WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE ASSEMBLY

Thursday, 26 November 1998

Legislative Assembly

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THE SPEAKER (Mr Strickland) took the Chair at 10.00 am, and read prayers.

EGG PRODUCTION, BATTERY CAGE SYSTEM

Petition

MS WARNOCK (Perth) [10.03 am]: I present the following petition -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned petitioners strongly urge all Members to support the following recommendations:
>
> . that the battery cage system of egg production is inherently cruel;
>
> . that the citizens of any jurisdiction have the right to demand a standard of animal welfare consistent with their collective conscience;
>
> . That the ACT Animal Welfare Amendment Act 1997 and the ACT Food Amendment Act 1997 are consistent with High Court precedents relating to section 92 of the Australian Constitution and other exemptions under the Mutual Recognition Act 1992 (Commonwealth).
>
> Inclusion of subsection 24A(1) and 24B of the ACT Food Amendment Act 1997 in the Schedules to the Mutual Recognition Act 1992 (Commonwealth) will allow the phase out of battery cages and of the sale of battery eggs to the citizens of the ACT to commence, as agreed by the ACT's elected Parliament.
>
> Your petitioners therefore humbly pray that the Western Australian Government agree to inclusion of subsection 24A(1) and 24B of the ACT Food Amendment Act 1997 in the schedules to the Mutual Recognition Act 1992 (Commonwealth) and your petitioners, as in duty bound, will ever pray.

The petition bears 1 000 signatures, and I certify that to my understanding and belief, it follows the proper regulations for such petitions in Western Australia.

The SPEAKER: It seems to be very qualified! I direct that the petition be brought to the Table of the House.

[See petition No 86.]

SELECT COMMITTEE ON CRIME PREVENTION

Report

MR NICHOLLS (Mandurah) [10.04 am]: I present for tabling a discussion paper from the Select Committee on Crime Prevention, entitled "Making Western Australia Safer - Have Your Say". I move -

> That the report be printed.

The House has set the Select Committee on Crime Prevention the considerable task of looking at the factors that influence crime; looking at programs and services that can prevent offending from occurring in the first place and that deal with offending once it has occurred; and, of course, providing information to the wider community. This discussion paper provides an opportunity for the Western Australian public to have its say about what this Parliament can and will do to prevent crime in the future. In my view, the Western Australian public has been looking for direction from this Parliament on ways of preventing or reducing crime, and I hope that members of the public will take an active interest in this discussion paper and also take the opportunity of contributing their thoughts about their local community.

Crime prevention has traditionally been concerned with prisons and police in Western Australia. Worldwide research over many years has identified factors that can increase or potentially affect a person's ability to live in our society, and that in so doing can affect the attitudes and behaviour of those citizens which can lead to offending. A person who is exposed to these factors can take the opportunity to participate in that illegal or antisocial behaviour, or the community can take the opportunity at various stages in that person's life to intervene or provide supports that may reduce or prevent that offending.

When the committee looked at the wide-ranging and quite substantial research, it became obvious that there is no single solution. My view, and I believe the view of the committee, is that the debate that has been taking place in Western Australia for some time has largely focused on what we do after an offence has occurred: How we catch the criminal; how we deal with the victim of the crime; and how we try to satisfy the public's demand that the criminal be punished. My view, and the

view of the committee, is that we should widen our perspective and look at the ways in which we can prevent the offending from occurring in the first place. Encouraging public debate starts with providing the community with well researched information so that it can consider the options rather than simply react to the limited information that is provided by various people through various forms of the media.

I would like to think that this discussion paper will provide an easy-to-read and well researched information base to which the general public can respond and in turn widen the debate in our community to more than simply a debate on punishment. I suggest all members of Parliament encourage their electors to participate in the debate. A copy of the discussion paper will be provided to every member's electorate office. I hope that when their constituents seek information, they will provide them with photocopies and encourage them to respond. I thank the members of the committee for their work. Although our work has not finished, this discussion paper is a substantial part of it. I also thank staff members Tamara Fischer, Robert Kennedy and Kathy Csaba for their strong support, the long hours they worked and the assistance they gave members.

I understand that each member of the committee will speak briefly to this report. I hope it will have the support of all members and will actively encourage a wider debate in our community.

MRS van de KLASHORST (Swan Hills - Parliamentary Secretary) [10.11 am]: I also support this discussion paper. The paper is divided into three sections on factors affecting criminal behaviour. The committee concentrated on making sure everything written in the paper was based on empirical and quality research. It is not based on figures plucked out of the air; we made sure we could substantiate the facts and the information. It covers such things as the effect of parenting skills on a child's predisposition to committing crime, family structure and size, marital conflict and how other family characteristics lead to the propensity to commit crime.

It also covers schools and socioeconomic factors and indicates that people from poor families have a greater chance of becoming criminals than other people, and it considers child behavioural problems. At page 17 the paper refers to the fact that although antisocial behaviour in children is not classified as criminal, research indicates it increases risk factors for young people and that biological and environmental factors are critical.

Ms MacTiernan: Did you say a biological factor?

Mrs van de Klashorst: As I said, the paper refers to both environmental and biological factors being critical.

Ms MacTiernan: That is extraordinary.

Mrs van de KLASHORST: It refers to the influence of television, media, alcohol and drugs on our community. At page 21 it demonstrates that one study of alcohol-related offenders identified that chronic offenders are largely aged 14 to 29, single males, unemployed and evenly distributed between capital and non-capital cities. The paper goes into a fair amount of detail in that area. It then addresses crime in Western Australia. I refer to the section on motor vehicle thefts at page 32. It is interesting to note that, despite our perceptions, the number of motor vehicle thefts per 100 000 population has been declining since 1994-95. That is not generally known in the community. Another section of the paper discusses race in relation to crime. It is of concern that Aboriginal people are over-represented in our justice system. The paper refers to some of the steps we can take to deal with that.

The committee examined the responses to crime and the cost of it, which is horrendous. For instance, at page 47 it is recorded that state government agencies spent $40m in 1997-98 on dealing with the consequences of criminal acts within government agencies and protecting government assets. It was estimated that in 1996 the amount of $18b was spent Australia-wide on fighting crime.

This document is to be circulated among the public to address ways of putting programs in place based on evidence rather than just hype in the media and in the community and uninformed decision making. Decision making and money spent on crime prevention programs must be based on sound information. I strongly recommend members read the paper which I intend to circulate widely among my electorate and to each member.

MR BARRON-SULLIVAN (Mitchell) [10.15 am]: Although, as the chairman of the committee explained, this report did not set out to make any definitive conclusions and is the first step towards encouraging a widespread debate within the community of the options that can be taken to improve crime prevention, even at this stage we can make some conclusions from the information provided in the report. Clearly, the report provides a firm distinction between that which people see as traditional crime prevention measures such as imprisonment, greater law enforcement powers and resourcing for the police, versus that which people are beginning to see as more innovative, grassroots crime prevention programs to prevent problems arising in the first place. However, something people do not consider - the report touches on this - is that both aspects can be considered. We do not have to be advocates of either grassroots crime prevention or tougher sentencing; they are not mutually exclusive. We can consider the range of policy initiatives to combat the overall problem.

One of the most succinct conclusions from this report is the fact that it very much highlights the fear of crime. The member for Swan Hills touched on it in relation to vehicle theft. People in the community would no doubt say that they perceive vehicle theft as a serious problem. However, it is evident from the report that they are probably talking about their fear of

crime as much as the actual crime statistics. I refer to the information on burglaries in this report and have gone one step further and extrapolated from the information a slightly longer term trend. It is fascinating to note that this report refers to a study which concluded that the single issue perceived by the community to be the main problem by far ahead of any other is burglary. In fact, 32 per cent of respondents said that was the issue of main concern to them. The next category of dangerous driving concerned 6.5 per cent of respondents; vandalism, 4.6 per cent; through to minor assaults, 0.01 per cent. Burglary was the first problem in people's minds; yet the trend in the number of burglary offences is downwards. In 1994-95, more than 3 500 burglary offences were reported for every 100 000 people. That had reduced to a little more than 3 250 by 1997-98.

I went one step further and used the source from the report so that I could compare apples with apples and examine what happened in the 1980s. During the 1980s the burglary statistics blew out to 81 per cent.

Mrs van de Klashorst interjected.

Mr BARRON-SULLIVAN: I will not get political in this speech. I am making this point to demonstrate the importance of this report. There was a very firm trend upwards in the 1980s, and the trend is now downwards, yet the perception still exists. That obviously raises a number of questions. The point I make is that this report - and the figures I have used illustrate this point - demonstrates there is a need for all members of Parliament on both sides of the divide to take an honest look at the problem. In my opinion this is the most significant community issue, and it will not be resolved by rhetoric or political point scoring. This is a very positive document and it is an opportunity for a turning point in the debate on crime prevention. It is an opportunity to put politics aside. A motion moved in this House last night was very much politically divided. This is an opportunity to recognise that to tackle crime and the fear of crime, a partnership is needed of both sides of this Parliament. A parliamentary committee is already involved and the Government is already acting in a number of respects. The Opposition parties, the Independents, and the community must also be involved.

I add my thanks to the chairman who has worked extremely hard to get this initiative under way. Much work is yet to be done. I thank the other members of the committee; it has been a very constructive committee on which to be a member and it has not been dogged by anything other than the best interests of the community and the need to tackle the heart of the problem. I thank very much the staff of the committee who have been a tremendous resource and of much assistance.

Question put and passed.

[See paper No 472.]

AUSTRALIAN NATIONAL TRAINING AUTHORITY AWARDS

Statement by Minister for Employment and Training

MR KIERATH (Riverton - Minister for Employment and Training) [10.22 am]: I want to tell the House about a home-grown success story that is reaping international acclaim and jobs for young Western Australians. I recently presented prizes at the Australian National Training Authority 1998 Australian Training Awards, which recognise best practice, excellence and outstanding achievement in vocational education and training.

The national Employer of the Year award went to Austal Ships Pty Ltd in Henderson. Since starting operations 10 years ago, Austal's work force has grown from 40 to more than 1 100 employees. It has trained more than 130 apprentices, and its 1999 intake will mean that more than 200 of its total work force will be in accredited training programs. Austal Ships exports all over the world and has some of its high-speed aluminium ferries and vehicle transport ships in operation in China, throughout Asia, in Poland, Sweden, Turkey, Tahiti and New Caledonia. For the first time in eight years Austal Ships has won a domestic contract with the Australian Customs Service, and in January will launch the first of eight patrol boats to be employed off our shores. Austal's managing director John Rothwell told me at the ANTA awards that his company has been concentrating on training its people because that was the best way for the company to grow and to continue as a world-leading shipbuilder. Austal has set up a training partnership with TAFE colleges to help meet its own need for skilled tradespeople.

I am pleased to also inform the House that the West Coast College of TAFE was awarded the Training Provider of the Year award by ANTA. The award was based on the college's best practice in flexible learning, International Standards Organisation accreditation, partnerships with Kmart and Newmart shopping centres, work with clients in Hong Kong and Malaysia and the running of a virtual company called the Practice Firm at its Joondalup campus. Student demand for this innovative college has far outstripped expectations and, from its humble beginnings back in 1982, currently more than 400 students are enrolled. Continuous enrolment and assessment on demand are features of the Joondalup campus not available under other institutions. A flexible approach to learning that was part of the college's award gives students access six days a week, 12 hours a day, 52 weeks of the year.

Austal Ships and West Coast College are perfect examples of the new training systems and ethos that are now part of the way this Government looks upon training and vocational education. I encourage Western Australian companies to take

Austal's lead and use our TAFE training system to help create more jobs for Western Australians, give them essential skills and show the rest of Australia why we continue to lead the country.

ARMADALE HEALTH SERVICE REDEVELOPMENT PROJECT

Statement by Minister for Health

MR DAY (Darling Range - Minister for Health) [10.25 am]: The Armadale Health Service redevelopment project has been a significant government initiative to improve the level of health service delivery to the people in the south eastern metropolitan area and its surrounds. The Government is committed to the establishment of comprehensive health services and facilities in that area. Due to constantly increasing demand within the health system flowing from new technology, increasing population, ageing population and a continued decline in private health insurance, it is imperative that a range of options for service delivery be explored. As a way of delivering the increased services at Armadale, the Government is undertaking a process to determine whether the private sector can deliver the required services and facilities in a way that offers a benefit to the community. At this stage this process has yet to be completed.

Recently the requests for proposal were submitted and there is now a process of evaluation of those submissions to determine whether the private sector should be involved either in whole or in part in the delivery of these services. It is expected that this will take several weeks to complete. There has been speculation about what the Government required in the request for proposal documentation. I will table the request for proposal documentation so that it can become part of the public record.

I advise that the requests for proposal were structured in such a way as to assist and guide proponents towards providing a quality response. To that end, the document indicated preferred options on which submissions were to be made. These, however, do not lock the Government into any given outcome and the flexibility remains to adjust the requirements to obtain the best possible outcome for the people of the Armadale region. If the proposals do not offer a benefit to the community, then there remains a commitment to establish comprehensive and enhanced services and facilities via more traditional procurement methods, such as through direct government provision. The process being followed is similar to that which has resulted in new hospitals being established in the Joondalup and Peel regions.

[See papers Nos 474A and 474B.]

SELECT COMMITTEE ON CRIME PREVENTION

Extension of Time

On motion by Mr Barnett (Leader of the House), resolved -

> That the date for presentation of the final report of the Select Committee on Crime Prevention be extended to 30 April 1999.

ADOPTION AMENDMENT BILL

Second Reading

MRS PARKER (Ballajura - Minister for Family and Children's Services) [10.28 am]: I move -

> That the Bill be now read a second time.

This Bill is to amend the Adoption Act 1994 to achieve two objectives. One objective is to give effect, through Western Australian legislation, to the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption; and the other objective is to provide for the recognition of adoptions under bilateral agreements with prescribed overseas jurisdictions.

At the outset I thank the Opposition for its offer of bipartisan support for this Bill. Adoption has touched the lives of many thousands of people in Western Australia. Since 1896, when the first adoption legislation was passed in Western Australia, the state adoption laws have tried to reflect the social thinking of the times and have sought to balance and protect the rights of those affected by adoption. The last century has seen many changes to community attitudes and practices in adoption. In particular, recent decades have witnessed a worldwide growth in intercountry adoption. In the financial year 1997-1998, intercountry adoption accounted for approximately 70 per cent of unrelated children adopted in Western Australia. Children adopted from overseas need special care and protection so that they are not exploited and their rights are not abused. Unfortunately there is potential for abuse with intercountry adoption.

