

# Legislative Council

Thursday, 16 May 1996

**THE PRESIDENT** (Hon Clive Griffiths) took the Chair at 2.30 pm, and read prayers.

## PETITION - D'ENTRECASTEAUX NATIONAL PARK

Hon J.A. Scott presented the following petition bearing the signatures of 291 persons -

To the President and members of the Legislative Council of the Parliament in Western Australia in the Parliament assembled.

We, the undersigned residents of Western Australia request that the Council -

Reject any proposal to excise land or downgrade the status of any part of, D'Entrecasteaux National Park, especially areas adjacent to or near the beautiful Lake Jasper;

Reject any proposals to exchange land or do anything calculated to open the way for mineral sands mining within D'Entrecasteaux National Park, especially in areas adjacent to or near Lake Jasper;

Guarantee the full and proper protection and management of the remarkable D'Entrecasteaux National Park for the sake of the native species and ecosystems of the Park and future generations of Western Australians.

Your petitioners as in duty bound will ever pray.

[See paper No 307.]

## PETITION - CONSERVATION AND LAND MANAGEMENT, DEPARTMENT OF, MANAGEMENT OF HESTER STATE FOREST

Hon J.A. Scott presented the following petition bearing the signatures of 167 persons -

To the Honourable the President and Members of the Legislative Council of the Parliament of Western Australia in Parliament assembled.

We, the undersigned are very concerned at the management practice of the Department of Conservation and Land Management in the Bridgetown-Greenbushes Shire. We request the Legislative Council to:

- (a) consider the Department of Conservation and Land Management's current logging proposals for the Hester State Forest are an unacceptable risk to the long term economy and quality of life of the Bridgetown-Greenbushes Shire Community;
- (b) call upon Department of Conservation and Land Management to hold a public workshop open to all of the Bridgetown-Greenbushes Shire Community, to establish and address all the issues and impacts of logging of the Hester State Forest upon this community, and
- (c) call upon the Department of Conservation and Land Management to manage the Hester State Forest in accordance with the wishes of the Bridgetown-Greenbushes Shire Community.

and your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners as in duty bound will ever pray.

[See paper No 308.]

## JOINT STANDING COMMITTEE ON COMMISSION ON GOVERNMENT

### *Seventh Report on Parliamentary Privilege, Tabling*

Hon Barry House presented the seventh report of the Joint Standing Committee on Commission on Government relating to parliamentary privilege, contained in chapter 10 of the first report of the Commission on Government, and on his motion it was resolved -

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

[See paper No 306.]

## MOTION - URGENCY

### *Airport, New General Aviation, Nowergup Site Proposal*

**THE PRESIDENT** (Hon Clive Griffiths): I have received the following letter dated 16 May which, among other things, will test my geographical knowledge -

Dear Mr President

At today's sitting, it is my intention to move under SO 72 that the House, at its rising adjourn until 9.00am on 25 December 1996 for the purpose of drawing attention to the recent announcement by

the Government that the preferred site for a new general aviation airport is Nowergup in the northern suburbs, and discussing the possible impact of that decision on residents of the suburbs of Joondalup, Wanneroo, Currabine, Kinross, Clarkson, Alkimos, Butler, Jindalee, Quinns Rock, Merriwa, Mindarie, Burns Beach, Iluka, Connolly, Ocean Reef, Edgewater, Carabooda, Nowergup, Neerabup, Carramar, Pinjar, Maringarup, Sinagra and Hocking.

Yours faithfully

Graham Edwards MLC

In order to discuss this matter it will be necessary for four members to rise in their places.

[At least four members rose in their places.]

I direct members' attention to Hon Mr Graham Edwards who will, among other things, give members the result of the test!

**HON GRAHAM EDWARDS** (North Metropolitan) [2.40 pm]: I move -

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

Mr President, I must say at the outset that I did not endeavour to put your geographical knowledge to the test. From your pronunciation of some of the names, which are a little difficult to pronounce, you have obviously a good knowledge of some of the suburbs and some of the proposed suburbs in the northern suburbs. I did it for a specific reason. Some members opposite seem to think that the site of the proposed airport is surrounded by mines. I will get to that a little later.

Members may recall that I raised the issue of the new general airport in the northern suburbs in this place in August of last year following an interview conducted between Hon Eric Charlton and Richard Utting of the ABC. During the interview Hon Eric Charlton, in talking about the airport, had this to say -

It's been through a long process of evaluating a number of options and there has been community consultation and a whole range of you know input that's given everyone an opportunity to have say and that's why the site that has been identified has been selected.

In the same interview he also said -

We will be looking forward to people putting their point of view forward and at the end of the day, selecting the best site. We've certainly eliminated a lot of other sites in the process and we'll be wanting to ensure that the site which is recommended will fulfil the expectations that everyone wants.

That interview concerned me because I was aware of no community consultation prior to listening to the Minister speaking on the radio. Indeed, the only consultation at community level of which I was aware was that which included some discussions with airport officials, some local government people and some Department of Transport people. My view was that Nowergup was not the best site from the community's point of view. So far as I was aware no members of the community had said that they wanted it. I therefore put the same question to the Minister in this place. He was not able to answer straightaway. I do not blame him for that. However, he followed up with some information which I thanked him for. He gave me a commitment that full consultation would occur before the final decision. He also gave me, which I appreciated at the time, a copy of the draft report on the issue, on the basis that I did not reveal it publicly or politicise the issue. I gave and have stood by my undertaking.

However, circumstances have changed, not because of anything I have done but because of conflicting public statements made by some of the Minister's coalition lower House colleagues which indicate that a final site for the general airport has been chosen without any further community consultation. This is evidenced by an article in the *Joondalup Community* on 1 March of last year in which the member for Jandakot in the Legislative Assembly, Mike Board, said that Nowergup in the northern suburbs had been chosen as a site for the second general aviation airport which the Government hoped, according to a quote, would be ready by 1997. In the same article he is reported as saying that the State Government was committed to the project, which was expected to ease the noise problems suffered by residents living around Jandakot. Further, the article reported him as saying that because the proposed site was surrounded by 100 year mining leases, it could not be affected by residential creep. It is because of that quote that I put in the names of the northern suburbs - not to test your knowledge of geography, Mr President. That quote concerned me. I would hate other members of the Government, even those who live in the area, to have the same idea. I will repeat the quote -

Because the proposed site is surrounded by 100 year mining leases, it could not be affected by residential creep.

Those words apparently upset Wayne Smith, the member of Parliament whose lower House seat includes Joondalup. He said in the *Joondalup Community* of 26 April 1996 that he was perturbed by the conflicting information coming to him from the community and the Department of Transport about the location of the airport. He said -

Local sources claim they have been advised Nowergup 'B' is the chosen preferred site, which contradicts a statement I made based on departmental information.

He went on to say -

It greatly concerns me that this decision, which will have a big impact on the wider community, might now have been made behind closed doors and that is not good enough.

There is not much that Wayde Smith and I have in common, but on this issue he and I are at one.

The facts are these: Jandakot Airport is Perth's only general aviation airport serving light aircraft. Current demands there exceed some 400 000 movements per annum. Further demand for these facilities is increasing at a fast rate. Jandakot, from what I can see, is residential land with little environmental chance of expansion. Consequently, the Government has concluded that a new airport site is required. This is despite the proposed decentralisation of some training flights to country airports from Jandakot. I am not sure what stage the decentralisation of those flights has reached.

In 1993 a working group comprising commonwealth, state and local government officers along with private sector representatives was established to examine various issues relating to a new general aviation airport site. I understand that the working group looked at 27 sites, which were in turn narrowed down to four sites, all of which are situated north of but in the general vicinity of Wanneroo. The preferred site, indeed what I now believe to be the chosen site, is adjacent to the northern end of Lake Pinjar and near Nowergup. It is interesting to note that this site is in the RAAF Pearce air space boundary, and the attitude of the RAAF to such an intrusion into this important defence and air training perimeter remains to be seen. I wonder whether it has been consulted; and if so, to what degree. Perhaps the Minister will be able to answer that.

As a result of so much community concern that has been generated over the Government's mishandling of this issue, in an attempt to diffuse the issue of a fait accompli over the site, as people believe it is, the Government has thrown two new sites into the debate. These are at Wilbinga north of Nowergup and adjacent to the coast, and Ledge Point, which is further north again. It is interesting to note that Wilbinga is also in the RAAF Pearce air space boundary. In a further endeavour to defuse the issue, I understand that the Government has employed a public relations consultant to help smooth the turbulence created by the wash of controversy that is now sweeping through the northern suburbs. I believe that the public relations company has contacted the City of Wanneroo seeking the names and addresses of people who live in a certain radius of Nowergup. I do not know whether the same is occurring at Wilbinga and Ledge Point. The Minister may be able to provide that information. I understand also that the Environmental Protection Authority has begun the formal process of evaluation of these sites. The main environmental issues for consideration will be: Underground water management; public safety and risk; and aircraft noise. I am advised that underground water management should rule out Nowergup. Public safety and risk is an issue very much worth considering. The issue of airport noise should also rule out Nowergup.

I would like the Minister to answer the following questions: First, what is the extent of the fees the Government is paying to the public relations consultant being used to help resolve the political furore that is now evident in relation to this issue? Second, were the two most recent sites proposed - Wilbinga and Ledge Point - considered as part of the original 27 sites surveyed; and, if not, why not? If they were, why was neither recommended as the preferred site? Third, will the Minister give some consideration to intervening in the process and, because of their unsuitability, rule out Nowergup and Wilbinga, and conduct only one site environmental review, at Ledge Point? On the face of it, that is the most sensible site to start. Failing that, I ask the Minister to consider jettisoning the whole proposal and starting again. However, when the process is started again, he should ask the community for its views. Claims have been made that the community has been consulted. The fact is that those consultations have not taken place. If the Government were to start again it might have a far better chance of resolving the issue. If members of the community were involved in the full process right from the word go and if they were given the opportunity to have input - not just be given a fait accompli - we might get somewhere.

The political problem of noise nuisance at Jandakot cannot be solved simply by transferring the problem from the south to the north. The Government has announced that it will defer the decision until May 1997, despite the fact that the Minister told this House last year that the situation at Jandakot was extreme. It is interesting that the decision will now be made after the election. I understand that the Government has set up a hotline. None of these initiatives has taken the heat out of the issue, and because it is such a hot issue it is very difficult to get good, commonsense, long term planning decisions. I suggest that the Minister look at the site further north or start the whole process again. I believe that the Shire of Gingin is interested in having Ledge Point as the site. On the other hand, the City of Wanneroo believes that the site should be at Bullsbrook.

I have been sent some information, which I have not as yet checked. It indicates that the proposed Nowergup airport is projected to have about 200 000 plane movements per annum within the second year of operations. It has been worked out that that would mean about 550 plane movements per day, which is 23 plane movements per hour or one plane movement every three minutes. Given those figures, the people living in suburbs such as Joondalup, Wanneroo, Currambine, Kinross, Clarkson, Alkimos, Butler, Jindalee, Quinns Rock, Merriwa, Mindarie, Burns Beach, Iluka, Connolly, Ocean Reef, Edgewater, Carabooda, Nowergup, Neerabup, Carramar, Pinjar, Maringarup, Sinagra and Hocking are now getting upset. Members will understand that some of these areas are developing; for instance, one area is the site of an aged persons development. Those people are very unsure about the future and that is why I have raised this matter today.

I have stood by my commitment not to politicise this issue. Members can examine the media reports, but they will not find one comment from me. The issue has been taken out of my hands and, now that it has, I do not intend to sit back.

**HON E.J. CHARLTON** (Agricultural - Minister for Transport) [2.56 pm]: It is healthy that Hon Graham Edwards has brought this issue forward for debate. Obviously a few things need to be corrected. We can guarantee that when there is debate in the public it is based on hearsay, rumour and a whole range of other factors that have nothing to do with the truth or what has actually happened.

Hon Graham Edwards: I have felt that about some of your colleagues for a long time.

**HON E.J. CHARLTON**: The member can say what he likes. However, we have a process. First, Jandakot Airport is overloaded. Proper planning is required to ensure that we find an appropriate second general aviation facility. Jandakot has over 400 000 plane movements per annum; everyone knows that it is full on out there. This Government has encouraged pilot training in Western Australia. We have been very successful in attracting customers to Perth in increasing numbers. Not only do we have a contract with Singapore Airlines but we will now train China Southern pilots; in fact, we will be training about 2 500 pilots in Western Australia. We are also negotiating with Indonesian airlines and a range of other South East Asian companies.

