader of the House raised the issue with the Premier?

(2) If yes, what action does he propose to take on this matter?

Hon GEORGE CASH replied:

(1)-(2) Following the Estimates Committee hearings I met with the Chief Executive, Office of State Administration, Mr Wauchope, regarding a number of matters relating to entitlements of members of Parliament. From that meeting it was clear that members have raised a number of issues regarding entitlements which could not be addressed in isolation or in a piecemeal manner. I formed the view that I would be better placed to raise these issues with the Premier once the Office of State Administration had considered them more fully. I will keep the member informed of progress in this regard, but it is apparent that the proposals generally have very significant cost implications and as such would be subject to the normal budgetary constraints.

SCHOOLS - NORTH LAKE SENIOR CAMPUS
Playing Fields, Sale

3888. Hon JOHN HALDEN to the Minister for Education:

(1) Can the Minister confirm that the playing fields at North Lake senior campus have been, or will be, sold?

(2) Who approved the sale of the playing fields?

(3) Has it sold for approximately $1.25m?

(4) If not, what is the sale price?

(5) Is it correct that this money will be spent on the North Lake senior campus?

(6) What is the justification for this, when the current enrolments are under 500 students?

(7) Will the Minister outline the details of where the money will be spent?

Hon N.F. MOORE replied:

(1) The playing fields at North Lake senior campus have not been sold. Excision proposals involving the playing fields are currently being evaluated; however, a decision has not been finalised.

(2)-(7) Not applicable.

SCHOOLS - GLENORCHY PRIMARY
School Psychology Services Removal; Private Practitioners

3889. Hon JOHN HALDEN to the Minister for Education:

(1) Can the Minister confirm that the Education Department has removed the school psychology services at Glenorchy Primary School to private practitioners?

(2) What is the reason for such a move?

(3) How will the principal effectively plan the school's small budget to provide for critical incidents or for ongoing consultation of transient students' needs?

(4) What will happen when there are no funds remaining or geographically isolated communities, like Glenorchy Primary School, cannot get a practitioner to call when there is a need?

(5) How will the school be able to ensure effective case monitoring, sufficient for legal requirements and freedom of information provisions, are maintained and available?

(6) What options are open to the school if they are dissatisfied with the only service provider available in the district?

Hon N.F. MOORE replied:

(1) The Education Department has not removed school psychology services from Glenorchy Primary School.

(2)-(6) Not applicable.

PRODUCTIVITY AND LABOUR RELATIONS, DEPARTMENT OF - THATCHER, COLIN, APPLICATION FOR CHIEF EXECUTIVE OFFICER

3897. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Minister for Public Sector Management:

(1) Further to supplementary information provided to the Legislative Council Estimates Committee, did Mr Colin Thatcher lodge an application for the position of Chief Executive Officer of the Department of Productivity and Labour Relations either in response to the newspaper advertisement of 4 March 1995 or public service notice dated 8 March 1995?

(2) If yes, on what date did Mr Thatcher lodge his application?

(3) If no, how was it that Mr Thatcher came to be interviewed in regard to the position?

(4) Why was there a delay of some six weeks between the first interviews of 29 May 1995 and the second interviews of 11 and 12 July 1995?

Hon GEORGE CASH replied:

The Premier has provided the following response -

The Commissioner for Public Sector Standards has advised me that the responses are -

(1) No.

(2) Not applicable.

(3) Mr Thatcher became an applicant following a nationwide executive search to identify additional applicants to supplement those who responded to the advertisements to ensure the most competitive field of applicants for the position.

(4) The interval of six weeks was due to the time taken to complete the executive search and the need to schedule interviews at a time convenient to all participants.

TAFE - OPEN LEARNING PROGRAMS

3909. Hon JOHN HALDEN to the Minister for Employment and Training:

(1) How many self-paced open learning programs are/were there in TAFE in -

(a) 1993;

(b) 1994; and

(c) 1995?

(2) How many graduates have there been from self-paced open learning programs in TAFE in -

(a) 1993;

(b) 1994; and

(c) 1995?

(3) Why are there increasing numbers of self-paced open learning programs being implemented in TAFE, despite students preferring traditional methods and its amazing failure to produce graduates?

Hon N.F. MOORE replied:

(1) (a) Four
(b) Five
(c) 19.

(2) The following figures do not reflect all the students who have completed courses at Joondalup, only those who have put in an application for graduation from the campus. Many hundreds of students study at Joondalup to complete one or two subjects in an open learning mode, and then graduate from their "home" college. Those graduating solely from the Joondalup campus are -

(a) 41
(b) 56
(c) 74.

It is estimated that a further 75 students will complete their courses at the end of 1995.

(3) I am not aware of evidence to suggest that students prefer traditional methods of learning. I understand most students who have been surveyed once they have experienced flexible delivery or open learning have stated that they prefer this approach to learning. Many students have been able to complete courses sooner than a traditional student and Joondalup campus has been able to cater for many different types of students who would otherwise have been locked out of the TAFE system. For example, workers who have two weeks on and two weeks off at mine sites; parents who prefer to work during specific times of the day when their children are at school, even if a part time student; part time employed students who do not want to be locked into attending a night class after work; students with disabilities who may prefer to work at home; students who are able to work at a faster, or indeed slower, pace than traditional students; mature age students who are seeking one or two subjects to enhance their skills at a time convenient to themselves. Simply put, flexible delivery puts the needs of the individual ahead of the convenience of the college.

TAFE - ACCESS AND EQUITY DECREASE
Education Costs Raised by Privatisation

3912. Hon JOHN HALDEN to the Minister for Employment and Training:

(1) Why has there been a decrease of access and equity in TAFE, in the Minister's term of office, in the light of there being a reduced number of colleges offering courses, a reduction of night classes and the proposed privatisation of child care?

(2) What does the Minister intend to do to increase the access and equity in TAFE?

(3) Why is the cost of education being raised by privatisation, as private providers must make a profit and therefore must charge at least 10 times the price it costs a student to enrol in an equivalent TAFE course?

Hon N.F. MOORE replied:

(1) There has been no decrease in access and equity in TAFE. Between 1992 and 1995 the number of bridging and preparatory courses increased from 46 to 85, while the total number of courses offered in TAFE increased from 556 to 636 over the same period. The number of night and weekend classes increased from 12 525 to 13 316. There will be no diminution of child care services. The Department of Training is presently exploring the feasibility of having the management of the service undertaken by either a community based group, or the private sector. Access to the service for TAFE students will be maintained under either arrangement.

(2) Not applicable.

(3) It is misleading to compare a commercial course with a tendered departmental course. A limited number of training courses are being offered for tender as a result of a deliberate policy agreed by the Commonwealth and all State and Territory Governments, to open up the training market to competition. Whichever provider wins a tender will have to meet stringent conditions. Tender contracts will ensure that vocational education and training courses remain accessible and affordable to Western Australians. Thus, if a private provider wins a Department of Training tender, then students will pay the same tuition fees as if they were studying at TAFE. For example, for prevocational courses, no fees were charged by providers. The department paid the cost of the courses.

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING - ABORIGINAL EMPLOYMENT AND ECONOMIC DEVELOPMENT PROGRAMS; JOBLINK PROGRAMS

3916. Hon JOHN HALDEN to the Minister for Employment and Training:

(1) With reference to the answer to question on notice 962 of 29 March 1995, with regard to the eight Aboriginal employment and economic development programs that the Department of Training funds -

(a) what programs are they;

(b) when did each of them begin; and

(c) how much funding does each of them receive?

(2) With regard to the 38 Joblink programs that the Department of Training funds -

(a) what programs are they;

(b) when did each of them begin; and

(c) how much funding does each of them receive?