I had discussions with the shadow spokesperson for Family and Children's Services on this Bill, and the prevention of trafficking and sale of children is a high priority for not only the international community, but also this Government and the Opposition. Extreme poverty and child abandonment in third world countries, together with an increasing demand from couples in western developed countries wanting to adopt, has created an environment in which exploitation, trafficking and sale of children can flourish.

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption is an internationally agreed mechanism to protect the best interests of children who are unable to either remain within their biological families or find a substitute family in their country of birth. In 1988, at the sixteenth session of the Hague Conference on Private International Law, a proposal was accepted to develop a Hague convention on the issue of intercountry adoption.

The Hague conference established a special commission to undertake the preliminary work. The special commission sat in sessions in 1990, 1991, 1992 and 1993. Australia was actively involved in this process and had a high profile in international discussions to develop the convention. Western Australia, and other States and Territories of Australia, had input into the development of the convention through the Australian delegation, which included a representative appointed by the Council of Social Welfare Ministers of Australia, of which Western Australia is a member.

The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption was finalised on 29 May 1993 and entered into force on 1 May 1995 after being ratified by three countries. All States and Territories have been negotiating for some time with the Commonwealth Government to develop and agree on the infrastructure required for Australia to be in a position to ratify the convention. In July 1997, the Council of Community Services Ministers agreed that the Commonwealth ratify the convention and implement it by way of regulations to the commonwealth Family Law Act 1975 with the inclusion of a savings provision allowing States and Territories to implement the convention by state law.

The Commonwealth Government of Australia lodged the instrument of ratification in the Netherlands on 25 August 1998. This means that the convention will enter into force for Australia on 1 December 1998. The commonwealth Family Law (Hague Convention on Intercountry Adoption) Regulations 1998, which implements the convention under commonwealth law, will also enter into force on the same day.

Ideally this Western Australian Bill would also come into force on 1 December 1998 so as to preserve and continue Western Australian legislative responsibility for adoptions. If this deadline is not met, commonwealth law will apply to intercountry adoptions under the Hague convention while state law and process will apply to all other intercountry adoptions as well as local adoptions.

Prior to ratification of the convention, the Commonwealth Parliamentary Joint Standing Committee on Treaties scrutinised the convention and completed a national impact analysis which included seeking the views of State and Territory Governments, non-government organisations and other interested groups.

The Western Australian Government contributed to the consultation process by distributing draft documents to organisations considered to be interested in intercountry adoption. In addition, a newspaper advertisement advised of the availability of documents and invited comment. In Western Australia, written submissions were received from 10 groups, six of which had a direct interest in adoption. The vast majority of submissions supported ratification of the convention.

The convention is important for Australia because it establishes legally binding standards and safeguards to be observed by all convention countries which participate in intercountry adoption. The convention has the objective of establishing international procedures, standards and cooperative mechanisms between government authorities to safeguard the interests of children who are the subject of intercountry adoption. These safeguards include agreed minimum standards and uniform procedures to regulate intercountry adoptions with the intention of eliminating the abduction and sale of, and trafficking in, children.

The Bill does not include any provision for a review of the operations of this Bill. In my discussions with the member for Kalgoorlie I have agreed to monitor the impact of the legislation on how it achieves best practice in this area. Two countries are involved in any intercountry adoption arrangement. One country acts as the donor or sending country. This is the country in which the child is born or habitually resident. The other country is the receiving country in which the prospective adoptive parents are habitually resident. The convention places obligations on both the sending country and the receiving country. The obligations on the sending country include -

establishing that the child is legally available for adoption;

determining that the child cannot be placed in the country of origin;

determining that intercountry adoption is in the child's best interests;

counselling birth parents about the effect of adoption and the consequence of terminating the legal parent-child relationship;

ensuring that the consent of the mother has been given only after the birth of the child;

where appropriate, ensuring that the child has been counselled and has given age appropriate consent;

ensuring that consideration has been given to the child's wishes and opinions; and

ensuring that there are no unauthorised payments or compensation of any kind.

Obligations on the receiving country include -

determining that the prospective adoptive parents are eligible and suitable to adopt;

ensuring that prospective adoptive parents have been prepared for adoption; and

determining that the child will be authorised to reside permanently in the receiving country.

In order to implement the convention, signatory countries are required to create central authorities. In federal countries, such as Australia, it is possible for individual States within a federal country to also become central authorities under the convention. This will be the situation in Australia. The Commonwealth Government will be the central authority for Australia. Each State and Territory Government will be a state central authority responsible for administering the convention in its own jurisdictions.

The Bill before the House today appoints the Minister for Family and Children's Services as the state central authority for Western Australia. Adoption of children in Australia has always been governed by state rather than commonwealth law. As outlined earlier, the commonwealth regulations contain a savings provision which allows States and Territories to implement the convention by state law.

I reiterate that this Bill aims to implement the convention by Western Australian law. The aim is to preserve the continuation of Western Australian legislative rights and authority in relation to adoption matters.

In February 1998, Western Australia and all other States and Territories, and the Commonwealth signed a commonwealth-state agreement relating to implementation of the convention in Australia. An objective of the agreement is to ensure that existing state legislation and administrative procedures relating to adoption comply with the obligations of the convention.

I would like to confirm that with the passing of this Bill, together with existing administrative procedures and provisions in our Adoption Act, Western Australia complies with the obligations of the convention. Under the commonwealth-state agreement, Western Australia retains responsibility for -

adoption policy;

providing information to prospective parents;

educating prospective adoptive parents about the requirements of the convention;

assessing the suitability of prospective adoptive parents;

preparing a file on the prospective parents and other documentation for the authorities in the overseas convention country; and

placement issues associated with allocation of a child.

The role of the Commonwealth Government will be to facilitate cooperation between authorities in Australia and other convention countries. Any issues which affect the implementation, administration or operation of the convention will be resolved through consultation between the Commonwealth and the States.

The convention requires that adoptions made under the laws of other convention countries be recognised under Australian law. Consistent with these requirements, the Bill allows for the automatic recognition of a legal parent-child relationship between the child and the child's adoptive parents. Also consistent with the convention, the Bill permits a contracting convention country to refuse recognition of a convention adoption if the adoption is manifestly contrary to public policy, taking into account the best interests of the child to whom the adoption relates.

It is important to emphasise that the Bill has been drafted in a way that is compatible with existing provisions of the current Adoption Act. For example, the eligibility criteria for prospective adoptive parents will be the same regardless of whether applicants are applying for a convention intercountry adoption, a non-convention intercountry adoption or a local child adoption. Under the convention, a child in any convention country can be adopted by applicants who are habitually resident in another convention country, subject to the approval of both the sending country and the receiving country and subject to the adoption being made in accordance with the convention.

Consistent with the requirements of the convention, the Bill allows for the adoption of a child from a convention country to live in Western Australia as well as the adoption of a child from Western Australia to live in another convention country. However, Australia is not considered to be a sending country. As the obligations of a sending country include obtaining appropriate consent from birth parents and establishing that a child cannot be placed with a substitute family within their country of origin, it is difficult to foresee any circumstance whereby Western Australia could satisfy the requirements of becoming a sending country.

It would be extremely difficult to prove that intercountry adoption was in the best interests of a child relinquished in Western

Australia for adoption. In addition, as a matter of policy and practice, this Government will not consent to a child in Western Australia being adopted in an overseas convention country except in very rare and exceptional circumstances and only when it can be clearly established that such an adoption would be the best option for the child.

It should be noted that current bilateral intercountry adoption programs with non-convention countries will continue as previously. However, the commonwealth-state agreement requires that where a country with an existing bilateral agreement with Australian States does not become a party to the convention within three years from the date of Australia's ratification of the convention, the bilateral agreement is to be renegotiated by the Commonwealth, in conjunction with the States, to obtain conformity with the provisions of the convention. Any new, future agreement with a non-convention country must also be developed to ensure compatibility with provisions of the convention. Western Australia has current programs with three convention countries - the Philippines, Romania and Sri Lanka, although no children have been adopted from Sri Lanka in recent years. From 1 December 1998, when the convention comes into force in Australia, these programs will operate under the convention. The convention also allows for the accreditation of non-government bodies to undertake intercountry adoption services on behalf of central authorities. In Australia, the accreditation of non-government bodies will be undertaken by the central authority in the respective State and Territory, as will decisions on what duties any accredited bodies might carry out under the convention. This is in accordance with the long-standing responsibility of States and Territories for adoption matters.

In order to determine whether a non-government body should be accredited to undertake intercountry adoptions under the convention, accreditation criteria have been developed as a joint exercise by States and Territories. The accreditation criteria are included as a schedule to the commonwealth-state agreement. The criteria will ensure that uniform standards and guidelines are applied throughout Australia for the selection and regulation of non-government bodies which engage in intercountry adoption under the convention. The Bill provides for regulations to be made regarding accreditation criteria and a code of conduct for non-government bodies to undertake intercountry adoptions in accordance with the convention.

I will now speak about the other part of the Bill which relates to the recognition of adoptions under bilateral agreements with prescribed overseas jurisdictions. For several years, the Victorian Department of Human Services, on behalf of all States and Territories, has been negotiating an intercountry adoption agreement with the People's Republic of China. These negotiation have been occurring outside The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption as China has not signed or ratified the convention. A working adoption agreement with China has been drafted. It forms the basis of an arrangement between China and the Australian state and territory community services ministers for the processing of adoption applications of children from China by Australian citizens. The guiding principles in the agreement with China has similarities with the objectives of The Hague convention. The agreement stipulates that the welfare and best interests of the child shall be regarded as the paramount consideration. In addition, intercountry adoption may be considered as an alternative placement for a child only if the child cannot be placed with foster parents or a local adoptive family in the child's country of origin. Included in the agreement are eligibility criteria for adoptive applicants, documentation requirements, child allocation procedures, travel arrangements, fees and post-placement requirements. Currently, because of commonwealth controls over immigration, children entering Australia for adoption do so under the commonwealth Immigration (Guardianship of Children) Act 1946, even though in many cases, some form of adoption order has usually been granted in the overseas country prior to the child arriving in Australia.

For children coming to Western Australia, guardianship of the child is delegated from the commonwealth Minister for Immigration and Multicultural Affairs to the state Director General of Family and Children's services. Guardianship is only transferred to the adoptive parents on the granting of a Western Australian adoption order which normally occurs approximately 12 months after the child has arrived in the State. A similar process occurs in other States. Chinese authorities consider this type of arrangement to be unsatisfactory and they want a greater degree of legal certainty regarding the status of the adopted child in Australia. There is currently no consistent mechanism across the States and Territories which allows for automatic recognition of foreign adoption orders. Implementation of The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption will allow automatic recognition of adoptions from convention countries. However, as indicated earlier, China is not a party to that convention.

The Council of Community Services Ministers has agreed that Australian laws should make provision for adoptions made pursuant to bilateral agreements to include automatic recognition in Australia of those adoptions. Commonwealth regulations for bilateral intercountry adoption arrangements with prescribed overseas jurisdictions have been developed following an amendment to the commonwealth Family Law Act 1975. These commonwealth regulations enable automatic recognition of overseas adoptions with prescribed overseas jurisdictions. China is identified as a prescribed overseas jurisdiction under the commonwealth regulations.

As in The Hague convention implementation process, the commonwealth regulations contain a savings provision enabling the implementation of bilateral intercountry adoption agreements with prescribed overseas jurisdictions, by state rather than commonwealth law. As with The Hague convention process, States and Territories have signed a commonwealth-state agreement regarding the implementation of bilateral intercountry adoption arrangements with prescribed overseas jurisdictions. The objective of this agreement is to provide, in conjunction with relevant commonwealth legislation and

relevant state legislation and practices, a cooperative scheme for the automatic recognition in Australian law of adoption orders made by competent authorities in an overseas jurisdiction. Such a scheme will provide a suitable mechanism to cover those countries which are not parties to The Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The commonwealth regulations do not apply to a State which has an overseas jurisdiction adoption law which has comparable effect to the commonwealth regulations.

The Bill enables implementation of bilateral intercountry adoption arrangements with prescribed overseas jurisdictions by Western Australian law, thus ensuring continuity of our state law and rights in relation to all adoption matters. The Bill provides for automatic recognition of adoption orders made under the law of a prescribed overseas jurisdiction. Following the passing of this Bill, Western Australian regulations will prescribe the People's Republic of China as an overseas jurisdiction.

In conclusion, I emphasise that intercountry adoption is a worldwide practice which results in complex legal issues and human rights. The overriding principle at all times must be that the best interests of the child are paramount. I reiterate that this Bill will provide appropriate safeguards and opportunities for those children for whom intercountry adoption is the only means of finding a family. At the same time, the Bill ensures the continuity of state law and rights in relation to adoption matters. I commend the Bill to the House.

Debate adjourned, on motion by Ms Anwyl.

NATIVE TITLE (STATE PROVISIONS) BILL

Committee

Resumed from 25 November. The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Court (Premier) in charge of the Bill.

Progress was reported after clause 5.42 had been agreed to.

Clause 6.1: Commission to determine compensation for certain acts -

Mr COURT: I move -

Page 81, lines 12 and 13 - To delete the lines and substitute the following -

(3) The principles set out in Division 2 apply to a

This Bill refers to compensation procedures that must be implemented according to sections 49 and 51 of the Native Title Act. Instead of saying that they must be implemented under the federal Act, these amendments write that procedure into this legislation. Again, the Government believes it is unnecessary because it will provide that the compensation procedures must be implemented under the arrangements outlined in sections 49 and 51.

The Opposition does not have any amendments because, as I understand it, it agrees with the compensation procedures. This amendment simply spells that out separately in this legislation.

Mr RIPPER: The Premier is correct in saying that the Opposition does not have any amendments to the compensation procedures. Members on this side have not had an opportunity to study this area of the Bill because of the pressure of business. The Bill has come on for debate at relatively short notice and it is complex. In all of our discussions, people have not raised concerns about the way in which the compensation provisions of this Bill are designed, neither have they raised concerns about the amendments on the Notice Paper. However, it is at least possible that when the Bill goes to the upper House, some concerns might be raised about these provisions. By the time the Bill goes to the other place, members of the Opposition may have had an opportunity to examine these provisions more closely than has been possible so far. The Opposition does not propose to debate this issue at this time. However, if on closer analysis there is deemed to be a need to go further, that will be done in the upper House.