As a result of that, we have put in place an airports upgrading program that includes a number of regional airports and we hope it will be an ongoing program. The Department of Transport quite properly identified sites and planned to develop another general aviation facility. A number of things must be taken into account when planning an airport. One does not simply go out to the bush where no-one lives and say, "This is a good place for an airport because it will not affect anyone; there will be no noise problems." If airports are not used by commercial operators and people associated with the aircraft industry, there is no point in developing them. It is a bit like putting a busport down by the river and not being able to put any buses in it. This Government had no intention of doing anything like that.

The Department of Transport identified a number of possible sites. I cannot answer the honourable member's question about Ledge Point and Wilbinga. Consultation was carried out at the bottom level. Officers spoke to the people who had information about availability of land, whether the land could be used, the mining tenements, access and so on. That consultation took place with those people in the community who had responsibility for representing the community, but not the community itself. As the member is aware, we cannot simply go out to the community and ask whether people want an airport. Officers would be asked questions about how many planes would use the airport, what the access would be, how would it affect water and so on. The officers would not be able to answer those questions because the investigations would not have taken place. Officers quite properly gathered the information, analysed it and came up with the preferred sites and, after further evaluation, Nowergup was identified as the preferred site. One must then ask members of the community what they think about the site, the sort of planes that will be using it, the number of planes using it, the hours of operation and so on. When all that information has been gathered, the community can quite properly be consulted. We have appointed a public relations consultant to carry out that consultation. It will be done professionally and independently.

The Government has no vested interest in this particular site. We need another general aviation facility. The current airport is owned by the Federal Airports Corporation; it is not a state-owned instrumentality. It will be sold as part of the Federal Government's planned sale of all FAC airports around Australia. I can inform Hon Graham Edwards and other members that the Department of Transport was advised at a national conference a few years ago -

Hon John Halden: The last time you got advice it was pretty poor.

**HON E.J. CHARLTON**: We did not ask for this advice; we were given it. The advice was that Western Australia's general aviation planning policy, and the Department of Transport, were viewed as the best in Australia. That is because of the planning initiatives to introduce tourism and prepare all those various options for the use of our airports. That is pretty important; particularly to Gary Hodge at the Department of Transport, who is an outstanding person who has done an excellent job, and he continues to do so. The department has selected a preferred site, which must now be evaluated for community reaction and its environmental impact on ground water, noise and so on. I have no problem in responding to the concerns of Hon Graham Edwards and the community. It is a shame the community is not always given the facts in chronological order to explain how things got to a particular point.

Hon Graham Edwards may be correct, and it may be found during that consultation process that the community is opposed to the plan, or the plan is knocked on the head for environmental reasons. Hon Graham Edwards and other members of Parliament may think it is not on. I have a concern that when members of Parliament hear more than 10 people opposing something, they think the world opposes it. If the Government thought that way, it would never make any decisions. Not everyone supported my bringing road trains into the metropolitan area. If I had taken notice of a few nervous Nellies, we would not have them in the metropolitan area and we would not know what an outstanding success the trial has been. If members opposite gain office in the future they will not change that policy, because there would be an out and out war. The people would oppose a change because prices would go sky high. The cost of bread would rocket and inflation and interest rates would increase as a consequence. All the nervous Nellies opposite would be petrified about what the public might do to them.



I am happy to do either one of two things. First, we will not waste money on consultants talking with the community and will put the issue on hold. We will go back to the Department of Transport and say that the public is opposed to the plan and ask the department to look for another site. Second, I will be happy to say to Hon Graham Edwards and anybody on this side of the House that we could form a group of people who can be involved with the Department of Transport to work towards identifying an alternative site. I would be comfortable about inviting Hon Graham Edwards to make a suggestion.

Hon Graham Edwards: I suggested that Ledge Point be the starting point.

Hon E.J. CHARLTON: It would not make a lot of sense to request the Department of Transport to look at Ledge Point as a preferred site, because the same sort of people who have found fault with the Nowergup site will start the same process at Ledge Point. As a consequence of this exercise, we should take notice of problems and not make the same mistake again and waste a lot of money. We do not undertake these exercises for nothing. Many good people have put in a lot of time identifying this site as the preferred site out of 27 sites.

I invite Hon Graham Edwards and three or four other people to come together with the Department of Transport to sit around the table. That meeting might come up with Ledge Point and a couple of other sites. That would be the time to consider a number of issues. As a consequence of a request from Hon Iain MacLean I will put this issue on hold.

**HON KIM CHANCE** (Agricultural) [3.05 pm]: I am delighted to have heard the Minister's undertaking to enter into an extensive period of consultation, and further, that he will take notice of what the communities of the northern suburbs have to say about the location of that airport to the extent that he will cancel the project. I am sure it will create a great deal of relief in those northern suburbs that for the first time people have such immense power.

To put the whole question in context, Nowergup lies inland from Quinns Rock. The site is not all that distant from the centre of Perth. An aerial view of Perth shows that Quinns Rock is a relatively central location. The site is east of the Wanneroo-Lancelin Road and, as Hon Graham Edwards has stated, is rapidly developing as a residential area. Unlike the President, I had no idea that such a range of suburbs existed in the area. Of course, I cannot claim the President's broad knowledge of the northern suburbs.

It was not until March this year that people in the northern suburbs had any idea that they would host a second general aviation airport in their locality. Given that became known as a result of comments made in the media by the member for Jandakot, I find it remarkable that this is likely to occur within two years. I know that a lot of planning and other processes need to be completed before a facility as intrusive to the community as an airport can be constructed. Surely a two year period - if that is an accurate statement - for passing through all the normal engineering, planning and environmental requirements and construction, is the minimum time in which one can construct a project from green fields to operational status without any consultation with the community at all. That is why I, and I am sure Hon Graham Edwards, feel so reassured to have that undertaking from the Minister for Transport that, after having done all this work, the Minister is prepared to consult with the community and in effect give the community caveat power over the construction of the airport.

The residents of the northern suburbs did not have any inkling that the construction, perhaps, was to go ahead until that statement by the member for Jandakot, who presumably wants to take credit for exporting a local problem. Had the member for Jandakot not made the statement at that time, it seems likely that northern suburbs residents would not have had much of an idea about the proposed construction of the Nowergup airport.

Hon Graham Edwards: We knew about it, but were told that the final decision had not been made.

Hon KIM CHANCE: Certainly, there is a problem at Jandakot and at some time the Minister should address the Parliament on this matter, perhaps by way of ministerial statement. In question without notice 603 the Minister was asked by Hon Graham Edwards in September 1995 for information about Jandakot Airport and the selection of the Nowergup site. In response to that question the Minister said "The point about the current and future use of Jandakot Airport is extreme." In view of that answer and later comments by the Minister on this issue, the Minister should advise the House of the exact situation at Jandakot. Is it extreme, and can that be taken to mean the situation is dangerous? Certainly some of the information I have come across since researching this matter indicates that there are 400 000 air movements per annum at Jandakot. I know the Jandakot airstrip fairly well, and that is an amazing number of movements. Hon Graham Edwards quoted an anticipated 200 000 air movements at Nowergup within the second year of its operation. The current figure of 400 000 air movements a year breaks down to 46 air movements an hour or one every 90 seconds. Apparently that is the current situation at Jandakot. That seems an extreme situation, and I would appreciate the Minister's advice on this matter at some later date. How thin is the line between extreme and dangerous?

Hon E.J. Charlton: There are no safety issues. It relates to the queue time for people to land and take off.

Hon KIM CHANCE: It is proposed that the Nowergup facility, if constructed, would be surrounded by an industrial park. As the member for Jandakot said, it is already a site of mineral leases. It is difficult to equate that protection to adequate protection from aircraft noise, and that aspect must be carefully considered. The present small aircraft airstrip at Jandakot was provided in its original planning phase with a fairly healthy buffer zone. It has bush on both sides for quite a distance from the airport. I am not

familiar with the northern approach to Jandakot Airport, but I have taken off from that airport in the last few months and I know the southern approach by and large runs over the industrial area of Canning Vale. In fact, it passes over the metropolitan markets. Therefore, I do not think there is a noise problem on the southern approach lines.

I have looked at the map and considered other aspects of the Nowergup site and I wonder whether it is the right place. To my untrained eye it does not look as though it is. It lies on the western margin of the restricted air space surrounding the Royal Australian Air Force bases at Pearce and Gingin. That would have the effect of confining air movements from Nowergup to the narrow coastal corridor which runs from Ledge Point to Whitford. I briefly sought advice from Hon Phil Lockyer about the effect of restricted air space, and he said it means exactly that; entry will be restricted unless aircraft have a permit. Although permits are relatively easy to obtain, particularly during off peak times, it is still a restricted air space. If large numbers of aircraft movements will be confined to that narrow airstrip - perhaps 2 kilometres wide - it will be most difficult to fit in 200 000 air movements a year. We shall be heading for exactly the same problems which occurred in Sydney after the construction of the third runway at the airport. Those who have followed that contentious issue in Sydney could not fail to recognise the potential for this proposal to cause all kinds of problems.

I agree with the suggestion by Hon Graham Edwards that the whole project should be reconsidered, with a focus on Ledge Point, which is north of the boundary of the restricted air space for the RAAF base at Pearce.

Hon Graham Edwards: We need to start again.

Hon KIM CHANCE: I agree, and Ledge Point would not be a bad place to start.

**HON P.R. LIGHTFOOT** (North Metropolitan) [3.16 pm]: On a motion of this type members from both sides of the House can contribute in a bona fide fashion and not along political lines. Obviously the politics of the matter are extremely important, but they are bipartisan politics. It is extremely rare for urgency motions of that nature to come before this House.

Having had some involvement with light aircraft and airports over the past few decades, I have taken an interest in one of the areas set aside - now referred to as Nowergup. My knowledge of the local geography is obviously not as vast as that of the President, for which I apologise. The Lake Pinjar area is a damp land rather than a wetland, and it is the preferred site for several reasons: Firstly, the Government already owns land in that area; secondly, further development had been stopped without permission from the planning department several years ago; and, thirdly, there is a forest to the east which would limit the noise and the overpasses that often cause so much trouble, and have done so at Jandakot. It is very close to the Wanneroo racetrack and it could be argued that the residents in that area are already used to noise at least once or twice a week. The area also covers a large catchment area from which Wanneroo and other parts of the metropolitan region extract their water. It is close to Neaves Road, so it has some attributes that in aggregate suggest it is a suitable site for an airport.

One of the great problems with airports is that they are built without any residences contiguous to them, but once the airport is built people are attracted, for one reason or another, to the area by the land that becomes available for development. Jandakot is one of those areas. Everybody uses and wants airports, but not in their backyards. That is the situation at Wanneroo. As Wanneroo has expanded so rapidly northwards and north-eastwards, further consideration must be given to this proposal and perhaps the original thinking must be changed. I know this Government does not have a mind set with regard to the positioning of the airport and neither does the Minister. This Government listens to people and, of course, it needs to be re-elected. If for only that cynical reason, there is no way an airport will be built over the Lake Pinjar area at Nowergup if it will incur the wrath of or cause discomfort in future to the people immediately adjacent to and affected by it.

Immediately to the east of Wanneroo, along Neaves Road, is the Pearce Air Force base which has been there for more than 50 years. I am trying to think of the name of a town in America which is near the pan handle of Texas near Kansas. I have visited this small town on several occasions, and I apologise for not remembering its name, where there is a United States Air Force base. A civilian airstrip runs parallel to the United States Air Force strip. The civilians use it as a normal civilian strip, but it is controlled 24 hours a day, seven days a week by the control tower of the US Air Force base. It would be a needless waste to duplicate an airport when one is acceptable at Pearce. That airport is long established and has facilities to attend to crashes and other emergencies, and a control tower. The people whose properties are adjacent to or about the Pearce Air Force base have become used to air traffic noises over the decades. I see no logical reason why defence establishments like Pearce should not be amortised by using them for civilian traffic. It happens in many places in the United States and, I dare say, in other areas of the world. What is so sacred about Pearce Air Force base that civilian light planes cannot land there? On occasions I have seen light planes on the base. Whether those planes belong to Air Force association members or not, I do not know. I will not go into that in detail in case I get them into trouble. However, the light planes do land at the base and it is an ideal situation because the infrastructure is already there. I mention that because utilising Pearce Air Force base for light traffic, particularly when there is an excess of air space at the base, would be far better than having another control tower in close proximity to cater for civilian aircraft. It would lead to better safety measures if one tower controlled the movement of both civilian and military aircraft.