Hon N.F. MOORE replied:

(1) (a),(c)

Project	$
Joorook Ngarni resource agency	45 000
Karrayili economic employment development officer program	87 000
Kurda employment and training project	65 000
Marble Bar/Nullagine employment project	40 000
Murchison Regional Aboriginal Corporation	50 000
Bibbulmun Regional Aboriginal Corporation	55 000
Ngoonjuwah resource agency	78 000
Wheatbelt Aboriginal Corporation	46 000
Total	466 000

(b) The AEEDO program commenced in 1987.

(2) (a),(c)

Project	$
Adult Work Link	80 000
Armadale/Kelmscott Joblink	112 000
Balga Joblink	129 000
Bedford Workforce	90 000
Bridging the Gap - Rockingham/Kwinana	115 000
Bridging the Gap - South	78 000
Catholic Migrant Centre employment project	80 000

Co-Scope Joblink	133 000
DOME Incorporated	90 000
Forrestfield Joblink	80 000
Fremantle migrant resource centre	103 000
Gosnells District Employment Service Inc	70 000
Hedland Joblink	70 000
Katanning work options centre	95 000
Kuljak Aboriginal employment and cultural centre	85 000
Midland Joblink	90 000
Midwest Gascoyne youth action scheme	90 000
Midlands area youth action	90 000
Murray Joblink	80 000
Newman Jobmate	73 000
Northern suburbs youth options	107 000
Stirling Joblink	70 000
North Perth migrant resource centre	90 000
Outcare employment and training	125 000
Joblink Enterprises	85 000
South east metropolitan youth action scheme	90 000
South metropolitan youth link (formerly Fremantle youth action scheme)	90 000
South west youth employment scheme	102 000
Step 1 Inc	55 000
Victoria Park Jobmate	80 000
Vietnam veterans and defence forces Joblink	65 000
Whitford Joblink	121 000
Willetton Joblink	80 000
WEDO	103 500
Onslow employment project	55 000
Youth options Peel	90 000
Total	3 314 500

(b) The Joblink program is part of the State Government state employment assistance strategy, which was announced in June 1994.

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING - ABORIGINAL COMMUNITIES, NON-ABORIGINAL EMPLOYMENT POSITIONS TO PROVIDE TRAINING TO ABORIGINALS

3918. Hon JOHN HALDEN to the Minister for Employment and Training:

(1) With reference to the answer to question on notice 970 of 29 March 1995, how many community education, training and employment coordinators are there and when were they appointed?

(2) How many Aboriginal program coordinators are there and when were they appointed?

(3) How many Aboriginal economic and employment development officers are there and when were they appointed?

Hon N.F. MOORE replied:

(1) Warburton, 1989; Warburton, appointment to be made; One Arm Point, 1990; Bidyadanga, 1990; Burringurrah, 1993; Jigalong, 1995.

(2) Kimberley College, 1992; Great Southern Regional College, appointed 1989; South Metro College, appointed 1991.

(3) The Aboriginal economic and employment development officer program commenced in 1987; currently has seven projects. Appointments have been made at various times, as necessary, since the inception of the program.

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING - ABORIGINAL SCHOOL LEAVERS, PILOT PROJECT DEVELOPED WITHIN SOUTHERN ABORIGINAL CORPORATION

3919. Hon JOHN HALDEN to the Minister for Employment and Training:

With reference to the answer to question on notice 972 of 29 March 1995, how much funding is there for the pilot project for school leavers in 1995 and 1996?

Hon N.F. MOORE replied:

The pilot project developed with the Southern Aboriginal Corporation has been resourced by a number of agencies which have all contributed to the packaging of resources to form the pilot project. Contributors include community development employment program, Department of Employment, Education and Training, group training scheme and the State Government. Assistance has been in various forms, including subsidy arrangements.

WESTERN AUSTRALIAN DEPARTMENT OF TRAINING - CONTRACTS AND TENDERS LET

3920. Hon JOHN HALDEN to the Minister for Employment and Training:

With reference to the answer to question on notice 79 of 28 March 1995 and 2037 of 9 May 1995 -

(1) Can the Minister advise the number of contracts/tenders which have been let in the Western Australian Department of Training since February 1993?

(2) What is the total value of work tendered or contracted out?

Hon N.F. MOORE replied:

(1) 74. This does not include 255 courses offered under tender arrangements.

(2) $6 139 000. The value of courses tendered was $10 500 000.

EDUCATION DEPARTMENT - MINOR WORKS EXPENDITURE FOR SCHOOLS

3921. Hon JOHN HALDEN to the Minister for Education:

What was the requested level of minor works expenditure for all schools in Western Australia in -

(a) 1992-93;

(b) 1993-94; and

(c) 1994-95?

Hon N.F. MOORE replied:

The following amounts were allocated for minor works projects in schools -

(a) $7.7m
(b) $3.4m
(c) $8.5m.

EDUCATION DEPARTMENT - NEW SCHOOLS
Establishment Coordinated with Private Providers to Optimise Expenditure of Funds

3922. Hon JOHN HALDEN to the Minister for Education:

With reference to the answer to question on notice 1275 of 12 April 1995, when did the Education Department commence the practice of coordinating the establishment of new schools with private providers to optimise the expenditure of education funds?

Hon N.F. MOORE replied:

Exchange of information, and coordination of location and school start up dates,

between the government and non-government sectors, has been the practice for many years.

HOSPITALS - ROCKINGHAM-KWINANA; SMITH CORPORATION PRIVATE
Medical Specialists

3924. Hon JOHN HALDEN to the Minister for the Environment representing the Minister for Health:

(1) How many medical specialists have been operating in the Rockingham-Kwinana Health District in -

(a) 1992-93;

(b) 1993-94;

(c) 1994-95; and

(d) currently?

(2) Is it correct that there were only two specialists operating from Kwinana-Rockingham District Hospital before the Smith Corporation opened a new private hospital in 1994?

(3) How many medical specialists work at -

(a) Rockingham-Kwinana District Hospital;

(b) Smith Corporation Private Hospital; or

(c) at both hospitals?

Hon PETER FOSS replied:

The Minister for Health has provided the following reply -

(1) The following medical specialists are accredited to provide services at the Rockingham-Kwinana District Hospital and Health Service -

	1992-93	1993-94	1994-95	Current
Anaesthetist	20	23	25	29
Emergency medicine	1	2	2	1
Orthopaedic surgeon	3	3	3	3
Obstetrician/gynaecologist	2	3	3	3
Endocrinologist	2	2	2	2
General surgeon	2	2	2	2
Physician	2	2	2	2
Urologist	2	2	3	3
Paediatrician	2	2	2	2
Gastroenterologist	1	1	1	1
Ophthalmologist	2	2	2	2
Plastic surgeon	1	1	1	1
Rheumatologist	1	1	1	1
ENT	3	3	3	3
Psychiatrist	1	1	1	1
Respiratory physician	1	1	1	1
Radiologist	1	3	3	3
Total	47	54	57	60

(2) No. Prior to the opening of Rockingham Family Hospital in May 1994, 37 medical specialists consulted and operated regularly in the Rockingham district. Of these, only two procedural specialists - an obstetrician/gynaecologist and a general surgeon - had committed to operating at Rockingham Family Hospital. Since the opening of the Rockingham Family Hospital, 51 medical specialists now regularly consult and operate in the Rockingham district. Of these, 20 procedural specialists operate regularly at Rockingham Family Hospital. Twenty-two

new medical specialists have been attracted to the Rockingham district since the opening of Rockingham Family Hospital.

(3) (a) 60 medical specialists have been accredited.

(b) 20.

(c) Not known.