This appears to be yet another example of the Government's being forced to amend its own Bill as a result of pressure from commonwealth officials. I would like the Premier to confirm that the amendment is being moved as a result of debate with commonwealth officials up to the last minute.

Mr COURT: I have explained that what we are inserting is exactly the same. Our Bill provides that we must implement the compensation procedures under these arrangements. It is pedantic and it does not change the operations in any way.

Mr Ripper: The Commonwealth wanted this inserted.

Mr COURT: Yes. Some provisions in the commonwealth Act apply only to the Commonwealth and cannot apply to the State.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 6.2 put and passed.

New clauses 6.3 - 6.6 -

Mr COURT: I move -

Page 82, after line 20 - To insert the following new clauses -

Division 2 - Principles to be applied in the determination of compensation

6.3. No multiple compensation for essentially same act

Compensation under this Part -

(a) is only payable once for acts that are essentially the same; and

(b) is to be determined taking into account any compensation awarded under another written law, or the NTA, for essentially the same act.

6.4 Compensation where similar compensable interest test satisfied

If the similar compensable interest test under section 240 of the NTA is satisfied in relation to an act, the Commission in determining compensation for the act under this Part must, subject to sections 6.5 and 6.6, apply any principles or criteria for determining compensation set out in the law mentioned in that section.

6.5 Compensation to be monetary

Subject to section 6.6, compensation may only consist of the payment of money.

6.6 Requests for non-monetary compensation

(1) If the person claiming to be entitled to the compensation under this Part requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the Commission -

(a) must consider the request; and

(b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to give the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation.

(2) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person claiming to be entitled to the compensation may request the Commission to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

(3) If the person does transfer the property or provide the goods or services in accordance with the recommendation -

(a) the transfer of the property or provision of the goods or services constitutes full compensation for the act; and

(b) the entitlement to it is taken to have been determined in accordance with the provisions of this Part.

New clauses put and passed.

Clause 6.3 put and passed.

Clause 6.4: How amounts held in trust to be dealt with -

Mr RIPPER: There are circumstances in which it would appear people may lose compensation that they previously would have expected. How will those provisions work and how might people lose compensation to which they had previously thought they were entitled?

Mr COURT: The money is held in trust. If a determination is made and it is found that they are not native title holders, the money is returned. That is fair. If money is being held in trust and the determination is favourable, the claimants get the money, otherwise it is returned.

Clause put and passed.

Clauses 6.5 to 6.11 put and passed.

Clause 7.1: Establishment of Commission -

Mr COURT: This clause relates to the question of the independence of the operation. I understand the Opposition wants the commission to be independent and to report to the Parliament, similar to the Commissioner for Public Sector Standards, the Auditor General or the Ombudsman. The Government has carefully considered the Opposition's amendments. Under this amendment, the position of the person in charge of the commission is equivalent to one within the senior executive service. The Deputy Leader of the Opposition has been critical, saying that senior people can be shifted around without having to obtain the approval of the Government. In summary, under this amendment, we are proposing that the position of the head of the commission is not within the senior executive service, rather, the appointment must be by the Governor; in other words, the position will be that of a chief executive officer. It is basically the same structure as exists for the National Native Title Tribunal where the chief executive officer reports to the Attorney General at the end of the day. That is the chain of command. Under the amendment the head of the commission will be the equivalent of a chief executive officer, with any changes to the position having to be made by the Governor. It mirrors the structure of the National Native Title Tribunal. We accept what those opposite are saying they want - that is, more independence for the body - and the proposed chain of command and structure will mirror that in the federal legislation. Those opposite want to go further so that the position is equivalent to that of an Auditor General. We do not support that, and that will be the nature of the debate on this part of the Bill.

Mr RIPPER: We will debate the issues as we go along. The Premier is right in saying that the Opposition is trying to enhance the status and independence of the Native Title Commission. To the extent the Government has moved somewhat in our direction, we appreciate its response to our proposed amendments; however, that is not to say that on occasion we will not proceed with our amendments. Our fear about the structure set up by the Government is that the Native Title Commission will be, as I have said before, a politico-administrative unit of the Ministry of the Premier and Cabinet, rather than the independent commission we think it should be. Essentially we would like to see decisions on native title matters being made in a judicial, rather than a political, manner. Through our proposed amendments, we are seeking more accountability, status and independence for the Native Title Commission. With our proposed amendments we will seek to insulate the Native Title Commission as far as possible from the sorts of political pressures that might apply to it, were it to be just another unit in the state public sector.

Clause put and passed.

Clause 7.2 put and passed.

Clause 7.3: Some particular requirements to be observed -

Mr COURT: I move -

Page 88, after line 10 - To add the following -

(3) Subsections (1) and (2) apply also to the Executive Director -

(a) in the performance of any functions and the exercise of any powers vested in him or her under section 207B of the NTA; and

(b) in the performance of any function that may be delegated to him or her under section 199F of the NTA.

Page 88, lines 16 to 18 - To delete "cooperative scheme between the Commonwealth, States and Territories" and substitute the following -

agreement between the Native Title Registrar and the Executive Director

In undertaking any functions under the Native Title Act, these amendments require the executive director to perform those tasks fairly, justly and expeditiously and in an informal and accessible manner. They also allow the executive director to take into account the cultural and customary concerns of Aboriginal people. These amendments more clearly specify the type of agreement which may operate between the State and the Commonwealth in the keeping of registers. I reiterate: These responsibilities already apply to the commission. With these amendments, we are also saying that they apply to the executive director when taking into account the cultural and customary concerns of the Aboriginal people.

Mr RIPPER: The Opposition is happy to support these amendments. Naturally requirements on the commission to perform the functions fairly, justly and expeditiously and to make the procedures informal and accessible should apply to the executive director. That is my understanding of the intent of the amendments.

Mr Court: They basically say that those responsibilities are already on the commission, but they must also apply to the executive director. We think it is said already, but it is being said twice.

Mr RIPPER: Once again, the faceless officials in Canberra are providing amendments to this Chamber, via the Government. It would be difficult to argue that the executive director should not behave fairly, justly and expeditiously. I am happy to support the amendments moved by the Premier.

Amendments put and passed.

Clause, as amended, put and passed.

New clauses 7.4 and 7.5

Mr RIPPER: I move -

Page 88, after line 19 - To insert the following new clauses -

7.4. Commission not bound by technicalities etc.

The Commission, in carrying out its functions, is not bound by technicalities, legal forms or rules of evidence.

7.5. Public consultation on directions for procedure

(1) Subject to this section, the Commission may issue directions as to the procedures to be followed in respect of the performance of its functions.

(2) Before issuing any direction under subsection (1), the Chief Commissioner must -

(a) cause a draft of the procedure or procedures to be publicly exhibited for a period of at least 2 months in such manner as may be prescribed by the regulations; and

(b) consider any written submissions made within the specified public exhibition period in relation to the draft procedure.

(3) The Chief Commissioner need not comply with the requirement of subsection (2) where -

(a) the Chief Commissioner certifies that, in the Chief Commissioner's opinion, it is necessary for the direction to be made expeditiously; and

(b) a copy of the Chief Commissioner's certificate is published in the *Government Gazette* along with the direction.

(4) Where a direction is made in reliance on subsection (3), the Chief Commissioner must consider any written submissions concerning that direction that are made to him or her within 2 months after the date of the publication of the direction in the *Government Gazette*.

(5) Any procedures adopted by the Commission are to be applied by the Commission as guidelines only.

(6) In making any direction under this section the Commission must have regard to the procedures adopted for the time being by the National Native Title Tribunal.

The purpose of proposed new clause 7.4 is to ensure that the Native Title Commission can work with the minimum of formality. If the commission operates in a way which is overly legalistic or bureaucratic, that will be to the disadvantage of native title parties. It will involve all parties in additional expense in legal advice that will be required and legal time that will be consumed. It is a sensible amendment which will make the commission more user-friendly from the point of view of all of those who must deal with it.

Proposed new clause 7.5 reflects a similar position in the New South Wales Administrative Decisions Tribunal Act 1997. The New South Wales provision reflected a concern that the Commonwealth and Victorian administrative appeals bodies had become formal and adversarial despite a legislative prescription for informality. The proposed new clause ensures that before the NTC adopts any procedures relating to its functions, the chief commissioner must cause a draft to be published and consider written submissions in response to the draft. When the New South Wales provision was introduced, it was described by the New South Wales Premier in the following terms -

> This is a unique proposal in the common law world and has the potential to be a significant model for future developments of tribunals so as to ensure the tribunal meets the needs for which it is established.

The NTA enables the president of the National Native Title Tribunal to make directions in relation to procedural matters.

These cover such subjects as lodgement and amendment of applications, search and mediation procedures and so on. It may be expected that the state Native Title Commission would be required to establish similar procedures. In addition to providing for the process of public consultation with interested parties before the Native Title Commission develops its internal procedures, the amendment also provides for the Native Title Commission to have regard for the procedures adopted by the National Native Title Tribunal when framing its own procedures.

To summarise, I am moving two amendments en bloc, one of which contains a provision for informality in the operations of the Native Title Commission. The second provision proposes that, in adopting its internal procedures, the commission go through a process of public consultation and have regard for the equivalent procedures adopted by the National Native Title Tribunal.

Mr COURT: The two amendments are self-defeating. In the first amendment the Opposition says it does not want the commission to be bound by technicalities. It then puts in place incredibly complex procedures in proposed new clause 7.5. The goal of the New South Wales Administrative Decisions Tribunal Act 1997 was to ensure that proceedings be as informal as possible. In proposed new clause 7.5 the Opposition seeks a complex and exhaustive process for establishing rigid procedures which would prevent the commission from adapting its procedures to suit particular circumstances. The two amendments conflict with each other. The Deputy Leader of the Opposition talks about the proceedings being as informal as possible so that the commission is not bound by technicalities, which I can understand in the running of a commission of this type. However, then he proposes that rigid procedures be implemented which will make it hard to tailor those operations for particular circumstances. For those reasons we do not support the amendments.

Mr RIPPER: If the Premier regards the two amendments as contradictory but views one as being satisfactory, he could support proposed new clause 7.4 even if he will not support proposed new clause 7.5. Perhaps I made a mistake in seeking leave to move the amendments en bloc because I could have had government support for proposed new clause 7.4. However, experience in other jurisdictions has shown that merely putting into the legislation governing those tribunals a requirement that they adopt informal procedures has not, in fact, worked in practice. The tribunals have gradually become more and more legalistic and formal in the ways in which they operate. The New South Wales Government said that not only would it insert a requirement that the tribunal operate informally but also it would insert a further requirement that when the tribunal develops its internal procedures, it does so by way of public consultation.

We have proposed a scheme for public consultation which is not overly rigid. For example, where the chief commissioner believes that it is necessary for a direction about procedure to be made expeditiously, the amendment provides that the commissioner can do that as long as he or she issues a certificate and the certificate is published in the *Government Gazette* along with the direction.

Finally, there is a section in our amendment which provides that any procedures adopted by the commission are to be applied by the commission as guidelines only. We cannot answer "guilty" to the charge by the Premier that what we are proposing is overly rigid. We are saying it must be informal and we should ensure that it is informal. There must be consultation about the procedures. If it needs to, the tribunal can still do something urgently without going through public consultation. In any case, it has the freedom to treat the procedures as guidelines only. It is a good scheme to ensure that the commission operates in as informal a manner as possible. I am disappointed that the Government, although stating that the amendments are contradictory, will not at least accept one of them.

Mr COURT: I take the Deputy Leader of the Opposition back to clause 7.3 which provides -

(1) The Commission is to -

(a) perform its functions fairly, justly and expeditiously; and

(b) ensure that, subject to this Act, its procedures are informal and accessible.

It is already covered in clause 7.3(1)(b) in that it must ensure that its procedures are informal and accessible. I support the thrust of what the Opposition is attempting to achieve in proposed new clause 7.4; however, it is already covered. The Opposition says that it does not want the tribunal bound by technicalities and so on, and that is exactly what the legislation is trying to achieve in clause 7.3(1)(b). I agree with the general thrust of what the Opposition is saying, and I believe it is already in the Act. However, the second part provides too much rigidity to deliver what we were asking for earlier.

Mr RIPPER: The Premier has made a valid point on clause 7.3(1)(b). Perhaps we are doing what the Government has done with titles validation, and we are applying a belts-and-braces approach to the requirement for informality.

Mr Court: That is a contradiction in terms. One does not wear braces informally, does one?

Mr RIPPER: The Premier should ask the Attorney General about that. The Premier is right when he points to clause 7.3(1)(b). There is already some requirement for informality and accessibility. To that extent, the proposed new clause 7.4 that I am moving is really adding to what is already there, without perhaps being entirely necessary. However, I point out the difficulties that have been experienced with other tribunals. Despite legislative requirements like clause 7.3(1)(b),

whether or not bolstered by my new clause 7.4, tribunals have tended of their own accord to become more formal and more legalistic. One way in which to prevent tribunals becoming more formal and more legalistic is to require them to consult on their internal procedures with the public and, in particular, with interested parties.

The Premier has described my model for consultation as being itself too rigid and prescriptive. Firstly, there is provision for the commission to dispense with consultation if it urgently needs to make a new direction on procedure; secondly, the procedures are to be treated as guidelines only under my amendment. Therefore, if there is a need to do something a bit different from the ordinary, then the procedure is only a guideline, and the commission has the freedom to depart from it if the circumstances of the case require it.

Therefore, I reject the assertion that the scheme for consultation on the internal procedures proposed by the Opposition is itself rigid. It is not. I reject the argument that what we have in the legislation is enough to ensure informality and accessibility. It is there in the legislation - yes, the Premier can point to it - but practical experience in other jurisdictions has shown that putting it in the legislation does not mean that Parliament achieves what it has set out to achieve. These tribunals develop a life of their own, and four or five years down the track they have precedents -

Mr Court: I can assure the Deputy Leader of the Opposition this one will.