I have been in touch with people in the electorate of Wanneroo, as has the member for Wanneroo - that was a Freudian slip and I apologise. I meant to say that my colleague Hon Iain MacLean has been in touch with those people who have the potential to be affected by the proposed airport. There is a hardening feeling, if not a consensus, in the electorate of Wanneroo that the airport site is in the wrong place and an airport there would affect their lifestyle. They believe it is most inappropriate for the future. The extension of the northern suburbs, particularly Wanneroo, has caught up with the planning. The planning has remained relatively dormant.

I am not opposed to an airport in the northern suburbs. However, if one is established the Government must properly recompense people for the value of their land where it is expropriated for airports or any other project from which people would benefit. I cannot understand why anyone who bought land in good faith in the area 20 years ago should now be subject to a government impost which prevents them developing their land. In some cases they cannot even erect a carport or put down concrete paths because there is a planning veto on areas where there is supposed to be an expansion and, almost certainly, an airport in that area which is the favoured area over Lake Pinjar.

The Minister said that the motion is based on hearsay and rumour. It is true because there is nothing else to go on. Unless one delves around government departments, which are controlled by public servants, one is unable to get an indication of where the airport will go. It is wrong. When major infrastructures like airports, roads, highways, freeways and railways could dramatically affect people's lives, the planning must be brought out into the open quickly and in a practical way. This issue should be out in the open to allow people to plan their lives. I again make the point that if there is to be expropriation of land for this airport the Government must recompense the people for the land it takes from them. It is bad enough to affect their lives, but it is another thing to put a planning order over areas which may be used by the Government and not allow these people to develop their land.

I know there is a hardening movement of people against the airport. Its preferred place at Nowergup is inappropriate. I go along with Hon Graham Edwards that Ledge Point is far more appropriate and more planning and discussion must take place.

**HON GRAHAM EDWARDS** (North Metropolitan) [3.26 pm]: I thank Hon Ross Lightfoot for his positive contribution and the Minister for listening to the very reasonable argument I put forward. As Hon Ross Lightfoot said, I have brought this motion forward in a non-political way. I have simply endeavoured to address the issues and concerns which the people in the northern suburbs have put to me over some time. My understanding is that the Minister indicated he was prepared to rethink the issue, including the resiting of the airport.

Hon E.J. Charlton: Lets put this project on hold and get a group of people together to consider it.

Hon GRAHAM EDWARDS: That is very wise and I congratulate the Minister for being prepared to listen to the arguments that have been put this afternoon. I am only too happy to involve myself in any fair and open process which will enhance the amenity of the people in the northern suburbs. At the same time, I accept and recognise that there is a problem at Jandakot.

Hon E.J. Charlton: If we could get the information to this group it could be disseminated through the community.

Hon GRAHAM EDWARDS: I am pleased with the Minister's response. This matter came into the public arena because the member for Jandakot and the people who live around the Jandakot Airport have a problem. However, that problem will not be solved by having an airport in the northern suburbs.

Hon E.J. Charlton: There is a significant difference. The main problem at Jandakot is the training.

Hon GRAHAM EDWARDS: I understand that the training will be decentralised and will be available in places like Corrigin and Merredin.

I take this opportunity to thank Liz Prime, the recently endorsed Labor candidate for the electorate of Wanneroo. She has a high profile in the northern suburbs and has been very active in the few weeks since her preselection. She and the other good people from that area who have a genuine concern in this issue have been very active.

Hon I.D. MacLean: So much for bipartisanship on this issue!

Hon GRAHAM EDWARDS: This debate was joined most intelligently by Hon Ross Lightfoot. It was apt that he was the first member to follow the Minister and was prepared to stand up for the people in the northern suburbs. It is a pity that there were not more members opposite prepared to follow the example set by Hon Ross Lightfoot and stand up for their electorates.

Hon N.F. Moore: Hon Iain MacLean missed the call because you closed the debate.

Hon E.J. Charlton: He said it last week. He asked me if I could do something about it and that is why I was in a position to give you all the answers.

Hon GRAHAM EDWARDS: The Minister has had his chance. However, I appreciate the fact that he has responded to the arguments put this afternoon.

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

# TAXES AND CHARGES (LAND SUBDIVISION) LEGISLATION AMENDMENT BILL

## *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Peter Foss (Attorney General), read a first time.

## *Second Reading*

**HON PETER FOSS** (East Metropolitan - Attorney General) [3.31 pm]: I move -

That the Bill be now read a second time.

This Bill contains a package of measures designed to maximise the production of residential land throughout the State. Since the early 1980s the amount of available residential land has declined each year with the exception of 1989-90 and most recently in 1994-95. As a result, there has been an overall drop in the amount of the buffer stock of residential lots. The development industry has become more sophisticated over this period and has adopted a "just in time" approach to the creation of more lots. It is, however, still of concern to the Government that there will be sufficient land in stock to meet future upturns in demand such as that forecast for 1997. There is also a need to ensure that Western Australia maintains its position at the forefront of having the most affordable land and housing in the nation. If there is a shortage of land, prices will rise and we will face the prospect of families camping out at auctions and land releases as unfortunately occurred during the eighties. Many of the Government's existing taxes and charges act to exacerbate the lot supply situation. They act as disincentives to the development industry bringing land to the market at an earlier stage and in larger quantities.

A comprehensive review involving consultation with industry and all relevant government agencies was completed last year. It closely examined land tax, Water Corporation headworks charges and Water Corporation interim rating. These charges have the common characteristic of being applied to the development process at a stage earlier than the sale of lots. Thus most developers act to minimise the effect of these costs by either delaying the production of lots or releasing smaller sized subdivisions, or both. This impacts negatively on the availability of lots in the completed state and reduces the developers' capacity to meet any increase in market demand.

The most striking example is the effect of land tax. In June each year developers demonstrably stop producing new lots to avoid being taxed on the basis of a higher subdivided rate of valuation for the unsold lots they hold in stock at 30 June. In recent years production has dropped by as much as 50 per cent. The numbers go up again in July to compensate. The end result is that government revenues are decreased in any event, because the lots are held back from production. The lot supply dries up and subcontractor workloads are artificially reduced in the months immediately prior to 30 June each year.

Similar effects are caused throughout the year by the current requirements of the Water Corporation to have headworks charges payable at the time of final planning approval. On average, this is at least three months before the lots are constructed and available to be sold. Similarly, interim water rates are imposed before the services are in use. This is inappropriate and in a sense immoral, because the developer pays for the capital cost and installation of the service infrastructure, plus a reasonable contribution to headworks, but the services are not used until a house is constructed after the lot is sold. The immorality of the current taxing regime is akin to taxing a manufacturer of goods prior to the goods being distributed or placed on the shelf for sale. Land should be treated as other goods. Taxation should be at the point of sale. There should not be a tax on production.

This Bill will address three principal issues. First, the land tax system is changed so that the subdivider is charged land tax at the en globo valuation rate for the survey strata and single residential lots subdivided in the previous financial year, and remaining in the ownership of the subdivider at 30 June in any year, until the following 30 June. The concession ceases on the first sale of the lot. Developers will be required to apply to the State Revenue Department by 31 August each year providing full details of their land holdings on which they wish to claim the concession relating to the previous 30 June.

Secondly, as an option to the existing system of paying headworks charges prior to clearance by the Water Corporation of a proposed subdivision, a subdivider will be able to elect to defer payment on each lot until immediately prior to that lot being sold for the first time, or within 12 months of final subdivisional approval by the Western Australian Planning Commission, whichever is sooner. Headworks charges for water, sewerage and drainage are significant at a minimum of about \$4 000 a lot. To achieve security for the payment of the charge, the subdivider will agree to the registration of a memorial on the title which will restrict dealings on the title until the headworks charges have been paid.

Thirdly, Water Corporation rating charges for water, sewerage and drainage where applicable will not apply until the lot is sold for the first time or within 12 months of final subdivisional approval by the Western Australian Planning Commission, whichever is sooner. The cumulative effect of these reforms is estimated to be a cost differential in excess of \$1 000 a lot, depending on valuation.

The Bill amends the Land Tax Assessment Act 1976 for the purposes of land tax reform, the Water Agencies (Power) Act 1984 and the Water Services Coordination Act 1995 to introduce the changes to the payment of headworks charges and interim rates. In addition, as part of the statewide implementation of these reforms, the Water Boards Act 1904 is amended so the charges apply to the Bunbury and Busselton Water Boards. The Bill requires a review of the success of these measures to commence as soon as



practicable three years after the implementation of the Act. The effects of the changes set out in this Bill are significant -

There will be no artificial drop off in lot production leading up to 30 June in each financial year.

Titles may be applied for as soon as the physical construction of the subdivision is complete and cleared by the relevant authorities. This should result in larger numbers of lots being applied for on fewer plans at the Land Titles Office.

Fewer plans should cause a reduction in administration costs for all authorities.

Developers advise that if there is an overall saving in oncosts, it will allow them to produce more lots for the same value and/or allow the sale of lots at a lower price to achieve quicker turnover.

Revenue neutrality for headworks charges which will still be collected at the same rate by the Water Corporation and the water boards - their only loss is the current windfall gain from having developers' funds on deposit.

The supply of residential land will be maximised, thus providing a positive economic benefit for the State during construction of the subdivision.

Relief is provided from the currently immoral rating of services which are unused by the landowner until the sale of the lot and the construction of housing.

I commend the Bill to the House.

Debate adjourned, on motion by Hon Bob Thomas.

### MAIN ROADS AMENDMENT BILL

#### *Report*

Report of Committee adopted.

#### *Third Reading*

Bill read a third time, on motion by Hon E.J. Charlton (Minister for Transport), and transmitted to the Assembly.

### SECURITY AND RELATED ACTIVITIES (CONTROL) BILL

#### *Committee*

Resumed from 15 May. The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Progress was reported after clause 87 had been agreed to.

#### **Clause 88: Liability of partners and bodies corporate -**

Hon N.D. GRIFFITHS: This clause causes me great concern. It states, albeit subject to subclause (2), that each of the partners or the body corporate, as the case may be, is to be treated as having committed an offence and is liable to the penalty prescribed for the offence committed by the licensee. Clause 87 has great relevance to the consideration of this clause. It deals with a number of situations where offences could be committed. The pertinent part of that provision is that a fine not exceeding \$10 000 in the case of an individual and \$20 000 in the case of a body corporate will be applied.

The first principle in this clause is that each of the partners or the body corporate may be liable for the penalty to which I referred. However, the second part of clause 88 states that this will not be the case if two matters are satisfied: First, if the offence was committed without the partner's consent or connivance; and second, if the partner exercised all such due diligence to prevent the commission of the offence.

*Sitting suspended from 3.45 to 4.00 pm*

#### **[Questions without notice taken.]**

Hon N.D. GRIFFITHS: Consent is a word readily understood. Undoubtedly connivance is similarly understood, but it is not a word used with great frequency in our Statutes. Perhaps the Minister has a list of examples of the use of "connivance" in legislation. It is a relatively novel word for use in legislation so the point is worthy of the Minister's considered comment.

The second aspect to be satisfied before the partner can be brought within subclause (1) is whether the partner exercised all such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the partner's functions and to all the circumstances. The real difficulty with subclause (2) is that the onus of proof is reversed. It is not the case of easily proving the matters referred to in subclause (2). The offending words are "subsection (1) does not apply to a partner who proves that". The proposed defendant is obliged to prove his innocence, and in many instances it will be difficult to prove that innocence. He must prove that the offence was committed without his consent. He could simply say, "I didn't consent." The "I didn't consent" position means by definition that he is invited to prove a negative. Those who have any expertise will know that proving negatives can be very difficult. He must prove not only that but also that he did not connive. The point in respect of consent, I

suppose, is the same as the one for connivance. A person who may be charged in many cases will not be very sophisticated but a normal small business person, perhaps new to a business. That person, who may be a partner, perhaps one of several, must show that he or she "exercised all such diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the partner's functions and to all the circumstances". It is bad to require a defendant to prove that. If that is the Government's position and the position of the Liberal Party - the pretenders when it comes to looking after the interests of small business people - let them wear it, but it is bad position to have.