CALM - SHARPE COUPE 6, ROADS CONSTRUCTION COST
Green Sawn Karri Timber, Demand; Fallers Deaths and Injuries

3925. Hon J.A. SCOTT to the Minister for the Environment:

(1) What is the demand for green sawn karri timber at present?

(2) What was the cost of building the road from Beardmore Road to the edge of Sharpe coupe 6?

(3) What is the cost to date of building the roads within Sharpe coupe 6?

(4) For what years does the Department of Conservation and Land Management have records of injuries and deaths of fallers in forestry operations?

(5) Over the three most recent years for which there are records -

(a) on average, how many fallers have been killed each year, in the course of clearfelling operations, per hectare clearfelled;

(b) on average, how many fallers have been injured each year, in the course of clearfelling operations, per hectare clearfelled;

(c) on average, how many fallers have been killed each year, in the course of selective logging operations, per hectare selectively logged; and

(d) on average, how many fallers have been injured each year, during selective logging operations, per hectare selectively logged?

Hon PETER FOSS replied:

(1) The Department of Conservation and Land Management does not collect information which would allow this question to be answered. The department collects information on the quantity of timber produced from logs supplied in accordance with contracts of sale. In accordance with returns received from sawmillers by the Department of Conservation and Land Management, 101 240 cubic metres of sawn karri were produced in 1994-95. From the same returns, 98 504 cubic metres were green sawn. No figures are available for 1995-96. However, log sales to date have been consistent with 1994-95. From inquiries received from sawmillers requesting more logs, there is a demand for timber in excess of that which can be supplied.

(2) $12 530.

(3) $44 395.

(4) Safety statistics in the forest industry are the responsibility of the department administering the occupational health and safety legislation. My colleague the Minister for Health; Labour Relations has provided me with the following information: Worksafe Western Australia has a computer database of all work related fatalities, together with lost time injuries derived from claims made under the Western Australian Workers' Compensation and Rehabilitation Act 1981, back to 1982-83.

(5) Worksafe Western Australia does not hold information sufficient to answer question (5) but has provided the following information that may be of assistance -

(a) Clearfelling related fatalities: 1991-92, 1992-93, 1993-94 - nil; 1994-95 - three.

(b) Not known, but can advise that the total number of lost time injuries among Western Australian fallers are as follows -

1991-92	74
1992-93	59
1993-94	71
1994-95	not yet available.

(c) Selective logging fatalities: 1991-92, 1992-93 - nil; 1993-94 - one; 1994-95 - nil.

(d) Included in (b) above.

ELLIOT, RICHARD - CONTACTS WITH SOLICITOR CARMELINA GALATI

3927. Hon A.J.G. MacTIERNAN to the Leader of the House representing the Premier:

Was the Premier aware, at the time, of Richard Elliot's contacts with the solicitor Carmelina Galati during the months of January-March 1994 and did he authorise those contacts?

Hon GEORGE CASH replied:

No.

AIDS COUNCIL OF WESTERN AUSTRALIA INC - GAY AND LESBIAN PARADE SPONSOR

3962. Hon P.R. LIGHTFOOT to the Minister for the Environment representing the Minister for Health:

(1) Is it correct that the Western Australian AIDS Council is sponsoring the gay and lesbian parade in Perth next month?

(2) If yes, what is the cost of such support to the Government funded Western Australian AIDS Council?

(3) Does the Government consider that by promoting homosexual activities the AIDS epidemic may increase?

(4) Was the Minister's permission required before the AIDS Council agreed to sponsor the parade?

(5) Is the Government supportive of the parade?

Hon PETER FOSS replied:

(1) I am advised that it is.

(2) The Western Australian Aids Council is an independent incorporated organisation not controlled by government. It has a contract with the Health Department to provide certain services to minimise the spread of HIV. These services do not include sponsorship of the gay and lesbian parade which is presumably funded by the Aids Council's other funding sources. The level of funding to contract health services is set out by state-commonwealth agreement as part of the matched funding program for HIV/AIDS.

(3) The usual cause of the viral transmission leading to AIDS is through unsafe sex, heterosexual or homosexual.

(4) No.

(5) The Government has not considered the matter.

JUSTICE, MINISTRY OF - SUPERVISED RELEASE REVIEW BOARD
Short Sentences Assessment; Young Offenders Act Amendment

3964. Hon CHERYL DAVENPORT to the Minister for the Environment representing the Attorney General:

(1) Is it correct that under the Young Offenders Act even young offenders sentenced to terms as little as one month must have their sentences reviewed by the Supervised Release Review Board?

(2) Does this mean that young people are being assessed by the board before they serve two weeks of a month's sentence with a view to release which would comply with serving 50 per cent of the sentence, with the other 50 per cent under supervised release?

(3) Does the Government agree that such a cumbersome process seems illogical for such short sentences and when will the Minister consider amendments to this section of the Act?

Hon PETER FOSS replied:

(1)-(2) Young offenders sentenced to detention are eligible for release after serving half of the term. However, the Act allows the Secretary of the Supervised Release Review Board to make a supervised release order in accordance with criteria fixed by the board when sentences do not exceed three months. The Supervised Release Review Board does not have the power to review sentences of the court.

(3) This is not a cumbersome process. A full review of the Young Offenders Act 1994 is due to be undertake 12 months after proclamation.

EDUCATION DEPARTMENT - DOOHAN, JOHN, SHREDDED FILES (1978)

3973. Hon J.A. SCOTT to the Minister for Education:

With reference to the answer to question on notice 3037, will the Minister advise whether the Education Department holds any files, not necessarily only with regard to employment by the department, on Mr John Doohan or members of his family which were shredded in 1978?

Hon N.F. MOORE replied:

The Education Department of Western Australia has not located any department files in regard to Mr John Doohan or his family.

HERITAGE ACT - REVIEW
Section 45 Amendment; Local Government Municipal Inventory

3991. Hon TOM STEPHENS to the Minister for the Environment representing the Minister for Heritage:

In reference to the Heritage Act review, what steps does the Government intend to take in regards to ensuring that section 45 of the Act is amended and expanded to clarify the intentions of the Parliament in reference to the obligation of local government with regard to their "municipal inventory"?

Hon PETER FOSS replied:

Section 45 will be reviewed as part of the overall review of the Heritage Act, particularly in relation to its impact on local authority town planning schemes.

EDITH COWAN UNIVERSITY - NOT SUBJECT TO OMBUDSMAN'S JURISDICTION

3994. Hon N.D. GRIFFITHS to the Minister for Education:

(1) Is the Minister aware that Edith Cowan University is not subject to the jurisdiction of the Parliamentary Commissioner for Administrative Investigations?

(2) Does the Minister intend to correct this anomaly?

(3) If not, why not?

Hon N.F. MOORE replied:

(1) Yes.

(2) Yes, in the context of a number of other legislative changes which have been sought by the universities.

(3) Not applicable.

JUSTICE, MINISTRY OF - AIR CHARTER CONTRACT No 410A1995

3998. Hon TOM STEPHENS to the Minister for the Environment representing the Minister for Justice:

(1) Further to the answer to question on notice 3684, was air charter contract No 410A1995 let for six months or 12 months?

(2) What was the cash value of this contract?

Hon PETER FOSS replied:

(1) The contract was let for six months with an option, exercisable by the State Supply Commission, for an additional six months.

(2) $39 000 for six months and $78 000 for 12 months - if option is exercised.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF - CONDITIONS OF LICENCES, ENFORCEMENT

4000. Hon J.A. SCOTT to the Minister for the Environment:

With reference to a letter dated 17 November 1994 from the Department of Environmental Protection, reference L65/94 -

(1) Why is it imperative that conditions of licences are complied with and how does this ensure that the environment is protected?