Mr RIPPER: Four or five years down the track they have precedence, they have legalities, they have formalities, and what Parliament intended at the start has not worked out in practice because there is no requirement on them to go through a process of consultation with the people who are subjected to the rigours of these formalities and technicalities.

Mr BROWN: I note what the Premier said in relation to clause 7.3(1) about the way the commission is to perform its functions. It is to ensure that its procedures are informal and accessible, and obviously it is not bound by the strict rules of evidence and so on. Given that that is the way the commission will operate, there is a need to provide some guidance to the parties. Simply saying that the commission will operate in this way, but not providing an outline as proposed by the Deputy Leader of the Opposition, leaves a vacuum. What is proposed by the Deputy Leader of the Opposition by way of amendment and new clause 7.5 sets out the consultation on the procedures that will be followed. Irrespective of whether procedures are informal and accessible or rigid, there still must be procedures. Saying the procedures will be informal and accessible is appropriate. However, what does that in fact mean, and what are those procedures?

At page 93 of the Bill, clause 7.16 deals with the arrangement of business of the commission. Subclause (1)(d) relates to the chief commissioner being responsible for determining the procedure of the commission at a particular place. Therefore, it is envisaged that procedures will be laid down, and therefore -

Mr Court: The procedures are laid down between clauses 7.16 and 7.25. It is a full subdivision.

Mr BROWN: Clauses 7.19 states -

> The Commission is to hold such hearings as are necessary or expedient for the performance of its functions.

Clause 7.16 deals with arrangement of the business; clause 7.22 deals with questions to be decided by majority.

Mr Court: Clause 7.18 deals with what happens when proceedings are part-heard. Those clauses are specific about the different procedures. The argument I raised was that, on the one hand, it is all very well for the Opposition to say it wants informality; on the other hand, it wants to put in place some rigid procedures that make it difficult to tailor those procedures to suit the circumstances that may arise. That was basically the argument. There are definitely procedures in place, and they are specific.

Mr BROWN: I compare it to at least one other area that I am aware of; that is, where the tribunal will publish matters of detail on procedures, and it will consult on those to ascertain whether they are workable, and the degree to which a procedure operating one way or another will impact on one or the other parties. Many tribunals and commissions have these broad powers to sit from time to time, at place to place, and to do this and that. Those sorts of powers are mentioned there. However, there are also matters of considerable detail in that, some of which are rigid, and some of which can be broadly drawn. For example, in ordinary circumstances, the commission would follow a procedure which provides for X; however, that is a general guide. Therefore, someone looking at it could get a general picture, but would also understand that if one failed to comply with dot point 65, the application would not be knocked out.

Mr COURT: Perhaps I can explain this. There is a framework for the procedures. Instead of being super-specific inside it, in order to get the informality and flexibility for the different types of cases, the framework is spelled out, and then the commission will have the flexibility to operate within that framework. That is the simplest way I can describe it. If one gets too specific, we will have difficulties in meeting the target of trying to make the operations as informal as possible, to make the parties as comfortable as possible during those processes.

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

Ayes (16)

Ms Anwyl	Dr Gallop	Ms MacTiernan	Mr Ripper
Mr Brown	Mr Graham	Mr Marlborough	Mrs Roberts
Mr Carpenter	Mr Grill	Mr McGowan	Ms Warnock
Dr Edwards	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*

Noes (30)

Mr Baker	Mrs Edwardes	Mr Masters	Mr Shave
Mr Barnett	Dr Hames	Mr McNee	Mr Trenorden
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr Minson	Mr Tubby
Mr Bloffwitch	Mr House	Mr Nicholls	Dr Turnbull
Mr Board	Mr Johnson	Mr Omodei	Mrs van de Klashorst
Mr Bradshaw	Mr Kierath	Mr Pendal	Mr Wiese
Mr Court	Mr MacLean	Mr Prince	Mr Osborne *(Teller)*
Mr Day	Mr Marshall		

Pairs

Mr Thomas	Mr Cowan
Mr Riebeling	Mr Sweetman
Mr McGinty	Mr Ainsworth

New clauses thus negatived.

Clause 7.4 put and passed.

New clause 7.5 -

Mr RIPPER: I move -

Page 89, after line 2 - To insert the following new clause -

7.5. Eligibility for appointment of Chief Commissioner

(1) A person is not eligible to be appointed as the Chief Commissioner unless the person -

(a) is a Judge of the Supreme Court or District Court of the State or any other State or Territory or a Judge of the Federal Court;

(b) is a former judge of any court of the State or elsewhere in Australia or a former Justice of the High Court; or

(c) a person who is, and has been for at least five years, enrolled as a legal practitioner of the Supreme Court of the State or any other State or Territory, or of the Federal Court of Australia or the High Court.

(2) Notwithstanding any other provision of this Act the Chief Commissioner shall be appointed by the Governor on the recommendation of the Premier, and shall hold office in accordance with this Act.

(3) Before making a recommendation under subsection (2), the Premier shall consult the parliamentary leader of each party in the Parliament.

From my reading of the Bill, the chief commissioner need not be a legal practitioner. In contrast, the President of the National Native Title Tribunal is a lawyer, and other States which have established native title tribunals or bodies have specified that the chair of those bodies must be a judge or a legal practitioner. The amendment specifies that at the very least, the chief commissioner must be a lawyer of five years' standing. It also allows for, but does not require, the appointment of a judge. I believe that the Government should appoint a judge as the head of the Native Title Commission to emphasise the status and independence of that commission. A very good way for the Government to reassure members of the Western Australian community about the integrity of the native title scheme that it proposes to adopt in this State would be for the Government to give a commitment in this debate that it intends to appoint a judge as the head of the Native Title Commission. We do not make that mandatory, but we have put it in our amendment in the hope that we will elicit such a commitment from the State Government.

Our minimum requirement is that the chief commissioner be a lawyer of at least five years' standing. The situation in some other tribunals in the state jurisdiction is that the heads of the Commercial Tribunal and of the Equal Opportunity Tribunal

are required to be legal practitioners of at least seven years' standing, and the Director of the Legal Aid Commission is required to be a legal practitioner of at least five years' standing. The Land Valuation Tribunal requires that one member have at least eight years' standing as a legal practitioner.

We are concerned about the type of appointment that the Government may make if it rejects this amendment, which encompasses the hope that a judge will be appointed, and which requires consultation with the parliamentary leaders of other parties before the appointment is made. It is possible that the Government will seek to appoint Bill Hassell, for example, as the chief commissioner of the Native Title Commission.

Mr Court: He would do a good job.

Mr RIPPER: It is possible that the Government will seek to appoint Richard Elliot as the chief commissioner of the Native Title Commission.

Mr Court: He would do a good job too.

Mr RIPPER: We have it on record from the Premier that be believes either Bill Hassell or Richard Elliot would perform good work if he were appointed to this position. If either of those appointments were made, it would not inspire confidence in the community.

Mr COURT: I want to try to expedite this process so I will move some way in relation to this matter. The Opposition is saying that there must be a judge.

Mr Ripper: Preferably it should be a judge, but at least it should be a legal practitioner with a minimum of five years' experience.

Mr COURT: The state legislation does not preclude that. The original Native Title Act required the president of the tribunal to be a judge, because it was to make determinations on native title. The finding in the High Court Brandy case meant that only courts can make determinations, and the NTA has been amended to give the function to the Federal Court. As a result, it is no longer a requirement that the President of the Native Title Tribunal be a judge but he must be a legal practitioner. Under clause 7.6 the qualifications for appointment of people to the commission are enrolment for at least five years as a legal practitioner or those set out in paragraph (b). That is an indication that the Government wants people with that sort of experience on the commission. I think members opposite will agree with that. It is the Government's intention that the chief commissioner must always have at least five years' experience as a legal practitioner. It does not want to go so far as stipulating that the person must be a judge, but the Government will slightly modify the Opposition's amendment so that the chief commissioner must have at least five years' experience as a legal practitioner. The Government will retain clause 7.6 as it is because it wants to have people on the commission who have a range of expertise. Does that satisfy the Opposition?

Mr Ripper: Are you proposing to move an amendment to my amendment?

Mr COURT: The proposed amendment is being written now and uses the first part of the Opposition's proposed amendment.

Mr BROWN: Part 6 provides that the commission is to determine compensation in relation to future acts, and I interpret that to mean that any member of the commission may make that determination, and not just the chief commissioner.

Mr Court: Yes.

Mr BROWN: Therefore, taking into account the provisions in clause 7.6 dealing with qualifications for appointment, a determination could be made by a member of the commission who is not a legal practitioner but who is skilled in either one of the areas specified in paragraph (b). I venture to suggest that a person skilled in, say, land and resource management or dispute resolution, both of which are disciplines, may not be an appropriate person to determine matters of compensation, taking into account the legal principles required in determining that issue. It is not an easy area of the law; it is highly complex, and people who are not trained would be asked to exercise their minds in relation to that determination.

Mr COURT: The Government obviously wants a cross-section of people on the commission, particularly those who have an interest in and understanding of Aboriginal issues. The chief commissioner would decide which commissioner heard a particular matter. The chief commissioner may choose a group of commissioners to hear a particular matter. The chief commissioner will make that decision and I am sure that appropriate people will be chosen in each case. Cases involving matters of, say, sites of significance or financial matters will be heard by people with expertise in those areas.

Mr BROWN: The Premier's comments about the segregation of duties sound eminently reasonable, in that if matters relate to sacred sites, a member of the commission who has experience in those matters might hear the case. If it is a different type of matter regarding land and resource management, another member of the commission might deal with it. If there is a tangle in the interaction between the parties, a commissioner who is capable of finding a resolution to the maze causing the impasse might be used. How would that work in practice? It suggests in relation to these matters that different members of the commission might deal with component parts of the same matter. I suggest that will not be the case in practice and that a

member of the commission will deal with a matter. That commissioner, whether he is a legal practitioner or has expertise in one of the other areas specified, will be under considerable pressure in coming to grips with the complexities of these issues.

This matter could be easily overcome by amending clause 7.6 by deleting the word "or" and substituting the word "and". The situation would then be that a person must be a legal practitioner and have expertise in one of the other areas. Although theoretically the type of arrangement currently provided seems fine on the surface, in practical terms a chief commissioner who may not know all the circumstances of a matter may have difficulty exercising his or her mind forward to work out the circumstances of the case and allocate a member of the commission who is most suited to dealing with those circumstances. If the commission has a great deal of work, the chief commissioner will not have that luxury. If there are so many bodies to do the job and there is a lot of work to do, the allocation will be made more in line with the workload of individual commissioners rather than their particular expertise.

Mr COURT: It is a responsibility of the chief commissioner to choose the parties. The member for Bassendean raised the matter of a participant in mediation being involved in the determination. The Government proposes an amendment to clause 7.13(4), so that a person who is participating in the mediation cannot be a party in a hearing to determine that matter.

Mr CARPENTER: Everybody who has taken part in debate would agree that the appointment of personnel to the commission is a crucial element of the legislation. The Premier's foreshadowed concession on the eligibility requirements for the appointment of a chief commissioner are welcome. The operations of the commission should be removed from the ambit of political interference, and even the perception of political interference.

Mr Court: The Government has always said that the chief commissioner will be a legal practitioner, and the amendment will provide that only a legal practitioner is eligible.

Mr CARPENTER: I had not heard that. Nevertheless, as the Bill stands it allows for a far greater scope of individual to be appointed to the position of chief commissioner. It is good that the Premier has outlined his position on the matter and has foreshadowed the amendment. The last thing we want, once the commission is up and running, is the perception that political appointments are made because the appointee has a particular world view on native title, or allegations that he is running the government line. It is less likely, though not impossible, to have that perception if we appoint a judge or former judge rather than someone whose expertise is in land and resource management. The Premier says frequently that this is an area of vital importance to the economy and social fabric of Western Australia, so it is important to get it right. The appointee will require abilities and capacities of judgment. That is probably the reason for the original structure of the federal Native Title Act. It would be preferable - at least initially - for the appointee to be a judge or former judge with training and expertise in not only advocacy but also judgments of extremely complex matters. Justice Robert French, who was a judge of the Federal Court, fulfilled that role well in the National Native Title Tribunal. The Premier said that the Government had always intended to appoint a legal practitioner. Is it the Premier's intention to appoint a current or former judge as the first chief commissioner? The appointment of a person to oversee the functioning of the Native Title Commission who is more likely than not removed from political influence and who has skills in judicial activities would send a good signal to the people with a vested interest in native title.

Mr COURT: The Government cannot look for a person until the legislation is in place, and it certainly would not rule out a retired judge for the position. It will be a difficult position, and it will take a special type of person. We have no-one in mind.

Mr Carpenter: When will the Premier make appointments, and when does he expect the commission to be functional?

Mr COURT: I have made some predictions, but I will have to change them. The Government hoped to have this legislation passed in this Parliament and approved by the Federal Parliament by March-April 1999. However, it may take six months after the legislation has passed through this Parliament, so it will be in the late half of 1999.

Mr CARPENTER: The Premier has an opportunity to make a symbolic gesture, if nothing else, about the standing and independence of the Native Title Commission and to indicate that his first preference - at least for the initial appointment - for chief commissioner of the Native Title Commission would be a former or current judge. We know that the Premier has had some experience in locating former judges for other tribunal hearings, because he managed to find Justice Marks in pretty short time for the Easton royal commission. Given the significance and importance of native title to Western Australia, I would have thought that the Government's first requirement would be to appoint a person of significant standing in the legal fraternity as the first chief commissioner of the Native Title Commission. If that is not the Premier's intention, will he explain why it is not, given that he has been able to appoint judges and former judges to head royal commissions and inquiries into other matters? I would have thought the Native Title Commission would be more important than some of those other commissions.

Mr COURT: The Government is not ruling out anyone.

Mr Carpenter: Would the Premier list a judge or former judge as a first preference?

Mr COURT: No, I will not list a preference. It may be that a person who is not a judge has more suitable qualifications. We have difficulty getting good people to accept judicial appointments, as many people will not take on that role. If we can find a person with the experience who is not a judge and whose qualifications are better than someone who has been a judge we would go for the person who is best qualified for the job. I cannot rule out anyone.