Looking at clause 88 as a whole the next point is a matter of form rather than of substance. I refer the committee to subclause (3), which reads -

The reference in subsection (2) to a partner does not include a reference to a partner who is also the licensee . . .

That is fair enough, and that is where that subclause should end. Then, for whatever reason, the subclause goes on -

. . . and the defence available to an officer under section 89 is not available to an officer who is also the licensee.

That second part of subclause (3) belongs not in clause 88 but clause 89. I note the Minister acknowledges the point.

Hon Peter Foss: I will not lose any sleep over it but I acknowledge it.

Hon N.D. GRIFFITHS: The Minister may lose sleep over it because I look forward to the Minister moving an amendment to adjust it. I do not like reading shoddy Bills. Regrettably I have had cause to read many examples of shoddy legislation emanating from this Government over the past three years.

Hon PETER FOSS: I did not come warned that I would have to do a general search on the computer for a judicial interpretation of the word "connivance", so unfortunately I am not able to satisfy the member's request. The word is well known and understood by the ordinary person. I would prefer a word that an ordinary person understands to one which appeals more to the legal profession. On the question of defence, in a scheme of this kind, it is fairly usual now in legislation that the corporation is held liable for offences committed in its name. That is appropriate. There is no doubt that partners are different from corporations. They are probably in a position to be treated like directors of corporations. That is acknowledged by how they are treated in clause 89. The question is whether it is appropriate on those grounds that they be accused. My first belief is that it is justifiable. The offence must be proved. It is not as if it is the entire matter. The member is well aware of shifting onuses of proof. The effect of shifting onuses of proof would be that a person who said that he did not know, consent or connive and gave a good account through his statement and showed the diligence that he took would be given a reasonable opportunity to be believed by the court. It may very well lead to a shifting onus of proof for what he says to be discounted. It is appropriate that the person with the knowledge should be called upon to give an account of it. It would be very difficult, if not impossible, for the Crown to establish the degree of knowledge, consent or connivance or the amount of diligence carried out by the person. It is quite appropriate and usual in cases where matters are clearly within his knowledge for the individual to be called on to explain them. The basic idea is that there is a similarity between corporations and partnerships. The difference is that the individual might be found guilty, and under those circumstances it is appropriate to give an opportunity for the individual to say, "It is not appropriate for that vicarious liability be applied because to my knowledge I am able to show to the court that I did not consent or connive and really it was outside my control and wish that it occurred." That sort of liability is quite usual for partners. Certainly in the area of civil liability nobody is suggesting that partners should be excused because something happened and there was no consent or connivance and a partner exercised all due diligence.

Hon N.D. Griffiths: This is criminal liability.

Hon PETER FOSS: I realise that. I am pointing out that the difference between civil and criminal is this: The partner in civil liability is strictly liable. Nobody for hundreds of years has suggested that a partner can get out of liability by showing that he did not consent to what somebody did or he did not exercise due diligence to prevent it.

Hon N.D. Griffiths: Nobody is suggesting that. You want to impose a criminal regime on them.

Hon PETER FOSS: That is quite wrong. We are saying that it is appropriate that a person can show that his act - because it is his act - should not attract criminal penalties, because it is beyond his will. In the same way as section 20 onwards of the Criminal Code contains the capacity to defend by showing that although a person carried out all the elements of the offence it was a matter beyond his will, it is appropriate under these circumstances that the burden fall on the defendant to show that despite its being an offence for which the person was vicariously liable, that offence was beyond the person's will. Both the language and the policy behind this legislation is appropriate.

I take the member's point about the second part of subclause (3). It could more appropriately have been placed as a subclause to clause 89; however, I would not describe it as shoddy, nor do I believe it is necessary to make an amendment to shift it into that clause.

Hon N.D. GRIFFITHS: I think it is appropriate that a defence be afforded and that the defence be raised. However, it is most inappropriate that a defendant must prove matters such as the partner exercising all such due diligence.

Hon Peter Foss: Who else will prove it?

Hon N.D. GRIFFITHS: I will move an amendment which would provide a proper regime for the disposition of this matter. Of course, if the Government has no concern about civil liberties or the appropriate functioning of business, or if it has no concern about small business people, it will not go along with it. Noting the width of what is set out in subclause (2), any reasonable Government in any civilised society would accept an amendment such as this. I move -

Page 47, lines 14 and 15 - To delete the words "who proves that" and substitute "if".

Hon PETER FOSS: What the member has said is nonsense. What is proposed in this clause is in accordance with the usual rules of evidence; that is, that the person within whose knowledge a particular point must necessarily remain is the person who should prove it. Hon Nick Griffith's statement that the Government does not care for small business is mere persiflage on his part. I might just as well say that in moving this amendment his attempt is to allow those unworthy and unsavoury elements who have been involved in some of these security areas an opportunity to get off offences of which they otherwise should be convicted. As he knows, there have been examples in recent times of people who would have been convicted but for some of the difficulties that exist in evidence. It is unworthy to try to remove the opportunities for those people to be appropriately convicted. However, I will not say that, because that would be as much nonsense as what the member said about the Government's regard for small businessmen. Our regard in this whole matter is to set an appropriate regime consistent with the ordinary rules of evidence. That will protect small business because undesirable people will not be able to hide behind the sort of persiflage that is sometimes heard in court by people protesting they have had nothing to do with the matter. One gets the feeling at times that small businesses are not run by anybody at all.

Hon N.D. GRIFFITHS: That is the most surprising speech I have heard from the Attorney General recently - and I have heard a number of surprising speeches from him. To suggest that recent jury verdicts would have been different if this legislation were present is an absolute nonsense.

Amendment put and a division called for.

Bells rung and the Committee divided.

The CHAIRMAN: Before the tellers tell, I cast my votes with the noes.

Division resulted as follows -

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Ayes (8)

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

Hon Graham Edwards  
Hon Val Ferguson  
Hon N.D. Griffiths

Hon John Halden  
Hon Tom Helm (*Teller*)

Noes (13)

Hon George Cash  
Hon E.J. Charlton  
Hon M.J. Criddle  
Hon Max Evans  
Hon Peter Foss

Hon Barry House  
Hon P.R. Lightfoot  
Hon P.H. Lockyer  
Hon I.D. MacLean  
Hon N.F. Moore

Hon M.D. Nixon  
Hon B.M. Scott  
Hon B.K. Donaldson (*Teller*)

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Pairs

Hon Doug Wenn  
Hon Tom Stephens  
Hon Bob Thomas

Hon Muriel Patterson  
Hon Derrick Tomlinson  
Hon Murray Montgomery

Amendment thus negated.

Clause put and passed.

Clause 89: Liability of officers -

Hon N.D. GRIFFITHS: When I first read clause 89 I thought some words were missing; then I reread clause 88 and I saw that they were there. I stand by my previous comments. The shoddiness which affected clause 88 now affects clause 89. Clause 89 is similar to clause 88: It is deficient. Again, it concerns a scenario similar to that covered under clause 88; however, whereas clause 88 dealt with a partnership, clause 89 deals with a body corporate. Where a body corporate is to be treated as having committed an offence against the Act each of the body's officers is to be treated as having committed the offence. The body's officers include wide categories of persons. During Committee we have expanded the category of people who can be caught by this clause. I refer to the amendment that was carried in clause 3,

and I ask the friends of small business to reflect on the words "Officer in relation to a body corporate means a director or secretary of the body; a person in accordance with whose directions or instructions the directors of the body are accustomed to act." That has great relevance in Victoria; perhaps not so much in Western Australia. The words "a person who is concerned in the management of the body whether as an employee or in any other capacity" have a wide potential application. Members should reflect on those words. Again, those people will be caught if the offence that the body corporate is to be treated as having committed against the Act is one done in circumstances where the officer is not able to prove that the offence was committed without the officer's consent or connivance. It is the same wording as clause 88. In clause 89, the officer must prove that he exercised all such due diligence to prevent the commission of the offence as should have been exercised having regard to the nature of the officer's functions and to all circumstances. I do not like the shift. I do not want to repeat the points I made with respect to the previous clause. I move -

Page 48, lines 4 and 5 - To delete the words "the officer proves that".

The comments I made in respect of the previous clause pertain to this one with the same force. I hope the Minister has reconsidered his stance and will accede to the amendment.

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 -

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Ayes (9)		
Hon Kim Chance	Hon Graham Edwards	Hon A.J.G. MacTiernan
Hon J.A. Cowdell	Hon N.D. Griffiths	Hon Mark Nevill
Hon Cheryl Davenport	Hon John Halden	Hon Tom Helm ( <i>Teller</i> )
Noes (13)		
Hon George Cash	Hon Barry House	Hon B.M. Scott
Hon E.J. Charlton	Hon P.R. Lightfoot	Hon W.N. Stretch
Hon M.J. Criddle	Hon P.H. Lockyer	Hon B.K. Donaldson ( <i>Teller</i> )
Hon Max Evans	Hon I.D. MacLean	
Hon Peter Foss	Hon M.D. Nixon	

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Amendment thus negatived.

Clause put and passed.

**Clause 90: Liability of employer of crowd controller for damages -**

Hon J.A. COWDELL: I draw member's attention to the concerns expressed in the thirty-seventh report of the Legislation Committee. They include -

Members of the industry expressed concern that this clause extends the liability of employers to all acts and omissions of their employees regardless of whether the employers would be so liable under the common law. This may have the effect of deterring reputable persons from becoming crowd control agents. They were also concerned that it may make insurance premiums for crowd control agents prohibitively expensive for all but the largest crowd control agents . . .

Representatives of the Police Force gave evidence that the intention of this clause was to make clear the civil liability of employers at common law extends to matters within the scope of the Bill.

Legal advice to the Committee supports the contention of members of the industry that cl 90 extends the liability of employers for the acts of their employees beyond their liability at common law. Clause 90 provides that an employer is liable for acts of her or his employees done in the course of performing their functions under the Bill if the employee would be liable in an action for damages in tort. This takes no account of the common law requirements relating to the vicarious liability of employers and imposes on them a strict liability where their employees are liable.

. . . The Committee considers that it is conceivable that an irresponsible employer could seek to escape liability for the tortious actions of her or his employees, for example, by encouraging or intimidating employees to lie about their motivation for acting. In these circumstances, the imposition of strict liability on employers would be desirable. However, in theory such irresponsible employers could not obtain an agent's licence in the first place, or could have their agent's licence revoked in appropriate circumstances. Furthermore, as was suggested by the members of the industry who gave evidence to the Committee, the provision may deter, or at least make it difficult, for responsible agents to enter or remain in the industry.



The Committee considers that neither the common law position nor the proposed statutory provision satisfactorily address the relevant problems. Consequently, the Committee suggests an alternative test adapted from the common law position stated by Mahon J and based on the reasonable belief of the employee. This should provide a clearer test which the courts can apply to relevant facts, without detracting from the common law position.

The findings of the Legislation Committee were based on the persuasive evidence put to it by people such as Hon George Cash. Hon George Cash stated -

In general terms . . . clause 90 provides the opportunity for the vicarious liability of the tortious acts of an employee to be extended to an employer; that is, for damages . . . the clause in its present form makes an employer liable for all acts or omissions of his employees - even acts or omission for which the employer would not otherwise be liable at law, such as acts or omissions of an employee which are outside the scope of his or her employment. . . . There is a wider question that must be addressed . . . that is, whether there is an intention to extend the vicarious liability for all acts of employees to employers. Quite clearly, the current wording of the Bill is said by some to be far too wide.

Hon George Cash then referred to the advice of the Minister for Police. That advice included the comment "the Minister for Police further advises me that he does not believe the amendment provides any practical benefit". Hon George Cash continued -

. . . in its present form, the doctrine of vicarious liability appears to be extended because it does not, for instance, qualify the wrongful acts of employees that might occur. . . . It is fair to say that over a period of time there have been a number of cases on the question of assault and the employer's responsibility for an employee's actions in an assault. The context and the general thrust of this Bill is all about potential assaults; it is about people keeping others in order. . . . It seems to me that at the very least we should qualify the section to exclude unlawful or unauthorised . . . acts of employees otherwise, an employer will find himself in jeopardy because of the damages that may be awarded as a result of the unlawful, unauthorised, or wrongful acts of his employees.