(2) Is the DEP required to enforce all conditions of a licence and not vary the rules for any particular licensee?

(3) If yes, under what specific sections of the Environmental Protection Act 1986 or any other Act or legislation is the DEP required to enforce all conditions of licence and not vary the rules for any particular licensee?

(4) If no to (2), why not?

(5) On how many occasions since 1993 have conditions of licence not been enforced by the DEP?

(6) What were those licence conditions and why did the DEP make that decision?

Hon PETER FOSS replied:

(1) Conditions of licence are placed on premises to minimise the impact on the surrounding environment of the operations on those premises. The conditions are tailored to address issues specific to each site and if complied with, the environmental impact should be negligible.

(2) The Department of Environmental Protection is obliged to enforce all conditions of licence, unless it can be demonstrated that those conditions are redundant or inappropriate. There are provisions available under the Environmental Protection Act 1986 for determining whether conditions are redundant or inappropriate.

(3) Section 58 of the Environmental Protection Act 1986 states that it is an offence to contravene conditions of licence. The Department of Environmental Protection follows an established enforcement policy

which is applied to every situation where there is a contravention of licence condition, irrespective of the licence holder. This policy recognises that each breach must be assessed in its context. Like any decision to prosecute it must be exercised sensibly. Failure to do so would be contrary to the proper principles of administrative law.

(4) Not applicable.

(5) The Department of Environmental Protection has not allowed any situation since 1993, where a condition of licence has been contravened and the department has been aware of it, to continue without taking or requiring some action. No prosecutions have been undertaken for breaches of licence conditions in this time.

(6) Not applicable.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF - TAILINGS DAMS, LEAKAGE

4001. Hon J.A. SCOTT to the Minister for the Environment:

With reference to the *Kalgoorlie Miner* on August 9, 1994, where Mr Peter Skitmore from the Department of Environmental Protection is reported as saying "It's appropriate to say some tailings dam do leak" -

(1) Is it correct that some tailings dams do leak?

(2) Do all tailings dams leak?

(3) If yes, when did the DEP become aware that all tailings dams leak?

(4) Can the Minister advise all the tailings dams that the DEP is aware are leaking?

(5) What action does the department take once it recognises that a tailings dam is leaking?

Hon PETER FOSS replied:

(1) Yes.

(2),(4) Yes to some extent. They are, however, designed to ensure that such leakage is minimised and meets environmental requirements.

(3) It is accepted industry knowledge that all tailings dams seep water at some rate. The rate of seepage depends on the type of materials used for construction, the manner of construction and the rate of consolidation of tailings once the dam is in use.

(5) Conditions of licence are set on tailings dams to minimise the impact that a tailings dam will have on the surrounding environment. If it is discovered that a tailings dam is potentially having an environmental impact through discernible seepage, remedial measures are implemented.

POLICE - EUCLA CASE

4044. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the Eucla case -

(1) Where was Constable P. Johnson sent or based during her three months special leave which commenced during November 1990?

(2) Was this officer paid during this period?

Hon GEORGE CASH replied:

I am advised by the Minister for Police in the following terms -

The Commissioner of Police has provided the following advice -

(1) Police Service records indicated that First Class Constable P. Johnson was absent on sick leave from 11 December 1990 to 8 January 1991.

(2) Yes.

WATERS EDGE, AUGUSTA - HOUSING DEVELOPMENT, EXTENSION PLAN

4047. Hon GRAHAM EDWARDS to the Minister for Lands:

(1) Which authority granted an extension to the housing development project known as "Waters Edge" Augusta?

(2) Does the extension encroach on to Crown land?

(3) Was the extension plan advertised to enable ratepayers to object if they so desired?

(4) Were tenders called before the extension was granted?

(5) If no to (4), why not?

(6) How much did the developers pay for the land involved in the extension?

(7) Are plans being processed to extend the development further?

Hon GEORGE CASH replied:

(1) Ministry for Planning approved of subdivisional development in consultation with the Shire of Augusta-Margaret River.

(2) No. Development is located on freehold land and portion of land leased to the proponent from the Crown.

(3) Yes. The land was advertised as part of the planning process and council endorsed inclusion of vacant Crown land into the subdivision.

(4) No.

(5) Crown land was made available to adjoining owner for convenience of servicing in conjunction with their landholding. Being within the sewer catchment of proposed adjoining subdivision, presented an opportunity to spread cost of pumping station and rising main.

(6) $440 000.

(7) No.

MINING INDUSTRY - MINING LEASE 01-6, SCHEDULE OF CONDITIONS, CONDITION 2.1

4081. Hon J.A. SCOTT to the Minister for Mines:

Mining lease 01/6, schedule of conditions, condition 2.1, states, "The sound bund wall not being mined or removed without the prior written approval of the State Mining Engineer"; will the Minister advise what is the extent of the conditions and rights under which this written approval can be given?

Hon GEORGE CASH replied:

The written approval of the State Mining Engineer to remove or mine the sound bund wall will only be given after the State Mining Engineer has considered all aspects relating to that action. There are no specific conditions or rights under which approval can be given.

MINING INDUSTRY - MINING LEASE 01-9, SCHEDULE OF CONDITIONS, CONDITION 27; MINING LEASE 01-6, CONDITION 19

4082. Hon J.A. SCOTT to the Minister for Mines:

With reference to schedule of conditions mining lease 01/9, condition 27 and schedule of conditions mining lease 01/6, condition 19, will the Minister advise the extent of the conditions and rights under which this written approval can be given?

Hon GEORGE CASH replied:

All aspects of any proposal to mine are considered and relevant vesting authorities are consulted prior to any written approval being made. If written approval were granted it would normally be subject to conditions developed jointly with the vesting authority. The wide range of mining options possible means that each case is unique, and no conditions or rights are specified.

FISHERIES DEPARTMENT - ILLEGAL ACTIVITIES, POLICE INQUIRY

4087. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the investigation and police report of the inquiry into illegal activities in the Department of Fisheries, which fisheries officers were interviewed?

Hon GEORGE CASH replied:

I am advised by the Minister for Police in the following terms -

The Commissioner of Police has provided the following advice: The following former and serving fisheries officers were interviewed between 8 September 1993 and 2 November 1993 -

Russell Scott Adams
Derek Elliot Blackman
Robert John Breeden
Warren Paul Brown
Lawrence Roy Caporn
Peter James Dawson
Steven Bradley Embling
Bradley Raymond Freeman
Peter Graham Godfrey
Graeme Leslie Hall
Roger Allan Hardwicke
Geoffrey Bert Hill
Peter William Hurst
Peter James Johnsen
Ronald Edward Phillip Kendrick
Gwyn Lawson Lewis
Joseph Michael Miller
Kevin Douglas Morrison
Prosper Jean Antoine Rault
Philip Martin Readhead
Norman James Sutton
Peter Bain Taylor
Christopher Bruce Thomas
Peter Charles Willey
John Graham Williams

FISHERIES DEPARTMENT - ILLEGAL ACTIVITIES, POLICE INQUIRY

4088. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

In respect of the investigation and police report of the inquiry into illegal activities in the Department of Fisheries, which fisheries officers provided signed statements, and when?

Hon GEORGE CASH replied:

I am advised by the Minister for Police in the following terms -

The Commissioner of Police has provided the following advice: The following

former and serving fisheries officers provided signed statements between 8 September 1993 and 2 November 1993 -

Russell Scott Adams
Derek Elliot Blackman
Robert John Breeden
Warren Paul Brown
Lawrence Roy Capom
Peter James Dawson
Steven Bradley Embling
Peter Graham Godfrey
Graeme Leslie Hall
Geoffrey Bert Hill
Peter William Hurst
Peter James Johnsen
Gwyn Lawson Lewis
Joseph Michael Miller
Kevin Douglas Morrison
Prosper Jean Antoine Rault
Philip Martin Readhead
Peter Bain Taylor
Christopher Bruce Thomas
Peter Charles Willey
John Graham Williams

GOVERNMENT PUBLICATIONS - SAFETYLINE

4089. Hon N.D. GRIFFITHS to the Minister for the Environment representing the Minister for Labour Relations:

(1) Who printed the magazine "SafetyLine" No 28, October 1995?