Mr RIPPER: There has been a lot of controversy about native title, probably more controversy in Western Australia than in any other State. The appointment of the chief commissioner of the Native Title Commission will be an opportunity for the Government to make a new start on native title issues and to promote reconciliation within the Western Australian community. It is also a possibility that the Government might fail to meet the objectives that I have just outlined. It might, regrettably, be an occasion on which the Government continues its record on native title matters on which the Government promotes further controversy and undermines reconciliation. I ask the Government to make the best use of this opportunity and to go some way towards healing controversies that have arisen over native title and reconciliation by making an appointment which meets with approval from across the community. The Government would be best placed to meet with that approval across the community if it appointed a judge or former judge.

An aspect of the argument which so far has not been canvassed in this Chamber is that aspect of my amendment which says that before making a recommendation to the Governor on the appointment of a chief commissioner the Premier should consult with the parliamentary leaders of all parties represented in the Parliament. The Premier has provided me with a copy of a suggested government amendment that will be moved should my amendment fail. That amendment at least deals with the minimum requirement of the opposition amendment that the chief commissioner be a lawyer of at least five years' standing. The Opposition appreciates that the Government has come that far to meet its position. However, the amendment is strangely silent on the suggestion that, before making a recommendation to the Governor, the Premier should consult with the parliamentary leaders of each party in the Parliament. These consultation requirements are sometimes lacking in substance. There have been occasions where, in pursuit of the legislative requirement for consultation with regard to a particular appointment, the Opposition has received a letter from the Premier saying he proposes to announce an appointment to a position that afternoon, and what do we say! That is not the sort of consultation that the Opposition would expect with regard to the amendment that I have moved. However, it is hard to put in more precise requirements and to oblige people to follow the provisions of the legislation in good faith. This is an opportunity for the Government to promote reconciliation and to heal some of the wounds arising out of native title controversies. That aim would be advanced if the Government made a high-profile, high-status appointment of a judge, and it accepted that part of the Opposition's amendment which required consultation with the parliamentary leaders of other parties.

Mr CARPENTER: I anticipated -

Mr Court: That is the question you asked when you stood up last.

Mr CARPENTER: Three-fourths of what the Deputy Leader of the Opposition said reiterated what I said before but more eloquently.

Mr Ripper: Thank you.

Mr CARPENTER: However, the Deputy Leader of the Opposition was asking the Premier to address an additional element in his amendment. I have not seen the written version of the amendments the Premier wishes to move, but subclause (3) of the Deputy Leader of the Opposition's amendment states -

> Before making a recommendation under subsection (2), the Premier shall consult the parliamentary leader of each party in the Parliament.

The Deputy Leader of the Opposition asked whether the Government is prepared to accept that provision. It is worth repeating the point that the appointment of a chief commissioner and the overall functioning of the Native Title Commission is not to be seen in a political light. It is not to be seen as a political function of government and as coming within the ambit of political interference and domination by government. The Opposition was heartened and gratified by the Premier's acceptance of the amendments relating to eligibility for appointment as chief commissioner. The Premier explained why he did not want to make an announcement and would initially be seeking a judge or former judge to fill the position. However, the Deputy Leader of the Opposition is not seeking too onerous a requirement in moving that before making a recommendation about this appointment, the Premier consult the Leader of the Opposition and the leaders of other parliamentary parties. Bearing in mind that we should not be dealing with either a politicisation of the commission or political appointments, I do not see that as a problem. As the Deputy Leader of the Opposition said, it might go some way to being seen as an act of good faith and a movement towards some sort of reconciliation and new beginning in this debate. Could the Premier respond to that element of the amendment?

Mr COURT: I responded to the point about the judge. Consultation was not included in the federal legislation. It is not a requirement for the appointment of the head of the National Native Title Tribunal and the Government does not consider it necessary. The Deputy Leader of the Opposition hit the nail on the head when he said if the Government picks the wrong

person, it pays the price. It could consult, but the Government could still proceed whatever Government it is. It will pay a price if it gets the wrong person.

Mr CARPENTER: I do not want to labour this point. It is a simple point and a counterpoint has been made. Often in the course of the debate, the Premier has said it is not necessary and the federal Act does not require it. That is no doubt the case. It is not strictly speaking necessary but, as I tell my children, what is necessary and what is desired are often completely different matters. While it might not be necessary that the Opposition parties and other parties in the Parliament be consulted about this appointment, it would be a desirable and positive move. I ask the Premier to reconsider. It is not necessary, it is not a requirement of the Native Title Act, but symbolically it would be important and it could be desirable. It would demonstrate good faith on behalf of the Government on this issue.

Mr Court: I take the point.

New clause put and negatived.

New clause 7.5 -

Mr COURT: I move -

Page 89, after line 2 - To insert the following new clause -

7.5 Eligibility for appointment of Chief Commissioner

A person is not eligible to be appointed as the Chief Commissioner unless the person has been enrolled for at least 5 years as a legal practitioner of -

(a) the Supreme Court;

(b) the High Court; or

(c) the Supreme Court of another State or of a Territory.

Mr Ripper: Did you include the Federal Court of Australia or the High Court?

Mr COURT: We have included the Supreme Court, the High Court or the Supreme Court of any other State or Territory. I think that was in the Deputy Leader of the Opposition's amendment. The Government has moved this amendment so the chief commissioner must be a person with that legal background. It was always the Government's intention to appoint someone with a legal background but there was an option for a person without a legal background to be appointed and so the requirement has been put into the legislation.

Mr RIPPER: The Opposition appreciates that the Government has come some way towards the Opposition's position on the qualifications required to be Chief Commissioner of the Native Title Commission. Consequently, it will support the Government's amendment.

Mr CARPENTER: I consider this amendment to be a considerable improvement of this part of the Bill. It is commendable that the Government has accepted this amendment. The Premier says that in practical terms it will make no difference because it was always intended to appoint a legal practitioner of more than five years' experience, but we can only take him at his word; that might never have been the case. The unamended legislation allowed for the first chief commissioner with no legal experience whatsoever to be appointed to the National Native Title Tribunal. That person could have been considered to have some expertise in land resource management. It is a significant and commendable amendment which underlines that the Opposition is doing its best to improve the working of the legislation.

New clause put and passed.

Clause 7.5 put and passed.

Clause 7.6: Qualifications for appointment -

Mr RIPPER: I move -

Page 89, line 12 - To delete "a" and substitute "an ordinary".

I believe that the consequential amendment to our amendment is still necessary, given that the Government has moved its version of our amendment.

Mr Court: The first part that you moved seeks to insert "an ordinary", but it is not the new clause; is that right?

Mr RIPPER: No. It would read "Without limiting section 7.5, a person must not be appointed as an ordinary member unless the person . . ."

Mr Court: Then you will move a new clause?

Mr RIPPER: No; we are simply amending the Premier's clause. With regard to the appointment of ordinary members, we propose -

Mr Court: You will move a new clause?

Mr RIPPER: We will move a new clause regarding the process.

Mr Court: We agree to that first part of the amendment; it is a follow-on.

Mr RIPPER: It is actually consequential to the Premier's amendment.

Mr Court: That is right.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 7.7 -

Mr RIPPER: I move -

Page 89, after line 27 - To insert the following new clause -

7.7. Appointment of ordinary members

(1) Where it is proposed to appoint any person as an ordinary member of the Commission, the Minister must publish in -

(a) the *Government Gazette*;

(b) a daily newspaper circulating generally throughout the State; and

(c) such other newspapers, journals or electronic media as the Minister considers appropriate,

a notice that it is proposed to appoint one or more ordinary members of the Commission.

(2) The notice referred to in subsection (1) must -

(a) set out the qualifications for appointment as an ordinary member as required under section 7.6 of this Act;

(b) invite persons or organizations who wish to do so to nominate, in the manner specified in the notice, persons for consideration for appointment as an ordinary member; and

(c) invite persons who wish to do so to inform the Minister, in the manner specified in the notice, that they are interested in becoming an ordinary member of the Commission.

(3) This section does not apply to the appointment of an ordinary member under section 7.5.

In essence, the new clause provides for a specific process for the appointment of ordinary members to the Native Title Commission. It ensures that as many individuals and organisations as possible are aware of the proposal to appoint members and it gives them the opportunity to nominate candidates for consideration by the minister. The provision does not apply to the appointment of a member who must already be a member of the National Native Title Tribunal. The new clause is about ensuring the legitimacy of the Native Title Commission which will be a problem for the Government, given its record on native title issues. Suspicion of the Government's record on native title issues has driven requests for amendments to bolster the status and independence of the Native Title Commission.

Mr Court: If I give a commitment to support the new clause, will we expedite matters?

Mr RIPPER: Yes.

Mr Court: I will give you that commitment.

Mr RIPPER: The Premier has indicated that he has already been convinced by my brief remarks in support of the proposed new clause. Given that I have succeeded in my aim, I will conclude my remarks.

The DEPUTY CHAIRMAN (Ms McHale): Perhaps there is a lesson in that.

Mr COURT: Basically, the member for Belmont wants us to advertise so that people have the opportunity to say that they

would like to be on the commission. Also, we must specify their roles, responsibilities and so on. That will add to the red tape which the member for Belmont has said that he has been trying to get rid of.

Mr Ripper: Only inside the commission.

Mr COURT: We have no difficulty with the new clause, provided the member does not run a later argument about red tape, because the new clause just adds to the process. However, for the sake of expediting the matter, we support the new clause.

New clause put and passed.

Clauses 7.7 and 7.8 put and passed.

Clause 7.9: Executive Director of the Commission -

Mr COURT: I move -

Page 90, lines 11 to 13 - To delete the lines and substitute the following -

(2) Schedule 2 has effect in relation to the appointment and conditions of service of the Executive Director.

(3) The office of Executive Director is not to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

(4) The Executive Director is the chief employee of the Commission for the purposes of the *Public Sector Management Act 1994.*

As I explained at the beginning of our consideration of part 7, we propose to make the senior executive service position one of chief executive officer. The amendment relates to the appointment and conditions of service of the executive director, which are provided for by a new schedule 2. It will exclude the executive director from the senior executive service under the Public Sector Management Act and give the executive director the functions of a chief employee under that Act. Basically, that is what I have said we would do.

Mr RIPPER: Once again, the Government has moved some way towards the Opposition's position. We will certainly support the amendment, which refers to schedule 2. When we discuss schedule 2, we will note that there are differing government and opposition proposals with regard to the precise provisions in the schedule which will govern the appointment and conditions of service of the executive director. The Opposition originally intended to move an amendment relating to the appointment and service conditions of the executive director at this stage of our deliberations, but it is prepared to postpone that debate until we consider schedule 2. The Opposition has recast its proposed amendment at this stage to fit in with the Premier's legislative scheme, which refers to a schedule. Coming back to the point of substance, it is good that the Government has moved in response to opposition amendments designed to bolster the status and independence of the Native Title Commission.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 7.10: Functions of Executive Director -

Mr COURT: I move -

Page 90, lines 16 to 19 - To delete the lines and substitute the following -

(a) to perform any functions and exercise any powers vested in him or her under section 207B of the NTA;

(b) to perform any function delegated to him or her under section 199F of the NTA;

(c) to perform any function given to him or her by any enactment of the State or Commonwealth;

The office of executive director will exercise powers delegated from the NTA functions. Clause 7.10 is amended to include as functions of the executive director those that can be devolved to him or her under section 207B of the Native Title Act and any other statutory function that may be given to him or her. Once we set up the office of executive director, that provision must be put in place.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 7.11: Other staff of the Commission -

Mr COURT: I move -

Page 91, lines 2 to 9 - To delete the lines and substitute the following -

(1) Public service officers may be appointed or made available under Part 3 of the *Public Sector Management Act 1994* to enable the Commission and the Executive Director to perform their respective functions.

(2) The Executive Director may, acting under section 7.10(1)(b), engage a person under a contract for services to provide professional, technical or other assistance to the Commission or the Executive Director.

This is designed to change the way in which public service staff will be made available to the commission, and to enable consultants to be engaged as necessary. The existing provisions are based on the commission being an affiliated body under the Financial Administration and Audit Act as it relates to a department. The new provisions are suited to the commission being a statutory authority under the FAAA. We must make these amendments to allow these changes to occur.

Mr RIPPER: Again, this amendment is evidence of the Government's moving toward the Opposition's position on the status and independence of the commission. The Labor Party objected that when the first version of the Bill was read, the staff of the Native Title Commission were to be drawn from the department principally responsible for the administration of the legislation; namely, the Ministry of the Premier and Cabinet. We placed amendments on the Notice Paper requiring staff to be appointed under the Public Sector Management Act rather than to be drawn from the Ministry of the Premier and Cabinet. In view of the Government's amendments on the Notice Paper, we have removed our amendments. We are pleased to support the Premier's amendment.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 7.12 -

Mr COURT: This is a series of amendments resulting from other changes made. As the Deputy Leader of the Opposition indicated, the Opposition has withdrawn its amendments. I move -

Page 91, after line 9 - To insert the following new clause -

7.12. Use of government staff etc.

(1) Arrangements may be made under this section to enable the Commission and the Executive Director to perform their respective functions.

(2) An arrangement may be made with the relevant employer for the use, either full-time or part-time, of the services of any officer or employee -

(a) in the Public Service;

(b) in a State agency or instrumentality; or

(c) otherwise in the service of the Crown in right of the State.

(3) An arrangement may be made with -

(a) a department of the Public Service; or

(b) a State agency or instrumentality,

for the use of any facilities of the department, agency or instrumentality.

(4) Arrangements under this section -

(a) may be made by the Executive Director acting under section 7.10 (1) (b); and

(b) are to be made on such terms as are agreed to by the parties.

Mr RIPPER: The Opposition supports the new clause.

New clause put and passed.

Clause 7.12 put and passed.

Clause 7.13 put and negatived.

New clause 7.13 -

Mr COURT: I move -

Page 92, after line 3 - To insert the following new clause -

7.13. General position

(1) For the performance of its functions in respect of a particular matter the Commission consists of the member or members specified by the Chief Commissioner under section 7.16(2) for that matter.

(2) In exercising the power referred to in subsection (1) in respect of a matter to which subsection (1), (2) or (4) of section 7.14 applies, the Chief Commissioner is to ensure that the constitution of the Commission satisfies that subsection.

This amends the provisions relating to the constitution of the commission. Except where the specific requirement of new clause 7.14 will apply, the chief commissioner may decide how the work of the commission is allocated between the members.