It was with this in mind that the Legislation Committee proposed an amendment to this section. I note that the Attorney General's amendment acts to a considerable degree on the same matters that were of concern to the committee and they would appear to allay some of the concerns of the committee. At the suggestion of the Attorney I will proceed only with the first amendment that stands in my name, and then be supportive of the Attorney's amendments. I move -

Page 48, line 13 - To insert before the words "A crowd" the following -

Without limiting an employer's vicarious liability at common law,

Hon PETER FOSS: Interestingly enough the first amendment if anything broadens the situation because it could be argued that clause 90 is substituting statutory liability in place of the common law liability. This clause makes certain the double basis for liability - it is not double liability; one can be liable only once for the damage. This amendment makes it clear that this is a separate statutory form of liability. The amendment which I will move later will bring into statutory liability a defence similar to that which lies at common law. The particular reason for differing from the Legislation Committee's recommendation as to the defence is that, following the publication of the committee's report, the same people who made submissions to the committee were still not happy with the proposed amendment. On further consideration and drafting by the parliamentary counsel this was seen to be a more satisfactory way of describing the offence. I have no concern with the amendment moved by Hon John Cowdell. It has the effect of broadening the clause rather than narrowing it, but it puts beyond doubt that this is a separate statutory liability.

Hon N.D. GRIFFITHS: If the amendment adds anything to the clause it adds words of expansion rather than limitation. I agree with the Attorney that the amendment does not add anything. Like Hon John Cowdell and the Attorney General I agree with the amendment.

**Amendment put and passed.**

Hon PETER FOSS: I move -

Page 48, after line 20 - To insert the following new subclauses -

(2) It is a defence to an action for damages under subsection (1) against an employer for the employer to show that in causing the physical injury the employee was pursuing a purpose of his or her own not related to the duties of his or her employment.

(3) Where an action for damages in tort lies against a crowd controller for physical injury in the circumstances referred to in subsection (1)(a), nothing in this section affects the liability of any other person as a joint tortfeasor with the crowd controller in respect of the same injury.

Hon B.K. DONALDSON: Clause 90 was the clause which triggered the concerns some members had with this Bill. The amendments to the legislation have improved it, but it is still not up to standard.

The industry's concern is with proposed subclause (3). It comes down to the fact that a crowd control agent is employed by a group which, for example, is holding a rock concert at the Subiaco Oval or the WACA, and their duty of care remains. They could actually exacerbate some of the problems which the crowd controllers who are employed by the crowd control agent who is employed by the concert promoter are supposed to prevent. The same applies to nightclubs. Some actions could lead to inciting irrational behaviour, for example, continuing to serve alcohol to people visibly affected by its consumption. I know that this is covered by the Liquor Licensing Act. My real concern is that the person who is liable is the crowd control agent and his or her employees as crowd controller. Does this amendment include the duty of care, for which every employer would be liable, to the people who employ crowd control agents? This was a real sticking point with the industry. The industry is hellbent on getting this legislation up because it wants it enforced as much as anybody else in the community.

Hon PETER FOSS: Proposed subclause (3) does not create the duty of care. It provides that any duty of care which exists at law is not excluded. If someone has a duty of care which they have breached and would, except for this proposed subclause, be liable to a joint tortfeasor, the existence of this proposed subclause does not exclude that liability. Anybody who would otherwise be liable remains liable as a joint tortfeasor. It was not suggested that one should go beyond that and make people liable who would not otherwise be liable. We are simply not excluding the law at either end. The amendment moved by Hon John Cowdell leaves in place any common law liability which is vicarious and my amendment leaves in place any other common law liability that a person whose joint tortfeasor with the crowd controller has at common law.

Hon N.D. GRIFFITHS: If I understand the position correctly, Hon John Cowdell's amendment, which the Committee agreed to, and the Minister's amendment are merely to leave things as they are in terms of the common law.

Hon Peter Foss: That is correct.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 91 put and passed.**

**Clause 92: Onus of proof -**

Hon N.D. GRIFFITHS: I do not know what will occupy my mind from now on because this Bill has been in my filing cabinet for many months and I approach debating the substance of clause 92 with a tinge of sadness because I think we are close to saying farewell to the Bill, although it still has a bit of bounce. This clause can be improved and I wish to offer a suggestion to the Attorney. I refer him to the words "it is to be presumed, unless the contrary is shown, that the person was engaged to do that thing for remuneration". Why is it necessary to include the words "unless the contrary is shown"? It is meant to be a presumption and it is not a deeming provision. The words simply are not necessary.

Hon PETER FOSS: Unless these words are included in the clause it is an irrebuttable presumption. The inclusion of the words make it a rebuttable presumption. The difference between a rebuttable and an irrebuttable presumption is clear. The Government would have no objection to the removal of the words, but I suspect people who felt they could show they were not doing it for remuneration would feel aggrieved if they were not allowed to do so.

Hon N.D. GRIFFITHS: I do not intend to amend the clause. If the words are removed, it will still remain a rebuttable presumption. If the Minister wants to leave the words in, so be it. I was somewhat disturbed to hear him say that he would be quite happy to have it as an irrebuttable presumption. That would be a disgraceful state of affairs. That discloses the state of mind of the Liberal Party in respect of obligations on citizens. It is quite happy to have irrebuttable presumptions of this kind. It once again demonstrates the lack of concern of those opposite for people who run businesses, and their employees.

**Clause put and passed.**

**Clause 93: Regulations -**

Hon PETER FOSS: I move -

Page 50, after line 4 - To insert the following new subclauses -

(3) Regulations made for the purposes of section 24(5), 25(5) or 26(6) may prescribe fees to be paid for applications under that section.

(4) A higher fee may be prescribed under section 46(1)(c) for cases where an application for a security officer's licence includes an application for an endorsement under section 24 or 26.

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clauses 94 and 95 put and passed.**

**Postponed clause 28: Definition of "investigator" -**

Consideration resumed from 8 May.

Hon PETER FOSS: I move -

Page 16, lines 21 to 25 - To delete the lines and substitute the following -

- (c) any body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business, while acting in the ordinary course of that business;
- (d) any employee of a body corporate referred to in paragraph (c) while acting in the ordinary course of his or her employer's insurance business; or
- (e) any other prescribed person, or person belonging to a prescribed class of persons, while acting in any prescribed circumstances.

Some of these exemptions were carried forward from previous ones where the business which is called in under clause 28(1) does not pick up the matters dealt with under clause 28(2). For instance, loss adjusters and loss assessors should not investigate the conduct of individuals or bodies corporate. If they are doing that, they are not acting as loss adjusters or loss assessors, but as inquiry agents. The exemption relates to their work in doing that. Some insurance investigators might also call themselves loss adjusters and loss assessors, but the business of a loss adjuster and loss assessor is not to investigate people's character or to carry out surveillance work. If they go into that, they are branching into another area of work and, therefore, they should not be licensed. The first change relates to a more exact definition of bodies corporate that is within the regulatory regime of the Commonwealth for carrying on insurance business.

**Amendment put and passed.**

**Postponed clause, as amended, put and passed.**

**Postponed clause 35: Definition of "crowd controller" -**

Consideration resumed from 8 May.

Hon PETER FOSS: I have taken up this matter with the Minister for Police, who has also taken it up with the assistant commissioner of crime operations. This draft came out of the Victorian experience. A query has been raised about the screening of patrons seeking entry. It has been found that the omission of this in legislation elsewhere and the definition as it exists has led to doormen not being categorised as crowd controllers. If doormen are left out of the definition of crowd controllers, we have not left very many people in.

Attempts were made to draft the clause in such a way that all possibilities could be contemplated about how we could exclude in a satisfactory way those people who should not be picked up by the definition so that all future contingencies could be dealt with. It became clear that a number of circumstances would arise from time to time - some already have been raised - where it would not be appropriate for those people to be licensed. The categories that have come up are theatre usherettes, ticket collectors and turnstile operators at sporting venues. It is intended to exempt those by regulation, and such others who from time to time appear to be in the same area.

We are dealing with a group of people who may be seen to be capable of exploiting any loopholes; that has been the experience in the Eastern States. It seems to me that the best way to deal with that is to define broadly the category that we wish to cover and specifically, by regulation, pick out those instances that will come up from time to time. We might find some strange ticket collectors turning up at nightclub doors, and it may require refinement as time goes on. We propose to keep the clause as it is. We will certainly be moving regulations to deal with those persons who have already been mentioned; namely, usherettes, ticket collectors and turnstile operators at sporting venues and others who become evident under the operations of the provision.

Hon N.D. GRIFFITHS: I am pleased that the Minister has given an assurance to deal in the appropriate way with those people referred to as the soft side, and I trust that it will be done expeditiously. I am intrigued by the Minister's comment that if the doormen were left out, it would not leave many others in. This would depend upon whether they came in before the doormen were left out!

Hon B.K. DONALDSON: I seek clarification from the Attorney General on the relationship between the doorman and usherette at the Perth Entertainment Centre or one of the other function centres. These centres employ people and call them ushers, but they are really bouncers in another form. I am concerned about the control we will have over them as a result of this legislation. This loophole could be used by not only the Entertainment Centre, but also a number of organisations. We must be very careful.

Hon PETER FOSS: I could not agree more. That is why the matter is being handled by regulation. It may need refinement on a fairly regular basis. The member is right that any loopholes will be exploited as much as possible, and that is why the legislative system will provide a broad definition picking up all such persons, and by careful initial drafting and refining regulations from time to time, we will exclude only the people necessary. It is intended that the regulations containing exemptions will come into operation at the same time as the Act.

**Postponed clause put and passed.**

New clause 48 -

Hon PETER FOSS: I move -

Page 27, after line 3 — To insert the following new clause -

**Taking of fingerprints and palm prints**

48. (1) A licensing officer may in writing require any of the following persons to attend at a place and there have his or her fingerprints and palm prints taken by a member of the police force or an officer of the Department -

- (a) a person who has applied for a crowd controller's licence, a crowd control agent's licence or a security installer's licence;
- (b) a person whose application for a security officer's licence includes an application for an endorsement under section 24 or 26;
- (c) a security officer who has applied for a permit under section 25; and
- (d) a person who, in accordance with regulations referred to in section 24(5) or 26(6), has applied for an endorsement under section 24 or 26.

(2) The grant of a licence, permit or endorsement referred to in subsection (1) may be refused if the person of whom such a requirement is made fails to comply with it.

(3) The Commissioner is to cause fingerprints and palm prints taken under this section and any copy of them to be destroyed -

- (a) if the relevant licence, permit or endorsement is not granted; or
- (b) when the relevant licence, permit or endorsement no longer has effect.

(4) If an appeal lies under section 71, the destruction of fingerprints and palm prints under subsection (3) is not required until -

- (a) the time for bringing an appeal has expired; and
- (b) if an appeal is brought, it has been determined in a way that does not result in the grant or continuation of the relevant licence, permit or endorsement.

This new clause will ensure that for certain of these licences positive identification is made through fingerprints and palm prints of crowd controllers, crowd control agents, security installers and security officers so that we are able to ensure that the person is identified. The protection contained in subclause (3) is that the commissioner is to cause fingerprints and palm prints taken under this provision and any copy of them to be destroyed if the relevant licence, permit or endorsement is not granted, or when the relevant licence, permit or endorsement no longer has effect. This will ensure that the record is retained only for the time that the person holds the licence.

**New clause put and passed.**

Hon J.A. COWDELL: I do not propose to proceed with new clause 65A on the basis of an earlier amendment regarding the period for which licences can be granted.

**Schedules 1 and 2 put and passed.**

**Title put and passed.**

**Bill reported, with amendments.**

*Recommittal*

On motion by Hon Peter Foss (Attorney General), resolved -

That the Bill be recommitted for the further consideration of clauses 24 and 60.