(2) What was the total cost of the magazine?

(3) What was the cost of the distribution of the magazine?

(4) To whom was the magazine distributed?

Hon PETER FOSS replied:

(1) The magazine was printed by Scott Four Colour, 40 Short Street, Perth. Tenders are sought every 12 months for the printing of four quarterly editions.

(2) The total cost of producing "SafetyLine 28" - printing plus photographs, packaging etc - was $8 547 excluding mailing costs.

(3) Not available. The account for mailing the magazine has not been received to date.

(4) WorkSafe Western Australia maintains a mailing list of subscribers to "SafetyLine". Subscribers include safety and health representatives, safety and health officers, employers, managers, supervisors and others in workplaces who have an interest in occupational safety and health, compensation and rehabilitation.

GOVERNMENT PUBLICATIONS - NEWSLETTER ACCESS

4092. Hon N.D. GRIFFITHS to the Minister for the Environment representing the Minister for Multicultural and Ethnic Affairs:

(1) Who printed the newsletter "Access" Volume 3, No 2, October 1995?

(2) What was the total cost of the newsletter?

(3) What was the cost of the distribution of the newsletter?

(4) To whom was the newsletter distributed?

Hon PETER FOSS replied:

The Minister for Multicultural and Ethnic Affairs has provided the following response -

(1) Picton Press.

(2) $2 500.

(3) Mailwest account not yet received - estimated $185.

(4) Ethnic community groups; government departments and agencies; members of Parliament; consulates; non-government ethnic services; ethnic media; local government authorities; public libraries.

WESTRAIL - MIDLAND WORKSHOPS
Site Assessments

4093. Hon N.D. GRIFFITHS to the Minister for Lands:

(1) With respect to the Midland Rail Workshops site since the publication of the strategy plan dated August 1994, have any further studies or/and assessments of the site been undertaken?

(2) If so, in each case -

(a) by whom;

(b) when did it commence;

(c) has it been completed, and if so, when was it completed;

(d) if continuing when is the anticipated date of completion;

(e) at what cost;

(f) will it be tabled, and if so, when, and if not, why not; and

(g) what are the Government's current intentions with respect to the site?

Hon GEORGE CASH replied:

(1) Yes.

(2) (a) Project steering committee chaired by LandCorp with representation from Ministry for Planning, Heritage Council and Shire of Swan.

(b) September 1994.

(c) No.

(d) See (g).

(e) Not applicable - see (c).

(f) Depends on form of any report compiled.

(g) Educational precinct dependent upon federal government commitment. If no federal commitment is provided, the Government will reassess use of the site.

POLICE - NEWMAN, FRANCIS J., COMPLAINTS INQUIRY

4096. Hon MARK NEVILL to the Leader of the House representing the Minister for Police:

Further to question on notice 3377 in respect of the investigation of complaints by Mr Frank Newman -

(1) Did Fraud Squad Detective Jim Allan and Detective Sergeant Bob Hersey interview -

(a) Mr Tony Kalajic; and/or

(b) Mr Rex Downie?

(2) If yes, on what dates, and was a signed statement obtained from each of the above Department of Agriculture officers?

(3) If not, why not?

Hon GEORGE CASH replied:

I am advised by the Minister for Police in the following terms -

The Commissioner of Police has provided the following advice -

(1) No.

(2) Not applicable.

(3) This question cannot be answered as the original inquiry officer is on leave until 11 December 1995.

QUESTIONS WITHOUT NOTICE

HOSPITALS - WANNEROO
Operators, Contract Terms and Arrangements

956. Hon BOB THOMAS to the Minister representing the Minister for Health:

(1) Will the contractual arrangements with the operators of the Wanneroo Hospital contain sufficient safeguards to ensure that the contract be nullified if an adequate level of service is not provided?

(2) Do the contractual arrangements provide for the contract to be nullified if the specified annual disbursement from the consolidated fund is exceeded?

(3) In what terms is the level of service to be provided by the operators of the Wanneroo Hospital specified in the contract?

(4) What means of monitoring the observance of performance criteria are contained in the contract?

(5) Will the degree of compliance with established performance criteria be available to the public?

(6) Will the performance criteria be made available to the public?

(7) What are the terms of the contract?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Yes.

(2) No. The operator will be required to carry the risk on any cost overruns.

(3) Volume, quality and price.

(4) Various means including performance monitoring of volume and quality as well as independent audit arrangements.

(5)-(6) Yes.

(7) Twenty years, with annual reviews.

AGRICULTURE WESTERN AUSTRALIA - OFFICERS, ALLEGED OFFENCES FINDINGS; ACTION TAKEN

957. Hon BOB THOMAS to the Minister representing the Minister for Primary Industry:

(1) Was I correctly informed by the Chief Executive Officer of Agriculture WA when I was told that no further action was taken against certain

departmental officers because the offences detailed in the findings were matters concerning conflict of interest, and as the maximum penalty for such offences, if proved, is dismissal, no action was necessary since the alleged offenders resigned when told of the charges?

(2) Is it correct that the conclusive findings contained recommendations related to -

(a) the use, or illegal authorisation of use of a chemical which is not registered for use on fruit in Western Australia;

(b) the stealing or receiving of that chemical;

(c) the use of government assets for unauthorised or private purposes?

(3) What action has been taken against former or existing officers of the department in respect of these findings?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

I am unaware of the specific situation to which the member refers and until I receive more information from the member I am unable to answer the question.

FORESTS AND FORESTRY - "DEFERRED FOREST ASSESSMENT FOR WESTERN AUSTRALIA DRAFT REPORT 1995", RESERVES LIST; SPECIES

958. Hon J.A. SCOTT to the Minister for the Environment:

I refer the Minister to questions without notice 905 and 914 -

(1) Which forest areas or reserves were included in the "Deferred Forest Assessment for Western Australia Draft Report 1995" for each of -

(a) jarrah; and

(b) karri?

(2) Will the Minister provide a list of each reserve included as containing jarrah in the deferred forest assessment and its size in hectares?

(3) Will the Minister provide a list of each reserve included as containing karri in the deferred forest assessment and its size in hectares?

(4) What other forest types have been included in the assessment document; for example, marri, wandoo, tingle, etc?

(5) If no other types have been included, why not?

Hon PETER FOSS replied:

I thank the member for some notice of this question. The question indicates a basic misunderstanding of the deferred forest assessment process, and before answering I will point out the basis of that misunderstanding. The member has focused on the individual tree species of jarrah and karri; however, the deferred forest assessment has considered two primary ecosystems - the jarrah forest and the karri forest. It is not just jarrah and karri trees. Neither of these ecosystems consists entirely of jarrah trees or karri trees. These forests are a mosaic of tall forests, woodland, wetlands, heathlands and rock outcrops.

The descriptions of "jarrah forest" and "karri forest" are all-embracing terms used to describe complex systems which include overstorey trees, understorey plants, and soil dwelling and aquatic biota. The biodiversity assessments for the deferred forest assessment were based on a gross estimate of the original - the pre-1750 - jarrah forest and a net estimate of the original karri forest.