Mr RIPPER: Again, I ask the Premier about the origins of this amendment. It seems to be an amendment which should be supported, which is the position the Opposition takes on this and several other amendments due to be considered by the Committee shortly. Although it is supportable, it indicates the difficulties which have arisen in handling this legislation. The Government should have placed its Bill in order before it presented it to the House. Perhaps the Government could have arranged for a version of the Bill with all of its amendments included to be placed before members, rather than the Committee dealing with a significant number of government amendments, some of which have resulted from opposition suggestions - for which we are grateful - and others from internal government deliberations or negotiations with the Commonwealth. Those deliberations should have been completed before the Chamber considered the matter.

Mr COURT: I appreciate the points raised. However, we had a six-week hiatus in discussions. This provision is a combination of both our internal work and discussions with the Commonwealth. The amendment will ensure that when the commission does things delegated under the NTA, it acts in accordance with the requirements of that federal Act. Some specific requirements apply in some cases. We must ensure that the two measures fit together.

Mr CARPENTER: The Premier mentioned the difficulty which arose as a result of the federal election campaign, regarding access to officials and changes of personnel, and how that impacted on the timing of the construction of this measure.

Mr Court: We wanted to get our Bill in Parliament.

Mr CARPENTER: I understand that. This process makes it very difficult for the interested layman, which is really all we are, to follow proceedings. This is a 120-page Bill, involving 30 pages of amendments. The Deputy Leader of the Opposition asked the Premier whether the amendments were directed to the State by the Commonwealth. To give credit, I asked the same question on the first day of this committee debate, and the Premier said, "Yes, they all were." Some of these amendments are very technical. We must also refer to the federal legislation, which comprises a couple of books. The Premier said that the legislation establishing the commission is most important; that is, it is central to the operations of the Western Australian economy, the mining industry and so on. We agree. However, we have had to patch things together as we go along, which makes it difficult to achieve good legislation. It is probably too late to criticise the Government for that process. Nevertheless, it has made things difficult for Parliament. Hardly anyone knows what is going on, as members are sitting around waiting for debate to finish. This is probably the most important legislation to be dealt with by Parliament for several years, yet no-one has a clue about what is going on.

Mr Court: Don't say that!

Mr CARPENTER: The Premier should ask his members.

Mr Court: I assume you do - the Deputy Leader of the Opposition does.

Mr CARPENTER: The Premier does not seem to have much of a clue about some issues. One day he makes a point in one direction, and the next day he argues the opposite position.

Mr Court: That is your view.

Mr CARPENTER: It is true. Last week we had an argument about whether historical leases extinguish native title, and the Premier was thumping the Table and chucking down his pen saying, "Of course they do!" A Federal Court decision two days ago said that they do not extinguish native title. The Premier then said he has never heard the suggestion put before. His memory is not very long as it was argued in Parliament last week. This is a poor way to address a vital Bill on an

important issue. The Premier, we and everybody else may live to regret this whole approach to the legislation. It may well be that what we put together is not the kind of legislation that will meet the requirements of the federal Act and the needs and requirements of the stakeholders who may well take legal action over it. We will have another period of uncertainty. The Premier has gone about it the wrong way. The reason is rooted in his attitude to the whole subject of native title.

Mr BROWN: The amendment seeks to remove the existing clause in the Bill and substitute another clause. As I see it, the original clause contained a provision that the commission must be constituted of at least three members, whereas the amendment now provides that the commission must consist of a member or members specified by the chief commissioner. There seems to be a pulling back from the legislative requirement that the commission comprise three members to a discretion being given to the chief commissioner for the commission to comprise one or more members. What was the original thinking when the Bill was drafted? Was the intention to ensure that in the exercise of its discretion, the commission must have on it at least a legal person and a person with experience in matters relating to Aboriginal people, whereas the amendment seems to remove that obligation and now any member of the commission may be asked to perform a function? Why has the original thinking now been changed relating to the broad discretion that has been given to the chief commissioner?

Mr COURT: The old clause said that it must be at least three members. This clause provides that the commissioner can choose the number of members. A large number of people will need to be involved to carry out the work. There will be significantly more than three members. All it says is that it must be at least three members. Was the member's question on the limitation of numbers of members?

Mr BROWN: No. What is the change of thinking between when the Bill was drafted and now? This amendment makes a fairly substantial change to what is contained in the Bill.

Mr COURT: Clause 7.13 provides how the commission is to be constituted and that it must comprise at least three members, but it does not cover the number of members required to hear a matter. That decision is made by the chief commissioner. Through these amendments we are taking away the old clauses 7.13 and 7.14 and rationalising them with new clauses 7.13 and 7.14. If the member looks at the amendment to clause 7.14, he will see that it outlines the constitution of the commission for the performance of certain functions. The difference is that the minimum number is no longer specified.

New clause put and passed.

Clause 7.14 put and negatived.

New clause 7.14 -

Mr COURT: I move -

Page 92, after line 26 - To insert the following new clause -

7.14. Constitution of Commission for the performance of certain functions

(1) For the performance of a function or the exercise of a power vested in it under section 207B of the NTA the Commission must include -

(a) at least one member who, in the opinion of the Chief Commissioner, has expertise in matters relating to Aboriginal people; and

(b) at least one member who holds an appointment under the NTA as a member of the NNTT.

(2) For the performance of its functions under Part 4, other than its mediation function under section 4.25 (1), the Commission must, subject to subsection (3), include -

(a) at least one member who is qualified as mentioned in section 7.6 (a); and

(b) at least one member who holds an appointment under the NTA as a member of the NNTT.

(3) Subsection (2) does not apply if the Commission is a recognised State/Territory body by virtue of a determination under section 207A of the NTA.

(4) The Commission when performing any function in relation to a matter that involves the determination of an issue cannot be constituted by, or include, a member who has taken part in mediation in relation to that matter.

This clause sets out the specific requirements of the constitution of the commission when it is acting under section 207B of the Native Title Act and when it is dealing with matters under part 4 of the Bill. The clause also precludes a member who

has mediated in proceedings from later taking part in determining issues in those proceedings. The member for Bassendean raised the matter earlier. We said that the amendment would go in so that the same person could not be involved in the mediation and in determining issues in the proceedings.

Mr RIPPER: It seems that the Premier has substantially rewritten clauses 7.13 and 7.14. What is the origin of that rewrite? Was there some rethink by the State Government or was it once again subject to commonwealth lobbying?

Mr COURT: We do not believe that there was a need to make the changes, but the commonwealth officials wanted different wording and had it done in this format. We have done it so that we do not have a confrontation.

Mr RIPPER: It is pretty clear from the Premier's explanation of this and other clauses that the negotiations with the Commonwealth on the structure of this Bill were not concluded when the Bill was presented to this place. This has made the Chamber's consideration of the Bill somewhat difficult. I remind the Premier that he has placed the Opposition under some pressure to deal with this Bill by Christmas. It would have been good if he had placed the Commonwealth under similar pressure to deal with its views on this Bill so that the commonwealth-state negotiations on the structure of this Bill had been concluded before it reached the Chamber. We have been faced with a demand that we pass the Bill unamended, followed by a big package of government amendments flowing from commonwealth-state discussions, and more latterly a government concession that some of the Opposition's amendments are worthy of acceptance in principle. Government versions of the Opposition's amendments have been included in the legislation.

New clause put and passed.

Clause 7.15 put and passed.

Clause 7.16: Arrangement of business of the Commission -

MR COURT: I move -

Page 93, lines 23 to 25 - To delete the lines and substitute "to be the chairperson."

This is a technical change following the amendments to clauses 7.13 and 7.14.

Amendment put and passed.

Clause, as amended put, and passed.

Clause 7.17: Unavailability of member -

Mr COURT: I move -

Page 94, lines 10 to 13 - To delete the lines and substitute the following -

another member for the proceedings, and in doing so must ensure, if subsection (1), (2) or (4) of section 7.14 applies, that the constitution of the Commission continues to satisfy that subsection.

This is consequential to amendments and ensures that the commission will be constituted as appropriate when a member becomes unavailable.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 7.18 to 7.20 put and passed.

Clause 7.21: Opportunity to make submissions -

Mr RIPPER: I move -

Page 95, line 15 - To insert after "make" the words "written or oral".

The clause allows people to make submissions to the commission. This amendment seeks to provide that they be in either written or oral form. I am pleased to advise the Government has indicated it will support the amendment.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 7.22 to 7.33 put and passed.

Clause 7.34: Determinations -

Mr RIPPER: Fresh from the glittering triumph of the Opposition's last amendment I move -

Page 99, line 5 - To insert after "based" the following -

, referring to the evidence or other material on which such findings are based and giving reasons for the recommendation or determination

Mr Court: In a spirit of cooperation the Government will also support this amendment.

Mr RIPPER: I appreciate the Premier's indication - yet another triumph for the Opposition! The amendment seeks to provide that when the commission makes a determination it should be not only in writing and state the findings of fact as is in the Bill but also refer to the evidence or other material on which such findings are based and give reasons for the recommendation or determination. This is an important addition to the accountability required of the commission. It is also important from the point of view of establishing the legitimacy of the commission with the people who will be required to deal with it.

Amendment put and passed.

Clause, as amended, put and passed.

New clauses 7.35 - 7.37 -

Mr COURT: I move-

Page 99, after line 9 - To insert the following new clauses -

Division 4 - Financial Provisions

7.35. Funds for carrying out this Act

The funds available for the purposes of this Act consist of -

(a) moneys from time to time appropriated by Parliament; and

(b) other moneys lawfully received by, made available to or payable to the Commission for the purposes of this Act.

7.36. Native Title Commission Account

(1) The funds referred to in section 7.35 are to be credited to an account called the "Native Title Commission Account" -

(a) at the Treasury; or

(b) with the approval of the Treasurer, at a bank,

and if paragraph (a) applies the Account is to form part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985.*

(2) The Account is to be charged with -

(a) the remuneration and allowances payable under this Act;

(b) all other expenditure lawfully incurred in carrying out this Act.

7.37. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and things done in the performance of functions under this Act.

These new clauses are consequential changes to the structure. As the Native Title Commission is being established as a statutory authority, we must put these financial provisions in place.

New clauses put and passed.

Clause 7.35: Particular function to compile data -

Mr COURT: I move -

Page 100, lines 5 to 9 - To delete the lines.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 7.36 -

Mr COURT: I move -

Page 100, after line 9 - To insert the following new clause -

7.36. Public access to database

(1) Members of the public -

(a) are to have reasonable access to the database maintained under section 7.35; and

(b) are entitled, subject to payment of any prescribed fee, to take copies of or extracts from any document in the database.

(2) The Commission must not make particular information available to the public if the Chief Commissioner considers that it would not be in the public interest for the information to be available to the public.

(3) In determining whether it would, or would not, be in the public interest for information to be available to the public, the Chief Commissioner must have due regard to the cultural and customary concerns of Aboriginal peoples.

This new clause elaborates on existing clause 7.35(5) in relation to public access to any database kept by the commission to provide that the chief commissioner may keep some information confidential in the public interest, taking into account cultural and customary concerns of Aboriginal people. These confidentiality provisions reflect subsections 98A(2) and(3) of the Native Title Act. We are all aware of some of the difficulties that have arisen with a number of these cases.

Mr RIPPER: I think this amendment flows from an Opposition amendment that was on the Notice Paper and which raised the issue of the sensitivity of some information from the point of view of Aboriginal people. The Opposition is pleased the Government appears to have taken into account that issue and supports the amendment.

New clause put and passed.

Clause 7.36 put and passed.

New clause 7.37 -

Mr RIPPER: I move -

Page 100, after line 23 - To insert the following new clause -

7.37. Notices and other documents to be written in other languages

(1) If the Commission is required by or under this Act, to cause a document or other instrument to be served on, or given to any person, and it appears to the Commission that the person is blind or illiterate or not literate in the English language, the Commission is, in so far as it is reasonably practicable, to cause the information contained in the document or other instrument to be communicated to the person in a manner that the person understands.

(2) Failure to comply with this section does not affect any thing done under any other provision of this Act.

I have an indication from the Premier that he is prepared to accept that and therefore I will not debate it.

New clause put and passed.

Progress reported.

[Continued on page 4379.]

PRISON, PYRTON SITE

Statement by Member for Bassendean

MR BROWN (Bassendean) [12.50 pm]: I was disappointed last week when the Attorney General announced that it was his intention and the intention of the Ministry of Justice to establish a prison at the Pyrton site at Eden Hill. This decision by the Government is contrary to the views of the local community and the extensive discussions that have taken place with the communities of Bassendean, Eden Hill and Lockridge over the past four to five months. No less than four public meetings have taken place during those discussions at which that sentiment was made clear. It is true that the minister advised at one of those public meetings personally that ultimately he would make the decision. However, the community

was hopeful that the minister and the Government would listen to it rather than make a decision which ignored community views. The communities will be having a public meeting tonight and at that public meeting they will establish a campaign committee; a committee which will be active in seeking to overturn the Government's decision. I raise that matter because government members should expect to hear from the campaign committee in due course.

WHITFORD CITY SHOPPING CENTRE, PROPOSED EXPANSION

Statement by Member for Joondalup

MR BAKER (Joondalup) [12.52 pm]: The decision by the State Town Planning Appeal Tribunal in the National Mutual Property Trust trading as the Whitford City Shopping Centre, WA Planning Commission, LandCorp and Armstrong Jones Retail Fund trading as the Joondalup Lakeside Shopping Centre and City of Joondalup dispute concerning the Whitford shopping centre's plans for a 35 000 square metre expansion has thrown into doubt the status and authority of the net lettable area caps contained in the metropolitan region centre's policy because while the appeal by the Whitford shopping centre was dismissed, it would appear that local design reasons as opposed to others were relied upon by the tribunal in its rationale. My view is that the net lettable area caps should have the full force of the law. If the Joondalup Regional City Centre is to achieve its full potential, an enforceable cap should be placed on the further expansion of district shopping centres, particularly the Whitford shopping centre situated at Hillarys. To advocate otherwise will throw long-term planning requirements into disarray and uncertainty. It may be that there will be a further appeal in this matter, but time will tell. The metropolitan region centre's policy is currently under review and I think that if, as per this decision, it does not have legal enforceable status, there is a dire need to amend the provisions of the Town Planning and Development Act to give it that status because we need certainty for planning, particularly when it comes to new regional city centres. It is interesting to note that LandCorp proposes to develop a new town in Alkimos, which is approximately 25 kilometres north of Joondalup. I think that it would be appropriate to have these amendments in place prior to construction works commencing on that new district centre.