*Committee*

The Chairman of Committees (Hon Barry House) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

**Clause 24: Endorsement for escort of money etc. -**

Hon PETER FOSS: I move -

Page 13, after line 22 - To insert the following paragraph -

- (b) any other prescribed activity,

Hon N.D. GRIFFITHS: The words the Minister proposes to add were deleted by the Committee in its wisdom because the Minister, notwithstanding his eloquence, failed to attract sufficient members currently occupying the government benches to come to his aid.

**Amendment put and passed.**



Clause, as further amended, put and passed.

Clause 60: Identity cards -

Hon PETER FOSS: I move -

Page 32, line 16 - To delete "\$200" and substitute "\$2 000".

Hon J.A. COWDELL: I do not wish to note that the Minister is a sore loser!

Hon N.D. GRIFFITHS: You have no need to.

Hon J.A. COWDELL: That is obvious. However, the Minister has brought this Bill back in the dying moments of the afternoon and in the absence of the one member of the Standing Committee on Legislation who has any concept of the notion of committee responsibility in this matter.

Hon Peter Foss: He has urgent parliamentary business.

Hon J.A. COWDELL: I oppose the amendment.

Hon N.D. GRIFFITHS: As members know, I do not comment on the fact that members are not in the House because of urgent parliamentary business elsewhere. However, I observe that this amendment deals with an issue dealt with some 24 hours ago and it involves the Government being defeated. The Government was defeated because my good parliamentary colleagues Hon Jim Scott, Hon Sam Piantadosi -

Hon Peter Foss: They are not here.

Hon N.D. GRIFFITHS: The Minister is referring to the fact that members may be on urgent parliamentary business elsewhere and I do not.

Hon P.R. Lightfoot interjected.

Hon N.D. GRIFFITHS: Hon Reg Davies and Hon Derrick Tomlinson voted against the Government. Why? They accepted the proposition that the Legislation Committee, after having given due consideration -

Hon Cheryl Davenport interjected.

Hon N.D. GRIFFITHS: Hon Cheryl Davenport is concerned to speak on the matter, but before she does, I want to make some observations about why the Minister has brought this on at this time.

Hon John Halden: This is not cooperation; this is betrayal. When members oppose do the statistics there will be an equal and opposite reaction.

The CHAIRMAN: Order!

Hon W.N. Stretch: Throw him out.

Hon John Halden: Throw me out so that I can get out of this goddamned hole.

The CHAIRMAN: Order!

#### *Points of Order*

Hon P.R. LIGHTFOOT: The Leader of the Opposition, Hon John Halden, referred to this House as "a goddamned hole". That is most unparliamentary and I am highly offended. I ask that it be withdrawn.

The CHAIRMAN: If those words were used, which I did not hear, they must be withdrawn.

Hon JOHN HALDEN: I did say those very words. I used the words "this is a goddamned hole" based on the act of betrayal we are seeing before us at this moment.

The CHAIRMAN: Order! They must be withdrawn unconditionally.

Hon JOHN HALDEN: I withdraw them totally unconditionally.

#### *Committee Resumed*

Hon N.D. GRIFFITHS: The wording of the clause concerns a maximum penalty of \$200 or \$2 000. Frankly that is not the important issue. The important issue here is that a committee of this House, the Legislation Committee, has given due consideration -

The CHAIRMAN: Order! I advise the Leader of the Opposition to sit down.

Hon John Halden: I did not know I had crossed in front of your path, Mr Chairman.

Hon N.D. GRIFFITHS: The Legislation Committee has given due consideration to the question dealt with in the clause and come to a decision. The Minister's point of view is not illogical; neither is the Legislation Committee's point of view. One can say \$2 000 is an appropriate maximum or \$200 is an appropriate maximum. Although that is what the wording of the clause is all about, that issue is not important.

#### *Progress*

Progress reported, pursuant to Standing Order No 61(c).

## TREASURER'S ADVANCE AUTHORIZATION BILL

### *Receipt and First Reading*

Bill received from the Assembly; and, on motion by Hon Max Evans (Minister for Finance), read a first time.

### *Second Reading*

HON MAX EVANS (North Metropolitan - Minister for Finance) [5.56 pm]: I move -

That the Bill be now read a second time.

The Treasurer's Advance Authorization Bill authorises the Treasurer to make certain payments and advances for authorised purposes chargeable to the consolidated fund or the Treasurer's Advance Account within the monetary limit available for the financial year commencing 1 July 1996. In addition, the Bill seeks supplementation of \$210m against the monetary limit authorised for the 1995-96 financial year. There is a pressing need to increase the 1995-96 limit due to -

The already announced funding increase to the Health Department of \$109m, inclusive of commonwealth programs, of which \$97.7m is to be funded from the Treasurer's Advance. It is imperative that this additional funding be provided as quickly as possible to enable the health system to meet budget overruns resulting from increased demand and activity levels and to fund wage increases which will result in improved productivity.

An amount of \$73.1m for the Department of State Services, as a result of the delayed sale of FleetWest to the 1996-97 financial year. The budget provision for FleetWest was predicated on the sale of the fleet by 30 September 1995. The sale is now anticipated to be finalised early in 1996-97. The supplementary funding to be provided from the Treasurer's Advance is largely offset by additional consolidated fund revenue. It is essential that sufficient funds are provided from the Treasurer's Advance to enable the operations of FleetWest, including the ongoing vehicle acquisition program, to continue up to 30 June 1996.

A payment of approximately \$75m to the State Government Insurance Commission to extinguish the deficit of the third party insurance fund.

As a result of the improved financial position of the State and in line with the Government's commitment to reduce the State's liabilities it is proposed to eliminate the deficiency of the third party insurance fund. To enable this to be achieved a Treasurer's Advance is required for the purpose. These expenditures have been made possible by additional revenue in 1995-96. After taking into account expenditure on these transactions a balanced budget outcome for 1995-96 will be achieved. While revenue capacity exists, the Treasurer's Advance Authorization Act is the vehicle through which these expenditure transactions are authorised. Consequently the increase in the 1995-96 authorisation limit should be seen as largely a procedural matter.

The three specific items to which I have referred, which total \$246m, together with other budget overruns, including \$34.5m for commonwealth and industry funded activities and \$34m for new items for the Fisheries Department, the Water and Rivers Commission and the Office of Water Regulation, and trust fund overdrafts for working capital purposes and standard advances for temporary purposes, have placed significant pressures on the current limit for 1995-96 of \$200m. On this basis an increase in the limit is urgently required to enable these activities to proceed. Expenditure overruns for 1995-96 are reported against the relevant appropriation item in the 1996-97 consolidated fund estimates.

The monetary limit specified within clause 4 of the Bill represents an authorisation for the Treasurer to withdraw up to \$200m for the financing of payments and advances in the 1996-97 financial year. This is identical to the limit which has applied since 1990-91. The purposes for which payments and advances may be made are set out within clause 5 of the Bill and remain unchanged from those authorised in previous years. Where payments are made for a new item or for supplementation of an existing item of expenditure in the consolidated fund, those payments will be chargeable against the fund pending parliamentary appropriation in the next financial year.

Members will be aware that a number of activities, such as suspense stores for supply services and rental of government offices, are initially financed by way of Treasurer's Advance, which is subsequently recouped from the department or statutory authority on whose behalf the service was performed or rental paid. Advances provided for other purposes are repayable by the recipient. I commend the Bill to the House.

Debate adjourned, on motion by Hon Tom Helm.

*House adjourned at 6.01 pm*

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## QUESTIONS ON NOTICE

## STATE LAW PUBLISHER - COST; REVENUE

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

- (1) What was the actual cost to the Government for the operations of the State Law Publisher for 1994-95?
- (2) What is the anticipated cost for 1995-96?
- (3) What annual cost recovery was achieved in 1994-95?
- (4) What annual cost recovery is anticipated within 1995-96?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

- (1) \$5.081m (includes costs associated with winding down State Print and set up costs for the State Law Publisher).
- (2) \$4m.
- (3) Total revenue of \$11 876 274 was collected by the State Law Publisher. This reflected revenue which was continued to be collected for all outstanding State Print accounts, including sale proceeds which were credited to State Law Publisher charts. New charts for State Law Publisher revenue were adopted from 1 July 1995 and apply for the 1995-96 financial year.
- (4) \$5.062m.

It should be noted that cost and revenue figures for State Law Publisher are not comparable over time due to changes in accounting arrangements following the privatisation of State Print and the separate formation of the State Law Publisher.

## MOTOR VEHICLES - CHAUFFEURED SERVICE FOR MINISTERS, COST

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

- (1) What was the total cost to CRF for meeting the chauffeured vehicle service provided to Ministers in 1994-95?
- (2) What is the estimated cost to CRF for meeting the chauffeured vehicle service provided to Ministers in the 1995-96 financial year?
- (3) What has been the cost for providing the chauffeured vehicle service to Ministers for the period from July 1, 1995 to 31 March 1996?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

- (1) The cost of the chauffeurs' services for 1994-95 was \$823 290. This figure includes the services provided to the Premier, Ministers, Government House, parliamentary office holders, Opposition, judges and VIP visitors.
- (2) The estimated cost for 1995-96 is \$880 489.
- (3) The cost for these services in the period 1 July 1995 to the pay period 21 March 1996 is \$660 366.95.

## TELECOMMUNICATIONS - EXPENDITURE

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

- (1) What was the total telecommunications expenditure for each department or agency within the Premier's current portfolio areas for each of the following years -
  - (a) 1994-95; and
  - (b) 1995-96 (budget estimate)?
- (2) What part of this expenditure in each of the years above was for telecommunications expenditure other than Telstra phone accounts?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

		\$
(1)	(a)	Ministry of the Premier and Cabinet
		Treasury
		Public Sector Standards Commission
		653 684.03
		23 889.90
		9 635.26

	Commission on Government	4 090.10
	Salaries and Allowances Tribunal	140.20
	Official Corruption Commission	4 278.59
	Gold Corporation	277 025.00
	Office of the Auditor General	67 444.00
(b)	Ministry of the Premier and Cabinet	654 300.00
	Treasury*	247 550.00
	Public Sector Standards Commission	36 200.00
	Commission on Government	12 000.00
	Salaries and Allowances Tribunal	500.00
	Official Corruption Commission	5 000.00
	Gold Corporation	292 779.00
	Office of the Auditor General	65 000.00
(2)	1994-95	41 291.64
	1995-96 (budget estimate)	36 202.63

\*Budget provision previously with Miscellaneous Services Division now transferred to Treasury Department.

#### ELECTRICITY - AND GAS, EXPENDITURE

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

What was the total expenditure on the supply of -

(a) electricity; and

(b) gas,

for each department or agency within the Premier's current portfolio areas for the following years -

(i) 1994-95; and

(ii) 1995-96 (budget estimate)?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

The chart of accounts adopted in July 1994 to support the introduction of accrual accounting combines the costs of gas and electricity. However, gas charges form a minor component of the ministry's power account (approximately 1 per cent). To obtain the information in the detail sought would require the diversion of considerable resources which cannot be justified. However, if the member has any specific query he should direct it in writing and I will respond in due course. Details of power cost (gas and electricity) are -

(a)-(b)		\$
(i)	Ministry of the Premier and Cabinet	455 149.89
	Treasury	111 143.00
	Public Sector Standards Commission	4 723.51
	Commission on Government	7 826.00
	Salaries and Allowances Tribunal	1 304.00
	Governor's Establishment	31 317.22
	Official Corruption Commission	1 826.23
	Gold Corporation and subsidiaries	802 289.00
	Office of the Auditor General	655 429.00
(ii)	Ministry of the Premier and Cabinet	352 000
	Treasury	125 000
	Public Sector Standards Commission	12 000
	Commission on Government	12 000
	Salaries and Allowances Tribunal	1 500
	Official Corruption Commission	1 800
	Gold Corporation and subsidiaries	703 241
	Office of the Auditor General	65 400

#### MOBILE PHONES - NUMBERS PAID FOR; COST

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

- (1) What number of mobile phones are paid for by each department or agency operating within the Premier's portfolio?
- (2) What was the cost of mobile phone communications to each department or agency within the Premier's portfolio during 1994-95?
- (3) What is the anticipated cost of the same for 1995-96?