I understand that the Conservation Council has made a submission on the "Deferred Forest Assessment for Western Australia Draft Report 1995" which highlights differences in statements contained in the report and those in a report compiled by a consultant to the Conservation Council. The consultant's report

chooses not to include dozens of new conservation reserves which have not yet been gazetted, but which have been committed as reserves in government approved management plans and are being managed as if they are reserves. Furthermore, the consultant has used a method of photo-enlargement and manual overlay to estimate the areas of jarrah and karri forest in reserves. This method is vastly inferior to Department of Conservation and Land Management's geographic information system forest database, which was constructed from large scale aerial photographs and verified in the field. I will proceed from correcting that misunderstanding in the first instance of what we are all about.

(1) The forest conservation reserves included in the "Deferred Forest Assessment for Western Australia Draft Report 1995" may be found listed in -

(i) Appendix 4 of the Regional Management Plans for the Swan Region, Central Forest Region and the Southern Forest Region (1987);

(ii) Table 1 of the Forest Management Plan 1994-2003.

Both documents are available to the public.

(2)-(3) The list of reserves referred to in 1(i) includes area statements and vegetation types. The list of reserves referred to in 1(ii) includes area statements.

(4)-(5) Marri, wandoo and tingle occur in mixture with jarrah and karri. Where these species occur in mixture they have been considered in the report. The final deferred forest assessment report will make specific reference to these species and others such as yarri and sheoak.

These forest species and others will be dealt with in detail in the regional forest assessment because there is an insignificant amount of timber harvest occurring within those forest types.

I remind Hon Jim Scott that the answers to many of his questions can be found in the comprehensive management plans and other documents published by the Department of Conservation and Land Management. These excellent documents are seldom read by people who are willing to criticise the department for its management of forests. I respectfully suggest that the member take the time to read these important documents.

Hon A.J.G. MacTiernan: Thank you, Syd!

Hon PETER FOSS: I notice the inference made in the interjection. I make it quite clear that that answer was directed by me; it is my answer. I suggest that everybody in this House read those important documents because they are important for the economy and for employment in this State. I hope that the Opposition will join with me, as did the member for Eyre, Mr Grill, in making certain that we look after the forest industry in this State.

SCHOOLS - WARWICK PRIMARY
Brookes Maintenance Service Contract

959. Hon A.J.G. MacTIERNAN to the Minister for Education:

In respect of the building demolition work at Warwick Primary School which was awarded to Brookes Maintenance Service -

(1) What were the terms of the contract?

(2) Were accounts submitted by Brookes Maintenance Service which detailed labour costs and tipping charges?

(3) If yes, what was the charge for -

(a) labour costs; and

(b) tipping?

(4) Is the Minister prepared to table the invoices submitted by Brookes?

(5) If not, why not?

(6) What mechanisms did the Building Management Authority have in place to check costs claimed by Brookes Maintenance Service?

(7) Will the Minister table the guidelines which were used by the BMA in granting the contract to Brookes Maintenance Service?

(8) If not, why not?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1)-(8) The selection of the contract, supervision of the contract and payment of the contract will be made by the BMA. Information will therefore need to be obtained from the Minister for Services.

SCHOOLS - WARWICK PRIMARY

960. Hon A.J.G. MacTIERNAN to the Minister for Education:

As a supplementary, why was the Minister previously prepared to answer questions about Warwick Primary School? Why has there been a change in policy? Is it because the questions are becoming a little embarrassing?

Hon N.F. MOORE replied:

The question which was just asked was a question of detail about the contracts, payment of invoices and things of that nature which clearly do not come under my portfolio responsibility. Previously Hon Alannah MacTiernan asked who received the contract. That information was very easy to obtain. She can ask her questions of the Minister for Services and I am sure that he will provide answers as soon as she asks them.

BUILDING MANAGEMENT AUTHORITY - CHIEFTON MANAGEMENT PTY LTD; MAINTENANCE OF GOVERNMENT BUILDINGS CONTRACT

961. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Works:

At least that last reply was a variation on the, "Please put that on notice" answer which we normally receive from the Minister.

(1) Has the Building Management Authority granted Chiefton Management Pty Ltd either a contract or preferred tenderer status in respect of the management of any government building?

(2) If yes, when was the contract granted and for what period was it granted?

(3) If no, have tenders been called for the maintenance of approximately 800 government buildings?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) Chiefton Management Pty Ltd has been granted preferred proposer status.

(2) No contract has been let at this stage.

(3) The Building Management Authority has called for proposals from the private sector for the work coordination and delivery of maintenance services to approximately 800 metropolitan government buildings.

An open invitation for expressions of interest was called in May 1995. From 44 submissions received, a short list of nine organisations was established. A request for a proposal was prepared and distributed to the short listed organisations in August 1995. From these proposals, three

preferred proposers were selected: Chiefton Management Pty Ltd, Serco Australia and Transfield Maintenance. Negotiations are proceeding with the three proposers which, if successfully concluded, will see each proposer managing the delivery of maintenance services to a geographically based - east, north, and south respectively - portfolio of metropolitan government buildings.

ALINTAGAS - ACCOUNTS OVERDUE

962. Hon MARK NEVILL to the Leader of the House representing the Minister for Energy:

In relation to overdue accounts to AlintaGas in the Perth metropolitan area -

(1) How many of those overdue accounts are owed by -

(a) business customers;

(b) domestic customers?

(2) What is the total amount owed to AlintaGas by -

(a) business customers;

(b) domestic customers?

Hon GEORGE CASH replied:

I thank the member for some notice of this question. I am advised in the following terms -

(1) (a) 662 tariff business customers;

(b) 22 462 residential customers.

(2) (a) $441 857 for tariff business customers;

(b) $1 911 152 for residential customers.

The above figures are as at 31 October 1995 and represent accounts overdue by five days or more.

HOSPITAL BOARDS - CONTRACTED SERVICE PROVIDERS, LEGAL LIABILITY; EXPOSURE TO LITIGATION

963. Hon BOB THOMAS to the Minister representing the Minister for Health:

(1) Will the hospital boards share legal liability with the contracted service provider in the event of a service provider being found to have acted negligently?

(2) Are hospital boards in any way exposed to litigation as a result of actions taken by a contracted service provider?

(3) Does the hospital board have the ultimate responsibility for deciding whether to engage a contractor or contractors to carry out non-clinical or clinical functions of the board?

(4) Does the ultimate responsibility for this decision actually lie with the Minister?

Hon PETER FOSS replied:

(1)-(2) These two questions seek a legal opinion. However, normally such contracts would require an indemnity to the board.

(3)-(4) The hospital boards are autonomous statutory authorities under the Hospitals and Health Services Act, but may be given directions by the Minister after consultation with the board.

BUNBURY MAIL WEST - TENDERS FOR OPERATIONS

964. Hon DOUG WENN to the Minister representing the Minister for Services:

(1) Has the Bunbury Mail West contract been privatised?

(2) If yes, to whom did the contract go?

(3) Have the Bunbury staff been offered redundancy or a place with the new contractor?

(4) How many places have been offered to the Bunbury area by the new contractor?

Hon MAX EVANS replied:

I thank the member for some notice of this question.

(1) No. Tenders have been called for the operations of Mail West.

(2)-(4) The preferred tenderer is Australia Post. Subject to successful contract negotiations, Australia Post will offer positions to Mail West staff, and I understand that one will be offered in the Bunbury area.

HEALTH DEPARTMENT - SOUTHERN HEALTH AUTHORITY
Bunbury Regional Hospital Allocation

965. Hon DOUG WENN to the Minister representing the Minister for Health:

(1) Has the Southern Health Authority announced this year's budget allocation for the Bunbury Regional Hospital?

(2) If yes, what is the allocation?