DEFENCE REFORM PROGRAM

Statement by Member for Rockingham

MR McGOWAN (Rockingham) [12.54 pm]: I take this opportunity to touch briefly on an important issue in my electorate about the Royal Australian Navy. I represent a total of 2 500 people who serve or are civilians in the Royal Australian Navy in the Rockingham area on Garden Island. I have been concerned during the past two years about the defence reform program being implemented by the Commonwealth Government. The defence reform program is basically the Commonwealth Government's technique to reduce the size of the defence force and put all of the people who are currently in there, including service personnel and civilian jobs, into disarray and create enormous insecurity about their employment. There is now a huge reduction in morale and a loss of confidence that they will be able to continue with their careers. They have always felt confident that their jobs were secure and have sacrificed a great deal to move all over Australia and perform a great number of arduous jobs. It is time for this defence reform program to stop. The people in the armed forces have had enough. They are sick of change and they need some decent treatment, otherwise we will see the poor rates of pay and the high rates of family breakdown continue. It is time these people received decent treatment and proper security in their jobs.

CRIME IN GERALDTON

Statement by Member for Geraldton

MR BLOFFWITCH (Geraldton) [12.56 pm]: I urge the Government to get tougher on people who commit minor offences, such as those that occur in Geraldton. For example, 27 car windows were smashed at the Queen's Park Theatre in one night. Two people were arrested and found guilty of minor offences and very minimum penalties of a cautionary nature were imposed. I do not think that is severe enough. Bag snatching goes on in the streets, and once again cautions are issued. I would like to see heavier sentences imposed on the people who commit these crimes.

The other major crime in the Geraldton area is antisocial behaviour by groups of youths who walk the streets abusing and intimidating people. Society must protect those law-abiding people from this sort of abuse as they go about their business. I ask the Attorney General to look at this, to make the penalty for this offence far more severe and to assure the public that the Government is handling these crimes more effectively than it has in the past.

KWINANA TOWN COUNCIL, COMMUNITY SERVICE AWARDS

Statement by Member for Peel

MR MARLBOROUGH (Peel) [12.57 pm]: One of the most pleasurable aspects of my role as a local member of Parliament is to go to functions such as those put on by local governments to show their appreciation for the services performed by members of the community. I had the pleasure of attending the Kwinana council's presentation of awards for

services to the community. I want to put on record my appreciation of those efforts. I am sure every member would agree that without those people who are willing to volunteer their time and energy to the community this would be a far worse place in which to live.

I pay particular credit to Betty Barber, a woman well into her 70s, who after years of unselfish commitment to home and community care was named the Citizen of the Year; Leona Brenchley, who was the Junior Youth of the Year; Dennis Wood, a personal friend of mine, who won the leadership award - there would not have been a committee in the past 10 years in which Dennis has not been involved; and Dennis Miller, another friend, who was named as the Senior Sportsman of the Year and who is presently the over-60s Western Australian champion in a number of distance events. At another event held a few days later, Mr Bob Poulson was awarded for his 15 years' dedicated service to the SES and the tremendous work that he and his volunteers do in the Kwinana-Rockingham area.

EATON, NEW SCHOOL

Statement by Member for Mitchell

MR BARRON-SULLIVAN (Mitchell) [12.58 pm]: I have made a point of keeping this Parliament informed of progress in the establishment of a new school for the Eaton community. It disappoints me greatly to inform the House that there has been a major setback in the planning for the new school. A site that had been earmarked for the construction of an interim school, similar to the school operating in Secret Harbour, has had to be put to one side as the developer has pulled out of negotiations.

It is my intention as the local member to pursue the only available option; that is, the construction of a permanent $4m-plus primary school to cater for the significant population growth in the east Eaton area. With that in mind, I am delighted that we now have the full support of the local community. At a recent public meeting it was decided that this is the only option. I am also pleased to advise the House that the local shire has been extremely cooperative in assisting to arrange a time for the Premier to meet with councillors and the school community. I put on the record my gratitude to the community as a whole for its patience in this regard. I share the frustration of families living in the area. As the local member I will do everything possible to bring forward the construction of a permanent school.

Sitting suspended from 1.00 to 1.30 pm

NATIVE TITLE (STATE PROVISIONS) BILL

Committee

Resumed from an earlier stage of the sitting. The Chairman of Committees (Mr Bloffwitch) in the Chair; Mr Court (Premier) in charge of the Bill.

Progress was reported after new clause 7.37 had been agreed to.

Clauses 7.37 to 7.41 put and passed.

Clause 7.42: Annual report of Commission -

Mr RIPPER: I move -

Page 104, after line 13 - To add the following -

(3) The report required under this section must include, but is not limited to, the following things -

(a) a detailed table of contents;

(b) a description of the Commission's functions in the relevant period;

(c) details of any decisions of any court or tribunal in the State or elsewhere having a significant impact on the Commission's operations and details of any remedial action taken in response to those decisions in the relevant period;

(d) particulars of any consultants engaged by the Commission and amounts paid to those consultants in the relevant period; and

(e) a table setting out particulars, in the relevant period, of certain operational data identified in schedule 3.

(4) In subsection (3) -

"the relevant period" means the period referred to in subsection (1).

The amendment specifies some of the annual reporting requirements for the Native Title Commission. It is part of our package of amendments which aim to enhance the status and independence of the commission and to improve the accountability requirements confronting the commission. The annual reporting requirements for the Native Title

Commission are sparse. Good annual reports should include information that is relevant and useful to the Parliament and the public. The amendment specifies some of the information that would be useful for Parliament and the public, and makes it a requirement that the annual report covers those things. For example, if the amendment is carried, the report would contain a description of the commission's functions in the relevant period, details of decisions of any court or tribunal that would have a significant impact on the commission's operations; it would detail the consultants engaged by the commission, and the amounts paid by those consultants. The Opposition also proposes to establish at a later stage a schedule 3 of the Bill to set out operational data to be included in the annual report.

I appreciate that there might be arguments on both sides of this issue. If the commission is operating properly - as members on this side of the House hope it will operate - we probably would not need an amendment like this, because this is the sort of information that a well-operating commission with a person of substance as its head would be expected to provide as a matter of course. However, that is not the context in which we are developing the legislation. We are developing the legislation in a context in which there is scepticism about the Government's commitment to fair and equitable solutions to native title issues, and people do not trust this Government to do the right thing on native title. Consequently, the Opposition has sought to strengthen the accountability provisions required of the commission in the Bill. The Opposition wants an annual report of substance which reflects the position that the Native Title Commission is an independent body and not a mere creature of the Ministry of the Premier and Cabinet or of the State Government. If the amendment is carried, it will not do any harm to the operations of the Native Title Commission. On the other hand, given the context in which there is scepticism about the Government's commitment to native title, and there is doubt that the Government's Native Title Commission will do the job that it is required to do fairly and equitably, some additional accountability requirements are justified. The annual reporting requirements proposed in this amendment are among the additional accountability requirements which the Opposition suggests should be included in the Bill.

Mr COURT: The Government does not support the amendment, which is one of a series of amendments moved by the Opposition covering reporting, the parliamentary joint committee, reports by the Equal Opportunity Commissioner, and public consultation on review. Under the Financial Administration and Audit Act statutory authorities already have strict reporting requirements and a responsibility to report. The Government does not legislate these sorts of requirements for other statutory authorities. However, the Government will support the review of the Act that is proposed for clause 7.47.

Mr BROWN: I note the Premier's comments on the requirement on other agencies to report and the detail to be provided in annual reports. I was a member of the Lonnie committee. It is a horrendous committee, because one is asked to read about 80 annual reports, and to award prizes for content. Any tasks that the committee set for itself turned out to be quite interesting. We found that some reports contained a lot of words and pictures - a lot of fluff - and no substance whatsoever. Other reports provided clear and coherent details of the way in which the department or agency was operating. Within the existing requirements of the Financial Administration and Audit Act, to which the Premier referred, there is great scope for departments to conjure up a lot of words and to put the best gloss on the outcomes of their areas of responsibility. We also found, particularly when we compared annual reports of one agency from year-to-year, that there was not always consistency in reporting. An agency may develop a set of performance indicators or graphs to show whether it is performing effectively and efficiently. All of a sudden the chosen indicators are moving in the wrong direction, as far as the agency is concerned in putting the best gloss on the situation, and the following year those performance indicators or graphs are not in the report and are replaced with something else. That makes a comparison of the performance of the agency between two years almost impossible, unless we get the raw information.

Extracting that raw information is extraordinarily difficult as one can see from the number of parliamentary questions asked in here which receive the response that the information is too great to be collected and it will cost the department too much money to collect it; therefore, it will not be made available. For someone who is interested in the operation of a department or agency, the annual report does not provide a great insight, and neither do the answers to questions in this place. It is almost as though there is a great wall of secrecy about this matter.

In this amendment, the Deputy Leader of the Opposition seeks to include some basic requirements, which in any event should be covered in an annual report, to ensure there is no manipulation or fudging as occurs in some annual reports. This amendment will ensure that at least the five matters mentioned must be dealt with consistently each year in the annual report so that the operation of the commission and its decisions from year-to-year can be monitored. Although, in theory, the amendment should not be necessary, in reality, given the context in which some annual reports are prepared, it is very necessary.

Amendment put and passed.

Clause, as amended, put and passed.

New clause 7.43

Mr RIPPER: I move -

Page 104, after line 13 - To insert the following new clause -

7.43. Special report

(1) The Commission may at any time make a special report to the Minister on any matter arising from or in relation to the exercise of its functions.

(2) The Minister is to cause a report prepared under this section to be laid before both Houses of Parliament as soon as is practicable after its receipt by the Minister.

This is not a crucial clause, but adds to the accountability requirements that are imposed on the commission. That will assist it to achieve the status and independence which will be essential for the acceptance by the public - in particular, the indigenous public - of the legitimacy of the native title scheme.

Mr COURT: As I said earlier, we do not support this proposal. A special report can be made if the commission wants to do that. I am sure it will on occasion make a lot of reports; however, I do not see why a provision should be put in the legislation covering a special report.

New clause put and negatived.

New clause 7.44

Mr RIPPER: I move -

Page 104, after line 13 - To insert the following new clause -

7.44. Restriction on publication

The Commission must not in any annual or special report disclose any matters known to the Commission to be of sacred, ritual or ceremonial significance to Aboriginal persons or a particular community or group of Aboriginal persons.

I hope the Government might see fit to accept the proposed new clause. Some information is of very special significance to Aboriginal groups, and the disclosure of that special information can be the cause of great distress to them. The commission should not in any annual or special reports publish that information, thereby, inadvertently causing distress to Aboriginal people. This principle is similar to that which the Government accepted when we debated public access to the database held by the commission. The Government at that stage moved a version of the Opposition's amendment which dealt with information on that database that might be of special significance to Aboriginal people. By extension, the same principle applies in this amendment. I hope the Government will see fit to support it.

Mr COURT: We do not believe it is necessary. Clause 7.3(2) states -

The Commission, in performing its functions under this Act, may take account of the cultural and customary concerns of Aboriginal peoples, but not so as to prejudice unduly a party to any proceedings.

There is enough flexibility for the commission to make a decision to handle the situation the Opposition is trying to cover in putting restrictions on applications. The commission will have the flexibility in the legislation to make such decisions.

Mr RIPPER: Subclause (2) says that the commission "may" take account of customary and cultural concerns of Aboriginal people. This amendment is stronger than that; it says that the commission must not disclose any matters known by the commission to be of sacred, ritual or ceremonial significance to Aboriginal persons.

Mr Court: A commissioner will not do that knowing that it will prejudice the position of someone.

Mr RIPPER: It is not a question of prejudicing a position in terms of consultations or negotiations.

Mr Court: It is about respecting their culture, and no commissioner will go against that.

Mr RIPPER: That is what it is about - respecting people's culture and giving them confidence that the governing legislation will not result in potential harm to their feelings and way of life. I am disappointed that the Premier does not propose to support the amendment, particularly given that he supported a version of the principle when it came to public access to the database held by the commission.

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

Ayes (17)

Mr Bridge	Mr Grill	Mr McGinty	Mr Ripper
Mr Brown	Mr Kobelke	Mr McGowan	Mrs Roberts
Mr Carpenter	Ms MacTiernan	Ms McHale	Ms Warnock
Dr Edwards	Mr Marlborough	Mr Riebeling	Mr Cunningham *(Teller)*
Dr Gallop			

Noes (30)

Mr Baker	Mrs Edwardes	Mr Marshall	Mr Prince
Mr Barnett	Dr Hames	Mr Masters	Mr Trenorden
Mr Bloffwitch	Mrs Hodson-Thomas	Mr Minson	Mr Tubby
Mr Board	Mrs Holmes	Mr Nicholls	Dr Turnbull
Mr Bradshaw	Mr House	Mr Omodei	Mrs van de Klashorst
Dr Constable	Mr Johnson	Mrs Parker	Mr Wiese
Mr Court	Mr Kierath	Mr Pendal	Mr Osborne *(Teller)*
Mr Day	Mr MacLean		

Pairs

Mr Thomas	Mr Cowan
Mr Graham	Mr Sweetman
Ms Anwyl	Mr Ainsworth

New clause thus negatived.

New clause 7.45 -

Mr RIPPER: I move -

Page 104, after line 13 - To insert the following new clauses -

Division 5 - Inquiry and Review

7.45. Parliamentary Joint Committee on Native Title

(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Parliamentary Joint Committee on Native Title, must be established.

(2) The Parliamentary Joint Committee's duties are -

(a) to consult extensively about the implementation and operation of this Act with -

(i) groups of Aboriginal peoples;

(ii) industry organisations;

(iii) local governments; and

(iv) other appropriate persons and bodies;

(b) to inquire into and report to both Houses on the implementation and operation of this Act as soon as practicable after the end of the period of 24 months from the establishment of the Commission and every eighteen months thereafter;

(c) to examine each annual report that is prepared by the Commission under this Act and of which a copy has been laid before a House, and to report to both Houses on matters -

(i) that appear in, or arise out of, that annual report; and

(ii) to which, in the Parliamentary Joint Committee's opinion, the Parliament's attention should be directed, and

(d) from time to time, to inquire into and, as soon as practicable after the inquiry has been completed, to report to both Houses on the effectiveness of the Commission.