- (4) How much has been spent by each department or agency on mobile communications, so far, this financial year?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

The chart of accounts adopted in July 1994 to support the introduction of accrual accounting provides for telephone charges but does not identify separately mobile phone charges. To obtain the information in the detail sought would require the diversion of considerable resources which cannot be justified. However, if the member has any specific query he should direct it in writing and I will respond in due course. Details of mobile phone numbers are -

- |     |         |  |     |
|-----|---------|--|-----|
| (1) | (a)     | Ministry of the Premier and Cabinet  | 56  |
|     | (b)     | Treasury   | 10  |
|     | (c)     | Public Sector Standards Commission   | 1   |
|     | (d)     | Commission on Government   | 2   |
|     | (e)     | Salaries and Allowances Tribunal   | 1   |
|     | (f)     | Official Corruption Commission   | Nil |
|     | (g)     | Gold Corporation and subsidiaries  | 15  |
|     | (h)     | Office of the Auditor General  | 4   |
| (2) | (a)-(f) | Under the accrual accounting format chart numbers do not separately identify mobile phone charges. |     |
|     | (g)     | \$10 347.  |     |
|     | (h)     | \$1 468.47.  |     |
| (3) | (a)-(f) | Not applicable.  |     |
|     | (g)     | \$17 629.  |     |
|     | (h)     | \$1 700.   |     |
| (4) | (a)-(f) | Not applicable.  |     |
|     | (g)     | \$10 572.  |     |
|     | (h)     | \$1 309.80.  |     |

#### CONTRACTS - ANTHONY BLEE MEDIA, TRANSFERRED TO SOUTH WEST CORPORATE COMMUNICATIONS

*Main Roads South West Contract; Peel Health Services Contract; Principals of SWCC*

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

With reference to question without notice 99 of 1996 relating to the transfer of a Government contract from Anthony Blee Media to South West Corporation Communications -

- (1) Is it correct procedure for Government contracts to be transferred from one company to another without the contract going back to tender?
- (2) Were the contracts that South West Corporation Communications have/had with Main Roads and the Peel Health Service put out to open tender?
- (3) If yes, when and in what papers were the contracts advertised?
- (4) What is the total amounts paid to SWCC under -
  - (a) the Main Roads contract; and
  - (b) the Peel Health Service contract?
- (5) Who are the principals of SWCC?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

- (1) Yes, with the consent of the State Supply Commission and if the company which holds the contract agrees in writing to assign it under the same terms and conditions to another party and that party agrees to the assignment in writing.
- (2) Yes.
- (3) Main Roads - *South West Times*, 26 October 1995; Peel Health Services - *Coastal District Times*, 11 February 1995.
- (4) (a) No payments have yet been made; however, an amount of \$490 is outstanding.  
 (b) All moneys to date have been paid to Blee Media and total \$5 328.95. An invoice for \$2 785.60 from South West Corporation Communications Management dated 22 March 1996 has yet to be paid.
- (5) Mr Dan Sullivan.

# OMBUDSMAN - APPOINTMENT, ADVERTISING AND SELECTION

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

- (1) Why has the State Government decided to advertise the position of the Parliamentary Commissioner for Administrative Investigations (Ombudsman)?
- (2) Was the Premier aware that the current Ombudsman, Mr Robert Eadie, who holds the position until June 1996, was prepared to continue to serve on in that role and intends to apply for this position which he currently occupies?
- (3) Is the Premier aware that Mr Eadie has repeatedly complained of the failure of the current State Government to adequately resource the Ombudsman's office to enable adequate investigation of complaints, which are now running in excess of 3 500 per annum?
- (4) Will the Premier advise details as to whom the Government intends will comprise the selection panel for this position?
- (5) Does the Government consider it appropriate that decisions in reference to the advertising and selection of the Ombudsman, who is directly responsible to the Parliament, should be taken by the current State Government, considering that most of the complaints lodged with the Ombudsman are against this same State Government?
- (6) What steps will the Government be taking to ensure the independence of the Ombudsman is not placed in further jeopardy by the Ministry of Premier and Cabinet advertising the position, in the absence of "appropriate legislative arrangements . . . for the participation of the Parliament . . . in the processes leading to the nomination of a person for appointment to (the position of) Ombudsman" as recommended by the Report of the Royal Commission into Commercial Activities of Government and Other Matters and the anticipated similar recommendations of the Commission on Government?

Hon N.F. MOORE replied:

The Premier has provided the following reply -

- (1) Advice from the Crown Solicitor's Office is that for an appointment to be made, be it a reappointment or a new appointment, the position must be advertised. This approach is consistent with the Government's policy of advertising chief executive officer positions on the expiry of the occupant's term.
- (2) Yes.
- (3) The WA Parliamentary Commissioner for Administrative Investigations has resources of a comparable standard to other similar size States.
- (4) Yes, when the membership of the panel is finalised.
- (5) The selection panel will exercise the same rigorous processes that would apply to any merit based selection within the Public Service.
- (6) Not applicable. The independence of the Parliamentary Commissioner for Administrative Investigations is not in jeopardy.

## QUESTIONS WITHOUT NOTICE

### ABERDEEN HOTEL - SITE; AUTO WHOLESALERS SITE, VALUATIONS

317. Hon KIM CHANCE to the Minister for Transport:

- (1) When did the Government buy the Auto Wholesalers site adjacent to and on the eastern side of the Aberdeen Hotel?
- (2) What was the cost?
- (3) What is the estimated value of the 450 square metres of land which was subsequently added to the Aberdeen Hotel site and offered for auction yesterday?
- (4) Will the Minister table immediately all valuations obtained by the Government for the purchase of the Aberdeen Hotel site and the former Auto Wholesalers site?

Hon E.J. CHARLTON replied:

I can answer some of the questions but it will be on the understanding that I will confirm my answers later.

- (1) I understand that the Auto Wholesalers site was bought in 1980 or thereabouts.
- (2) I do not know.
- (3) I understand that the approximate value of the land is \$500 000.

- (4) I will be happy to supply an answer to this question when I receive the information.

#### ABERDEEN HOTEL - VALUATIONS

#### 318. Hon KIM CHANCE to the Minister for Transport:

- (1) In determining the value of the Aberdeen Hotel, did the Government ensure that the valuers monitored the turnover of the hotel for a reasonable period?
- (2) If so, what was that period?
- (3) Did the Government ever offer to the former owner of the Aberdeen Hotel a land swap; that is, 450 square metres of the former Auto Wholesalers land subsequently added for auction yesterday, in exchange for the 350 square metres of the hotel's beer garden retained for the Northbridge tunnel project?
- (4) Did the Government ever offer any compensation along with the land swap to the former owner rather than pay in excess of \$4m for 350 square metres of the backyard of a pub?

Hon E.J. CHARLTON replied:

- (1)-(4) It is the right of Hon Kim Chance to end a question in that way, hoping to attract the attention of the journalists from *The West Australian* and gain another front page headline -

Hon Kim Chance: I am a very modest man; how can you say that?

Hon John Halden: What comments do you have about *The West Australian*?

Hon E.J. CHARLTON: I have not finished yet! The member hopes to attract the attention of the journalist and her friendly editor. The important point is that when these things happen we see another cartoon. As I said to Hon Kim Chance last night, I am looking forward to meeting the cartoonist from *The West Australian* because I enjoy what he is able to achieve. The important point about his cartoons is that he always reports the issue better than the journalist or the editor. It is tremendous!

The PRESIDENT: Order! This is all very interesting but does the Minister have any views on this question?

Hon E.J. CHARLTON: I have a few more views about *The West Australian* if anyone cares to ask about them!

The questions are very important because they are central to the whole exercise. I have invited members opposite to participate in an historical assessment of the facts. The invitation still stands. When members opposite receive the facts it will probably interfere with the politicking that is going on but still they should take advantage of my invitation.

The Northbridge tunnel decision necessitated the resumption of an area of land at the back of the hotel site. The usual procedure is for Main Roads to get an independent evaluation to make an offer to an owner of land. That was done. The decision was to offer \$6m to the owner of the hotel. It will take some time to answer this question correctly and precisely. The important point is that we are not talking about simply an area of land; we are talking about a business. That business is simply not able to take another piece of land next door or over the road - that is, take a few hundred square metres here or a few hundred square metres there and have everything stay the same. I am advised that more than 60 per cent of the hotel's business came from that area of land. Taking away that area would affect more than 60 per cent of the business. Because the land represented 60 per cent of the business, that action destroyed the business. It had no future.

Hon Peter Foss: It is called injurious affection.

Hon E.J. CHARLTON: Exactly. As a consequence, \$6m was offered to include the area next door. Quite properly, the owner rejected the offer. It was estimated that it would cost \$700 000 to bring the block next door into commercial operation - but the owner could still lose the business. In the meantime the business was being destroyed, so he chose to sell. Two independent valuations were prepared by Main Roads and one by the owner. The owner's valuation of the business was \$6.8m. We finally agreed that would be the price paid for the property; and an additional sum was added for the commercial operation of the business to bring the price up to \$7.7m. The turnover figures were identified over a three year period. Main Roads appointed an accredited auditor who certified those figures to be consistent and correct. That is how Main Roads arrived at the value of the property. After the negotiations Main Roads took over the hotel in January this year. Main Roads is not in the business of running hotels. The plan was to hold the property for the shortest possible time, to identify the area required for the tunnel, and then to sell the remaining property. The effect of taking that area off the back of the hotel premises was to reduce the value of the hotel to \$1.2m. To give someone the chance in the future of running a commercial operation Main Roads offered the adjoining piece of land to any intending purchaser so that whoever bought the land would have a sufficient area to develop. Architectural plans and specifications were produced to identify how that could be done. The cost involved was \$750 000. In the meantime the business has been effectively destroyed because of the original decision.

Hon A.J.G. MacTiernan: It is still operating.

Hon E.J. CHARLTON: The new owner must now build up a business. He must pay the purchase price

and undertake further construction work, which will involve a lead time. That is why those valuations were sought and those commercial consequences taken into account.

Two points need to be acknowledged, and I have no problem in discussing these at any time with anybody. I have met today with the valuers and the auditors and they have put me straight as to their clear and precise credibility in this issue. They had given Main Roads two options: Pay the owner \$6m and take the land, which the owner rejected; or buy the whole business, which is what it did.

#### ABERDEEN HOTEL - NEGOTIATIONS WITH FORMER OWNER

**319. Hon KIM CHANCE to the Minister for Transport:**

- (1) Is the Government currently negotiating with the former owner of the Aberdeen Hotel to repurchase the hotel property?
- (2) In valuing the property in the first instance did the valuers have to rely on Deloitte's most recent audited turnover of the Aberdeen Hotel, which occurred three years ago?

**Hon E.J. CHARLTON replied:**

- (1)-(2) I am advised that is not correct. Deloitte had access to a number of sources for that information, and that was consistent with the information it had been given. The original owner has made an offer on the hotel, but no negotiations have taken place with that owner. The current manager acted as an agent for other interests in bidding for the hotel yesterday. That offer was not accepted by Main Roads, for the reasons I mentioned yesterday. There has been some criticism that the current manager has a conflict of interest in acting as an agent for some future owner. I totally reject that. The current manager has every right to act for a future owner, and is encouraged to bring together a number of people who may be interested in purchasing the hotel. If negotiations are successful and a sale is made at around the assessed figure of a little under \$4m, the Government will be between \$1.5 and \$2m better off than had it accepted the \$6m compensation which Main Roads would have had to pay if the owner had accepted the original proposal to pay compensation, as Main Roads must do for all other landowners in the area in the path of the tunnel.

#### PEAT RESOURCES OF AUSTRALIA PTY LTD - SOILS AIN'T SOILS *Soil Mulch and Stockpiling Facility, Johnson Road, Jandakot Proposal*

**320. Hon J.A. SCOTT to the Minister for the Environment:**

I refer the Minister to the proposal by Peat Resource-Soils Ain't Soils to run a soil mulch and stockpiling facility at lots 1 and 2 Johnson Road, Jandakot.

- (1) Is the site within a category 2 underground water pollution control area at Jandakot?
- (2) How close is the site to the production bores of the Jandakot ground water scheme?
- (3) Will any sludges, wet or dry, be used in this proposed operation?
- (4) If yes, what are the chemical contents of such sludge and what dangers does the sludge pose to the environment?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) Yes.
- (2) The eastern boundary of the site is approximately 100 metres from the production bore J140, and approximately 400 metres from production bores J130 and J150 respectively.
- (3)-(4) No.