(3) If no, when does it expect to make this allocation?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1)-(3) The allocation to the Bunbury Health Service for the 1995-96 financial year is $17 143 880. That includes the Bunbury Regional Hospital as well as Bunbury Community Health, the aged care assessment team and the Bunbury Mental Health Service. The actual breakdown of this allocation among component services within the Bunbury Health Service has yet to be determined by the general manager of the Bunbury Health Service.

HEALTH DEPARTMENT - PEEL HEALTH SERVICE
Recommendations made to Minister and Proper Authorities

966. Hon J.A. COWDELL to the Minister representing the Minister for Health:

My question relates to a comment by the Minister for Health to the effect that a recommendation is to be made to him and the proper authorities about the Peel Health Service.

(1) Who is responsible for making the recommendation to the Minister and the proper authorities?

(2) Has the Minister received a recommendation?

(3) Has the Minister accepted the recommendation?

(4) When will the Minister's decision be announced?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The Board of Management of the Peel Health Service.

(2) Yes.

(3) The recommendation is under consideration

(4) A decision is expected in the very near future.

CONTAMINATED SITES - CLEAN UP LIABILITY, DEPARTMENT OF ENVIRONMENTAL PROTECTION DISCUSSION PAPER; MOSMAN PARK

967. Hon J.A. SCOTT to the Minister for the Environment:

(1) In bulletin 763 of August 1995, did the Department of Environmental Protection recommend that owner occupiers be made liable for clean up of toxic sites if the polluter is unidentifiable or insolvent?

(2) If yes, in the case of the development of toxic sites for housing projects, who will be liable for clean up under those guidelines and where the polluter is not the developer or owner occupier?

(3) If the owner occupier will be liable for clean up, is the vendor required to notify potential purchasers of the contamination and their liability?

(4) In the Minim Cove development at Mosman Park, who will be liable to clean up the containment cell on LandCorp's land if it fails to contain the toxic waste from the Octennial Holdings development?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The discussion paper proposes that liability will be "assigned" only where a contaminated site is posing a risk to human health or the environment. In this case, the owner or occupier could be made liable for contaminated site clean up if the polluter is insolvent or unidentifiable.

(2) If the site is not posing a risk to human health or the environment in its undeveloped state, the person or persons carrying out the development would be responsible for ensuring that the site is fit for residential development. Liability would not be "assigned" to the polluter, owner, occupier or any other person as the site does not pose a risk. This situation is an example of where market forces, as opposed to regulation, would drive a clean up. The problem that we have here is that the member is asking me to comment on a paper which simply proposes various regimes which have not been decided and certainly have not been carried into legislation in Parliament. That involves hypothetical cases being dealt with in hypothetical legislation. Certainly, if the site is not posing a threat, nobody is liable. The first rule is that the polluter be liable. It is only if one is not able to do so that the cost is passed on.

(3) In the scheme proposed in the discussion paper, yes.

(4) Again, this is a highly hypothetical question. I suggest that the member look at page 3 of EPA bulletin 699. The State Government, through the Department of Land Administration, accepted responsibility for the cell on the McCabe Street site through the formal environmental impact assessment process since 1993. If the member looks at page 3 of that bulletin, he will see for himself.

NEWSPRINT - RECYCLING

968. Hon SAM PIANTADOSI to the Minister for the Environment:

(1) What percentage of the 78 000 rows of newsprint used annually in Western Australia is recycled?

(2) How is that recycled newsprint used?

(3) Is any recycled newsprint exported?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The most recent data from the Australian newsprint industry in November 1995 indicates that 79 000 tonnes of newsprint is consumed each year in Western Australia. Of that, 41.5 per cent is estimated to be recycled into newsprint or other products, either in Australia or overseas.

(2) The main uses for recycled newsprint are -

cardboard packaging produced by Australian Paper;

ceiling insulation products;

erosion control and vegetation establishment work, such as spray-on soil stabilisation and mulch materials;

the ANM de-inking plant at Albury to create more newsprint; and

export into South East Asia and India, primarily for de-inking to create newsprint.

(3) Yes, about 17 200 tonnes a year is exported as described in (2).

NEWSPRINT - DISPOSAL TO LANDFILL; IMPACT ON ENVIRONMENT

969. Hon SAM PIANTADOSI to the Minister for the Environment:

(1) How many rows of newsprint are dumped into landfill?

(2) What effect does that have on the environment and the water table?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) Of the approximately 79 000 tonnes of newsprint consumed per annum in Western Australia, about 32 800 tonnes are recycled through various activities. In addition, waste newsprint is used for a variety of other uses, such as secondary packaging or fuel. It is not possible to define exactly how much of the newsprint that is not recycled is disposed of to landfill, as it is generally mixed up with other putrescible waste.

(2) The disposal of old newsprint to landfill has, of itself, no discernible negative effect on the environment and makes only a relatively minor contribution of organic material and nutrients to leachate from landfills.

HOSPITALS - BUNBURY REDEVELOPMENT
Estimated Cost

970. Hon DOUG WENN to the Minister representing the Minister for Health:

(1) Will the Minister confirm that, in answer to question without notice 912 on 14 November 1995, it was stated that the estimated capital cost of the planned public hospital in Bunbury was $39m?

(2) Will the Minister confirm that, in a press statement of 4 September 1995, the Minister said that the estimated cost of the new public hospital in Bunbury would be $50m?

(3) If yes to both questions, will the Minister explain the $11m discrepancy?

Hon PETER FOSS replied:

The first part of the question obviously refers to an answer that I gave. The second part of the question obviously refers to an answer that the Minister for Health gave. To make sure that the two matters can be resolved, I ask that the question be put on notice.

SCHOOLS - WARWICK PRIMARY
Fire, Demolition of Buildings Contract; Firms Contacted

971. Hon A.J.G. MacTIERNAN to the Minister for Education:

In respect of the answer to question without notice 820 provided by the Minister

for Education, which two firms were contacted prior to Brookes Maintenance Service in respect of the demolition work?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

The selection of the contractor, supervision of the contract and payment to the contractor were handled by the Building Management Authority. The information sought would therefore need to be obtained from the Minister for Services.

SECONDARY EDUCATION AUTHORITY - TERTIARY ENTRANCE EXAMINATIONS, PAGES OUT OF ORDER AT MT BARKER

972. Hon JOHN HALDEN to the Minister for Education:

(1) Is the Minister aware that Secondary Education Authority test papers for students sitting the tertiary entrance examination at Mt Barker had pages out of order?

(2) If yes, will the Minister give an assurance that that occurrence will not affect students' results in the papers on which they were tested?

(3) Were there similar occurrences to that experienced by Mt Barker students?

(4) If so, where?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) I am aware of the problem that was experienced at Mt Barker

(2) I am seeking information from the Secondary Education Authority about that matter.

(3)-(4) In respect of the remainder of the information, the member can either ask me again tomorrow or put the question on notice.

HEALTH DEPARTMENT - BUNBURY HOSPITAL REDEVELOPMENT
St John of God Hospital, Combined Facilities Agreement

973. Hon DOUG WENN to the Minister representing the Minister for Health:

In relation to the combined facilities agreement between Bunbury Health Service and St John of God Hospital, Bunbury:

(1) Has the agreement, which was due to be signed in September 1995, now been signed?

(2) If not, why not, and when is it expected to be signed?

(3) If the agreement has not been signed, will the Minister explain how design work on the new hospital can proceed as announced in the media last week?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) No.

(2) Within the next few weeks.

(3) The Health Department and St John of God Hospital have agreed to share the cost of facility planning while negotiating the detail of the agreement. That cost sharing was detailed in the memorandum of understanding.