#### NORTHBRIDGE TUNNEL - TENDERS FOR CONSTRUCTION

**321. Hon JOHN HALDEN to the Minister for Transport:**

In respect to the construction of the Northbridge tunnel -

- (1) How many tenders were received.
- (2) Was the successful tender the lowest tender?
- (3) What was the price of each tender submitted?
- (4) Were the tender details changed in any way after the tender documents were submitted; and if so, how and why?
- (5) Is there provision within the contract signed earlier this week for the tender price to be increased under any circumstances; and if so, what are the details of such provisions?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question.



- (1) Five joint venture groups registered interest in the project. Three groups were short-listed and asked to bid. Initially, expressions of interest were called for joint venturers and five applied. Three were asked to bid.
- (2)-(3) The lowest conforming bid of \$203.6m, which was negotiated to \$203.8m, was accepted. The other group submitted a range of bids all of which were higher than the accepted price. I have not given the member those bids as part of the undertaking in the tender process was that - apart from the successful bid - the price and specifications would not be made public because a number of confidentiality requirements on the engineering processes were intellectual property, and would remain with the tenderer until such time as an agreement was made for that to be publicised.
- (4) The requirements were varied at Main Roads' request to cover changes to meet service authority requirements. When evaluating the tenders a number of add-ons and take-offs had to be encompassed in the contract to meet those other service obligations outside the tunnel such as water, power and sewerage.
- (5) Yes; normal rise and fall on changes and variations required by Main Roads and items in the contract of a provisional nature.

**MINIMUM CONDITIONS OF EMPLOYMENT ACT - TRUCK ACT, REPEALED;  
PARTS RETAINED; COMMISSIONED AGENTS PROTECTION**

**322. Hon J.A. COWDELL to the Minister representing the Minister for Labour Relations:**

I refer to the public notice that appeared in *The West Australian* on 11 May 1996 regarding the repeal of the Truck Act. The notice states that most of the provisions of that Act are considered irrelevant to the modern employment relationship. Those parts of that Act which remain relevant have been updated and included into the Minimum Conditions of Employment Act 1993.

- (1) Are commission agents, such as real estate agents, excluded from any of the protections contained in the Minimum Conditions of Employment Act?
- (2) Did the Minister promise such agents an appropriate alternative form of protection if the protections contained in the Truck Act are repealed?
- (3) How does the Minister intend to honour his pledge to workers who are remunerated on the basis of commission?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1) No. Those provisions of the Truck Act 1989 that deal with unauthorised deductions from employee wages and payment of wages have been retained and incorporated into the Minimum Conditions of Employment Act.
- (2)-(3) Not applicable.

**NORTHBRIDGE TUNNEL - ENVIRONMENTAL ASSESSMENTS BY  
COMPANIES WHO TENDERED**

**323. Hon JOHN HALDEN to the Minister for Transport:**

Of those companies which tendered for the Northbridge tunnel -

- (1) How many conducted an environmental assessment?
- (2) Which companies were they?
- (3) Did Main Roads Western Australia receive a copy of any or all assessments made; and if so, which ones?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question.

- (1)-(3) Main Roads Western Australia obtained the environmental clearances. Each of the three short-listed groups submitted a draft environmental management plan. This was considered as part of the evaluation of their bid. The short-listed groups were Boulderstone Clough Joint Venture, Transfield Thiess Joint Venture and City Pass.

**PEAT RESOURCES OF AUSTRALIA PTY LTD - SOILS AIN'T SOILS  
Soil Mulch and Stockpiling Facility, Johnson Road, Jandakot Proposal**

**324. Hon J.A. SCOTT to the Minister for the Environment:**

I refer the Minister to the proposal by Peet Resources-Soils Ain't Soils to run a soil mulch and stockpiling facility on lots 1 and 2 Johnston Road, Jandakot.

- (1) How much sludge or other biosolids will be permitted on the site?
- (2) What dangers do such developments have for the ground water?

- (3) Are soil blending operations permitted within and on top of a declared underground water pollution control area?
- (4) Is this proposal in contravention of the recommendations and spirit of the report of the Select Committee on Metropolitan Development and Ground Water Supplies?
- (5) Will the Minister take action to prohibit this development and protect the ground water supplies?

**Hon PETER FOSS replied:**

I thank the member for some notice of this question.

- (1) No sludge or biosolids will be permitted on the site. That is the answer I gave to a similar question.
- (2) Although no sludge or biosolids will be used at the site, the proposal does involve the use and storage of wheat fines, green waste and bark. Leachate from these materials poses a potential ground water pollution risk as it is likely to fail guidelines for raw drinking water for colour and total organic carbon. If this leachate is allowed to contaminate the ground water resource, discolouration of the water may occur. This will result in increased treatment costs for the Water Corporation, which has production bores nearby, and also a decrease in the utility of ground water to private bore water users in the area. It is a peculiar thing that the colour of the water is one of the things which is most vigorously noted by consumers of water. In fact, it is one of the things that has the least effect on their health and the environment. The way in which it does affect the environment is that, to remove the discolouration, nasty chemicals must be used. It is those chemicals, rather than the discolouration of the water, which is of concern. I make the qualification that discolouration is not a health or environmental problem.
- (3) A differential approach to ground water quality protection is adopted in ground water pollution control areas to reflect the importance placed in protecting the quality of the ground water resource by the community. Lots 1 and 2 Johnston Road are classified for priority 2 source protection. Ground water resources in priority 2 areas are managed with the aim of no increase in the risk of ground water contamination. Within such areas the use and storage of biosolids would not be permitted.
- (4) The Select Committee on Metropolitan Development and Ground Water Supplies overwhelming concluded that the utmost importance should be placed on the protection of Perth's ground water resources. Although the proposal does not involve the storage of sludge or biosolids, the commission considers that the materials stored at the site could pose a threat to ground water resources if not adequately managed. For this reason, the proposal was referred to the Environmental Protection Authority and it has been assessed as a consultative environmental review. This level of assessment will ensure that ground water resource protection issues and community concerns are adequately considered.
- (5) The outcome of the consultative environmental review will determine whether this proposal is to proceed.

#### FISHERIES - KIMBERLEY DEMERSAL LINE INTERIM MANAGED

**325. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:**

- (1) How many boats registered in Darwin have been granted access to the northern demersal fishery?
- (2) Were these vessels granted access on the basis of verified catch history?
- (3) Were these vessels granted access on the basis of their stated fishing activity in the area during a given period?
- (4) Was a Department of Fisheries policy officer provided with detailed evidence purporting to show that some of the vessels were in fact in Darwin and not working in the fishery at the time in question?
- (5) Has the evidence been investigated?
- (6) If so, what was the outcome of the investigation?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question. I believe the member is actually referring to the Kimberley demersal line interim managed fishery.

- (1) I do not have home port registration details for all boats licensed for that fishery. However, the department is aware of five boats that use Darwin as a base while operating in the Kimberley fishery.
- (2) These vessels were granted access under the basis of statutory catch returns. Some verification of activity from independent sources was also sought.
- (3) Yes.

- (4) Verbal allegations were made that some of these vessels were not working in the fishery at the time in question.

Hon Kim Chance: Did you use the word "verbal"?

Hon E.J. CHARLTON: Yes. Requested written confirmation relating to those allegations has not been provided.

- (5)-(6) As no detailed evidence, as requested, was provided, no formal investigations were undertaken.

Hon Kim Chance: It was provided to the policy officer Joan Fowler three months ago in Darwin.

Hon E.J. CHARLTON: However, verification of the vessels' presence in the fishery was conducted by the department using Coastwatch data. This data verified their presence in the fishery during the relevant criteria period.

**BUILDERS REGISTRATION BOARD - RAWSON, GEORGE, DEREGISTERD  
BUILDER, ASSOCIATED WITH VCH GROUP KIT HOMES**

**326. Hon A.J.G. MacTIERNAN to the Minister representing the Minister for Fair Trading:**

- (1) Is the Builders Registration Board aware that Mr George Rawson, a deregistered builder who formerly operated the deregistered building company Kestral Homes, is now associated with a business known as the VCH Group, which is advertising kit homes for sale?
- (2) What steps has the Builders Registration Board taken to ensure that this business is not entering into contracts to construct such homes and therefore breaching the Builders' Registration Act?
- (3) Why has the Minister not answered question on notice 286?

**Hon MAX EVANS replied:**

I thank the member for some notice of this question.

- (1) Yes. The Act does not prohibit advertising kit homes for sale.
- (2) The board has notified all local authorities that Kestral Homes and George Rawson have had their registration cancelled.

Hon A.J.G. MacTernan: What about the VCH Group - that is the question?

Hon MAX EVANS: Consumers inquiring with the board will also be given this advice. It is unlawful for a local authority to issue a building licence to a person who is not a registered builder unless he is exempt from the requirements.

- (3) The response has been submitted.

**EDUCATION DEPARTMENT - SCHOOL CLEANING, BUDGET ALLOCATION**

1996-97

**327. Hon JOHN HALDEN to the Leader of the House representing the Minister for Education:**

What is the anticipated total budgetary allocation for school cleaning in the 1996-97 budget year?

**Hon N.F. MOORE replied:**

I thank the member for some notice of this question. The answer is \$34.3m.

**FISHERIES - KIMBERLEY DEMERSAL LINE INTERIM MANAGED**

**328. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:**

- (1) Have all successful applicants for interim entry into the northern demersal line fishery been able to show that they have submitted returns for catches that met the qualifying criteria?
- (2) If not, which applicants have been granted interim access without submitting returns which met the criteria?
- (3) On what grounds was access allowed if the applicant or applicants did not meet the established criteria?

**Hon E.J. CHARLTON replied:**

I thank the member for some notice of this question. The Minister for Fisheries has provided the following response -

- (1) If the member is referring to the Kimberley interim demersal line interim managed fishery, the answer is yes.
- (2) All applicants granted access by the executive director's delegate submitted statutory fishing returns as necessary. Three applicants who did not, in the opinion of the executive director's delegate, meet the entry criteria have subsequently had their appeals upheld by the objections tribunal established under part 14 of the Fish Resources Management Act.
- (3) A statement of reasons from the objections tribunal can be made available to the member on request.

FISHERIES - KIMBERLEY DEMERSAL LINE INTERIM MANAGED

329. Hon KIM CHANCE to the Minister representing the Minister for Fisheries:

- (1) Is it correct that minutes relating to a meeting of the northern demersal fishery were altered by an officer of the Fisheries Department?
- (2) If so -
  - (a) Has an internal investigation been conducted into the matter?
  - (b) What was the outcome of this investigation?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question. The Minister for Fisheries has provided the following response -

- (1) Draft minutes produced by a departmental officer were found to contain some inaccuracies and were corrected. The corrected minutes were endorsed by the working group at its subsequent meeting.
- (2)
  - (a) Yes.
  - (b) Recommendations concerning more transparent processes for the recording and distribution of minutes have been made. These are under consideration by the executive director.

NORTHBRIDGE TUNNEL - PRIVATE LAND AND PROPERTY ACQUISITIONS, COST

330. Hon JOHN HALDEN to the Minister for Transport:

- (1) What has been the cost to date of private land purchases associated with the construction of the Northbridge tunnel?
- (2) What is the anticipated total cost of private land purchases associated with the construction of the Northbridge tunnel?

Hon E.J. CHARLTON replied:

I thank the member for some notice of this question.

- (1)-(2) Since the project was announced, the estimated total cost of private land and property acquisitions is \$53m for the overall city northern bypass project. However, the net cost will be in order of \$35m as a result of surplus land and property from these purchases being sold. Obviously, that includes the area about which we have had some discussions.

Hon Peter Foss (Minister for the Environment) was granted leave to table a letter relating to question without notice 302.

[See paper No 309.]

*Point of Order*

Hon A.J.G. MacTIERNAN: I am a little confused and perhaps you could give me some advice, Mr President. In answer to a question asking why the Minister had not answered question on notice 286, I was told that the response had been submitted. We have been carefully looking each day to see the answer.

The PRESIDENT: Order! What is the point of order?

Hon A.J.G. MacTIERNAN: Is there some way in which we can find out whether an error has occurred in the recording of the answer to the question on notice?

The PRESIDENT: There is a method.

Hon A.J.G. MacTIERNAN: Could you give me some guidance on that?

The PRESIDENT: Ask a question on Tuesday.