TAFE - LINFOOT CLEANING SERVICES CONTRACT
Australian Industrial Relations Commission Hearing

974. Hon JOHN HALDEN to the Minister representing the Minister for Labour Relations:

(1) Why did the Government have a representative at the federal Industrial Relations Commission hearing regarding Linfoot's TAFE cleaning contract, when the Minister has claimed that it was an issue only for the company, the Australian Hospitality and Miscellaneous Workers Union and the federal Industrial Relations Commission?

(2) How can the Government claim that it is purely an issue for the union, the company and the federal commission when the Government's proposed actions deny unions the right to scrutinise workplace agreements, making it impossible to represent workers on such issues?

Hon PETER FOSS replied:

I thank the member for some notice of this question.

(1) The Minister for Labour Relations has responsibility for the administration of the Workplace Agreements Act. This matter before the Australian Industrial Relations Commission dealt with an analysis of the Workplace Agreements Act. The Minister instructed Crown counsel to address the AIRC on the relevant provisions of the Act.

(2) See (1). There is no intention to amend section 39 on confidentiality.

EDUCATION DEPARTMENT - TEACHERS, ACTION AGAINST

975. Hon JOHN HALDEN to the Minister for Education:

(1) Will Mr Black, the Director General of Education, instruct personnel in the Education Department to identify teachers and other Education Act staff who refused to sign any of the various "pay offers" presented this year?

(2) Will personnel in the Education Department be directed to take any punitive actions against teachers or Education Act staff who supported industrial directives and advice from the State School Teachers Union of Western Australia and the Australian Education Union throughout 1995?

(3) Will Education Department personnel be directed to differentiate between union and non-union teachers or Education Act staff in any way?

(4) Will any temporary teachers who are SSTUWA/AEU members and who refused to sign any of the various Government "pay deals" be discriminated against in any way?

(5) Is the Minister prepared to state categorically that no temporary teacher, tandem teacher, PTA teacher or teacher as permanent on probation will suffer because he or she, as a SSTUWA/AEU member, followed union advice not to sign any of the various Government "pay deals"?

Hon N.F. MOORE replied:

I thank the member for some notice of this question.

(1) No.

(2) Under the terms of the order issued by the Australian Industrial Relations Commission, action against teachers who refused to follow directives issued by the director general in the context of the industrial action has been suspended.

(3)-(4) No.

(5) Yes.

PATIENT ASSISTED TRAVEL SCHEME (PATS) - CHANGES REVIEW

976. Hon BOB THOMAS on behalf of Hon Kim Chance to the Minister representing the Minister for Health:

In relation to changes that the Minister made to the patient assisted travel scheme, which are causing great hardship to country patients -

(1) Will the Minister confirm that he gave a commitment that the changes would be reviewed after three months?

(2) If yes, has the review concluded and when will he announce the results of the review?

Hon PETER FOSS replied:

The member is not meant to ask questions regarding the case or containing a controversial issue. Having said that, I will ignore that breach of standing orders and answer as follows -

Several members interjected.

Hon PETER FOSS: I could just say that I will not answer the question because I would have to say that the changes had not caused great hardship to country people. Members may like me to enter into that argument, but I will try not to because I do not think it would be appropriate. If members ask me questions like that I will say that I disagree with the statement. The answer is as follows -

(1) Yes.

(2) The review is continuing and it is intended that the results will be announced in December 1995.

CABINET - LOYALY TO PUBLIC OF WESTERN AUSTRALIA; MEMBERS AND BACKBENCHERS, MEMBERS OF FREEMASONS

977. Hon J.A. SCOTT to the Leader of the House representing the Premier:

Some notice has been given of this question.

(1) In the light of the statements reported in *The West Australian* on 11 October 1995 of Hon John Halden's legal counsel, Mr Philip Vincent, at the Marks royal commission that Hon John Halden has duties to the House of which he is a member at common law, but they are not a duty to the public as such, can the Premier assure the House that the loyalty of the Cabinet and its individual members is to the public of Western Australia ahead of affiliations to any other organisations or associations?

(2) Will the Cabinet and its individual members put the interests of Western Australia and the people of Western Australia before the interests of the Liberal-National coalition?

(3) How many members of the Cabinet and how many backbenchers are members of organisations such as Freemasons that require members to swear allegiance to any fellow member of the Freemasons and the Freemasons as a group above and beyond their allegiance to any other person or groups including the people and Government of Western Australia?

(4) What are their names?

(5) Is the Premier a member of Freemasons?

Hon P.H. Lockyer: Jim Scott, the old billygoat rider himself!

Hon GEORGE CASH replied:

(1)-(5) This question was originally given to me on 19 October. In the meantime the Marks royal commission has reported and the information I had previously sought from the Premier in that regard is now somewhat

outdated. However, I can advise the member that there is no question that the loyalty of the Cabinet has been and always will be, first, to the public of Western Australia. As to which members of Cabinet or which backbenchers are members of the Freemasons, I suggest that the member direct a question to the individual members in a personal capacity.

BUILDING AND CONSTRUCTION INDUSTRY TRAINING FUND - MONEY HELD AND RECEIVED

978. Hon A.J.G. MacTIERNAN to the Minister for Employment and Training:

I am going to have another shot at asking a question of the Minister. Some notice has been given of this question.

Hon E.J. Charlton: You are going to have another shot, are you?

Hon A.J.G. MacTIERNAN: Yes, absolutely.

(1) How much money is currently held in the building and construction industry training fund?

(2) How much money is currently being held to the credit of the engineering sector allocation within the BCITF?

(3) How much money was received into the BCITF from the engineering sector for the following periods -

(a) financial year 1991-92;

(b) financial year 1992-93;

(c) financial year 1993-94;

(d) financial year 1994-95; and

(e) 1 July 1995 to 30 September 1995?

(4) What strategies have been put in place by the administration of the BCITF to ensure that the operators in the engineering sector are meeting their obligation to contribute to the fund?

Hon N.F. MOORE replied:

I thank the member for some notice of this question. If the member asks questions of the right Minister she is likely to get an answer more quickly than if she asks the wrong Minister.

Hon A.J.G. MacTiernan: You have been answering questions about Warwick Primary School until today.

Hon N.F. MOORE: The member asked a question that I said should have been asked of the Minister for Services, who would provide an answer as soon as he was ready. In respect of the question that has just been asked, I went to a lot of trouble to ensure that I had an answer today.

(1) At 31 October 1995 the BCITF held $1 741 274 on deposit with banks. Accrued training expenditure commitments to 31 October 1995 amount to $1 562 008.

(2) At 31 October 1995 the engineering construction sector was $641 402 overdrawn. Accrued commitments to 31 October 1995 amount to $270 000.

(3) Levy receipts engineering sector -

(a) 1991-92 - $759 224;

(b) 1992-93 - $1 063 571;

(c) 1993-94 - $771 318;

(d) 1994-95 - $224 333; and

Hon A.J.G. MacTiernan: That has dropped.

Hon N.F. MOORE: We changed the rules. The member does not know that there have been some changes to the way the BCITF operates. The answer continues -

(e) 1 July 1995 to 30 September 1995 - $48 205.

(4) The BCITF has initiated an audit of existing engineering projects and has developed a list of major engineering projects to be conducted. A circular letter will be forwarded to the project manager of the major projects seeking payment of the levy.

Hon Alannah MacTiernan suggested that somehow or another something improper is going on - an innuendo was made about the numbers dropping. The suggestion is, of course, that the money has not been collected. The management of the BCITF is the same management that has always been in place. It is a tripartite board set up under legislation passed by this Parliament. There have been some changes to the projects that are required to pay the levy, and that has been done by regulation. The people that the member knows in the BCITF can provide her with more details than I can. That would account in some respects for the reduced amount of money coming into the fund. However, if there are funds that should be provided but are not being provided, I will ensure that they are paid.