Given what the State Government is doing, which is replicating commonwealth Native Title Act provisions in state legislation and establishing a state version of a native title scheme, we considered where the state legislation falls short of the commonwealth legislation. The establishment of a parliamentary joint committee on native title is a feature of the commonwealth Native Title Act, which is not to be found in the state native title legislation. Section 204 of the NTA provides for the establishment and membership of a parliamentary joint committee on native title and the Aboriginal and Torres Strait Islander land fund. Given that the Federal Parliament thought that it was necessary to establish a joint committee to examine the impact of the NTA, it is reasonable that we at state level, as we are substituting some state legislation for portions of the NTA in Western Australia, should do the same.

It is a matter of controversy and complexity. There has been much scepticism about the State Government's commitment to native title, and there has been much division in the community over native title issues. No-one can say precisely how the legislation will work, such is its complexity, its interaction with the NTA and the possibility of court decisions which may throw into doubt certain parts of the legislation. That complexity, history of division in the community and scepticism about the Government's commitment to native title justify a parliamentary review of the operations of the legislation. The review should be ongoing and it should be done by a joint committee.

Mr COURT: As I have mentioned, we do not believe that it is necessary to establish the committee, but there is nothing stopping Parliament doing so down the track if it believes that it is appropriate. As I have mentioned, we support the review provisions that the member for Belmont wants to insert, but not this provision.

Mr RIPPER: It might not be necessary and it might not be required of the State Government by the operations of the NTA, but that does not mean that it is not a valuable thing to do. We know the history of native title in this State, we know that people have been arguing about it for years and we know that people doubt whether the State Government will come up with a fair scheme for the operation of native title. Knowing that history, we should provide for opportunities for people to complain and for future review and reconsideration.

Progress reported.

[Continued on page 4394.]

[Questions without notice taken.]

YOUNG PEOPLE UNABLE TO LIVE AT HOME

Matter of Public Interest

THE SPEAKER (Mr Strickland): Today I received a letter from the member for Kalgoorlie seeking to debate as a matter of public interest the following motion -

> This House deplores the Minister for Family and Children's Services' continued complacency in the face of the increasing problems suffered by Western Australia's young people unable to live at home and calls on her to stop misrepresenting the grave situation that has been allowed to develop in this State during the time she has had the responsibility for the area.
>
> Further, the House calls on the Minister to -
>
> (1) provide a report to the House next week addressing the 12 recommendations contained in the Accommodation and Support Services Provided to Young People Unable to Live at Home report;
>
> (2) take urgent steps to ensure that young people have improved access to drug and mental health services; and
>
> (3) provide a statement to the House about the true level of resourcing in the Department.

If sufficient members agree to this motion, I will allow it.

[At least five members rose in their places.]

The SPEAKER: The matter shall proceed on the usual basis, with half an hour allocated to members on my left, half an hour to members on my right, and five minutes to the Independent members, should they seek the call.

MS ANWYL (Kalgoorlie) [2.40 pm]: I move the motion.

The matter before the House refers to an extremely important report tabled by the Auditor General; that is, the report on the accommodation and support services provided to young people unable to live at home. I hope that most members have read it. I particularly hope that the Minister for Youth and the Minister for Health will look at the report urgently. It reveals that children are falling through the cracks in respect of the delivery of government services in this State. Not only are they falling through the cracks but they are also unable to access the services they clearly need.

Ministers come and Ministers go, but the Minister for Family and Children's Services has presided over the department for some time. She has maintained a mantle of complacency about child prostitution, abuse of children by paedophiles, youth suicide and drug abuse. The problem with that complacency is that if she will not acknowledge the problems in her own department, it is difficult to see how the department can coordinate the services it is required to provide. I do not know whether the minister is ignorant of the situation or what is the problem, but it is clearly time for her to confront the very serious problems referred to in this report. I again urge members to consider the issues raised.

We know that at the end of the last financial year, just over 5 500 children were on the books at the Department of Family and Children's Services and almost 1 200 young people were wards of the State. That is 3 per cent of the 12 to 17-year-olds

of this State. The report states that 18 per cent of those young people are in second-generation care. That is a staggering almost one-fifth of the young people in care and protection in this State, and about one-third of them are Aboriginal. No figures are provided for the third or fourth generations, but I suspect some children in care in this State have grandparents and great grandparents who were in care. In addition, 44 per cent are at risk educationally, 33 per cent are prone to drug and substance abuse, 20 per cent have mental health problems, and 29 per cent are already in contact with the criminal justice system.

This afternoon we will debate new sentencing measures. The Government must realise that the money it is pouring in at the top end of the problem is not fixing it. It can build as many new jails as it wishes, but until it addresses the fact that about one-third of the young people already in care are now in contact with the criminal justice system, many of those dollars will be wasted.

The figures I have quoted are frightening enough. Even more frightening is the fact that a staggering 47 per cent of those requiring specialist education courses were unable to access those services, 50 per cent of those requiring training services were unable to access those services, 83 per cent of those requiring alcohol or drug treatment could not access those services, 38 per cent of those requiring mental health treatment could access those services, and 51 per cent of those requiring psychological counselling could access those services. That is a staggering indictment of the way in which services are being delivered to young people most at risk in this State.

The report states that the risk of offending is high and there are some common characteristics. I quoted that almost one-third are already involved in the criminal justice system. Research shows that we know the factors indicating which young people and children are likely to come into contact with the criminal justice system. The research is clear about what works and what does not work in combatting this incidence of youth involvement in crime. We need preventive programs at much greater levels. As a Parliament we preside over a system of pilot projects - there is a pilot project here and a pilot project there. However, when it comes to evaluating those projects and ensuring that services are delivered throughout the State, we fall down. All the sociological research - whether it be education, health or criminological research - demonstrates the need for early intervention and the establishment of programs across agencies.

The minister has repeatedly refused calls not only from me but also from members of the community and community groups across Western Australia to establish a new coordination mechanism. She has refused a call from her own upper House colleague, Hon Barbara Scott. She has said that the panacea will be to create another policy mechanism within the Department of Family and Children's Services, and as I speak that is being done.

The report is clear that coordination is falling down. These gaps in services have much to do with the fact that there is no proper coordination of inter-agency approaches in this area. There is an obsession across government with privatisation of services. The report makes it very clear that this obsession has led to the purchasing model of business practice reigning supreme. According to the Auditor General, there is pressure on individual non-government agencies to be "businesses". These are the "businesses" that are funded to provide services to our children and young people most in need. They are not businesses; they are often community groups that are providing services at the coalface for those young people most in need. We must reassess where we are going with this obsession with privatisation and the whole concept of trying to make non-government agencies work as businesses. The Auditor General has identified that this pressure on individual non-government agencies has threatened their viability and service capabilities. Part of the problem with the young people who are missing out on the services they need so much is that the viability of those agencies is threatened.

The Auditor General's report states -

> . Young people in care are viewed by most agencies as the specific clients of F&CS. Nevertheless, they are clearly also components of the 'at-risk' categories of these agencies.
>
> . There is insufficient sharing of essential information about a youth by F&CS with other service providers to enable them to best deliver their services. This is primarily a result of a lack of linkage at the local level between F&CS and other service providers . . .
>
> . The various agencies involved have not developed shared goals or pooled their resources to achieve common outcomes.

I am aware that some initiatives are in place. As I said, we seem to be masters of the pilot project. It is very clear from the report that the bulk of the young people assessed as being most at risk and in need of assistance to avoid their ending up in the criminal justice system, or having dysfunctional families, or to avoid their children from being third-generation in care, are not receiving the support they need. The Minister for Family and Children's Services also has responsibility for the strategy. She continually denies there is a problem with service delivery. It is clear from this report that there are major problems with the system.

It goes on to say that there are many reasons young people are unable to live at home. Only some of these people become wards of State. Between 1993 and 1998 1 039 children were taken into care and protection. Since 1 July of this year 63

young people have been taken into care, of whom 32 were of Aboriginal descent. That is a much higher representation in terms of Aboriginality than is reflected in the general population. It goes on to say that most of the care and protection applications refer to very young children - that is, children under five years of age - and many other young people under 18 years also end up accessing these support services, particularly the accommodation component. The report shows they do not get the other services that are required. Many of those young people are not wards of the State and care and protection applications are rarely taken out where young people are aged 14 years or over.

This report demonstrates that the bulk of the older children coming to the attention of the department are cases where there is family conflict of one form or another. The report also notes that very few of those young people end up returning to their homes via the family mediation process. The bulk of those young people are moving towards independent living. That, in itself, can cause a great deal of angst for the families involved. Every member will have been contacted by parents who are desperately trying to be reunited with their children. The report discloses that when it comes to providing the support services required for the young teenagers to return home successfully - such as drug and other support services - this State is failing dismally. How can the minister suggest there is no difficulty when the report finds that 83 per cent of young people requiring alcohol or drug treatment did not receive these services?

This has been quite a week. On Tuesday the minister tabled in this place her response to the report entitled "Finding The Right Balance: Working Together as a Community to Prevent Harm from Illicit Drugs and to Help Individuals and Families in Need" which was a rather vast report. I suspect that no other member of Parliament has read it. I take it that the minister has read the report. I ask her to confirm that she has read it. We have no response from the minister, so I take it that she has not read it. In any event, I presume this response document was prepared by the minister's staff. In light of the finding of the Auditor General that 83 per cent of young people who need alcohol and drug assistance do not get the support they need, I am rather surprised to see the minister's response to the recommendations on the Select Committee into the Misuse of Drugs Act. I was a member of that committee. One of the recommendations stated -

> The Select Committee draws the State Government's attention to the apparently inadequate nature of the accommodation services for young people with serious levels of drug abuse . . . and requests the Minister for Family and Children's Services to report to Parliament on how such accommodation services can be improved to better meet the special needs of this group.

The response goes on to state that there is not enough information in the telephone book of a report to provide detail to the department of what exactly must be done. I refer to the terms of this motion. I hope that every one of the 14 recommendations contained in this Auditor General's report can be replied to because the response to the report of the Select Committee into the Misuse of Drugs Act, which took three months to come back, was totally out of order. Recommendation 34 states -

> That high priority be given to establishing two new youth focused Community Drug Service Teams, the first to be located in the inner Perth city area and the other, capable of being deployed on short notice to problematic areas . . .

The response states -

> This recommendation is supported in part.
>
> The WA Drug Abuse Strategy Office is working with the Safer WA Committees and an interagency working group to improve strategies in the inner city.

There is a proposal, possibly - maybe - to establish something else in the inner city. The response continues -

> The concept of a flexibly deployed youth team is not supported as this role should be undertaken by each of the Community Drug Service Teams working in close collaboration with their communities . . .

The report makes it very clear that the system is not working. Of all the young people who need that assistance, 83 per cent are not getting it. I ask the minister to revisit those parts of the recommendation of the Select Committee into the Misuse of Drugs Act, which relate to young people.

I will move on to another issue. In the report there were many findings about inappropriate placements of young people. I acknowledge this is a difficult area. The report has criticised the practice of sending young people to hostel-type environments where they are exposed to negative peer influences. One does not need to be Einstein to work out that if vulnerable young people are placed with others who may well have established drug-use habits or criminal connections - as I said, almost one-third of the young people involved are already in contact with the criminal justice system - there can be negative influences. The report goes on to state that there is a huge turnover of case management. That is where the young person in question has a responsible Family and Children's Services case manager. On page 53, the report states -

> Frequent changes in case manager impacts on the provision of stability and continuity of care required by young people, and can also affect the quality of services provided.

> The examination found most young people had more than one case manager in a year and more than three was not uncommon.
>
> Where changes in case managers occurred, some instances were noted where new case managers made decisions without being fully aware of the young person's history or circumstance.
>
> A common reason for this was a failure by previous case managers to document key information such as 'alerts' about a child's circumstances raised at a case conference but not recorded . . .

A number of matters are set out in the recommendations as to how this might be changed. I have said repeatedly in this place, despite claims by the minister to the contrary, that I recognise people working in the department have an extremely difficult job. Social work is a difficult area of practice. Social workers have a very hard time of it. They are required to turn up, unannounced, on the doorsteps of families and to make inquiries about children at risk. They are also expected to provide mediation where children, for one reason or another, do not wish to return home.

I am leaving out the example of children not going home because they are being abused there. I am talking about the full range of teenage conflicts which can occur. At the same time, we know from many sources that the restructure has not solved all the resourcing problems in Family and Children's Services. I have been informed that in certain areas, including the hostel area, the restructure is not complete but is ongoing. We know that turnover of staff at Family and Children's Services is high and that stress leave is extremely high. Despite the minister's claim in question time today, we know that meetings have been held between senior executives of her department and the union representing the social workers and that an action plan is in place. If the minister is not aware of that, she has a problem in her department. We know that almost a fifth of the workers in the department, including social workers, are on contract. Case managers are on contract for two and three months at a time. It is no wonder the Auditor General detected that many young people lack consistency of case management. We know that the issues of workload are not being addressed and that the problems raised by staff at the time of the infamous memo - which stated that many family support cases would never get a guernsey - have not been solved by the restructure.

People cannot understand why the minister is not prepared to address these issues. It may be that she is addressing them in a secretive fashion, but it is not good enough for her to suggest that this report does not raise anything new. It is not good enough to provide trite responses to the Select Committee into the Misuse of Drugs Act 1981 report and claim, as she did about the matters recommended for Kalgoorlie, that all of these things were in hand. In Kalgoorlie we continue to have four times the state average of intravenous drug use. It is time for the minister to put up or shut up. It is not enough for her to say that everything is in hand; it is time the minister confronted the issues. Young people are not just falling through the cracks, they are falling into huge canyons in this State. The fact that 83 per cent of young people who needed drug and alcohol assistance could not get it is a terrible indictment of the system. The fact that almost a quarter of those young people are in contact with the criminal justice system when we are about to pass laws to lock up more people for longer is not good enough. It is time a true emphasis was placed on service delivery across the State, not just in some little pilot areas, so the dollars spent on early intervention start to save the Government money and save a lot of human and emotional cost to the community and victims of crime. The cost of these problems to the community indicates the importance of spending money on early treatment services. It costs about $1 878 a fortnight to keep an offender in custody. It costs between $383 and $653 to keep a homeless person in supported accommodation for a fortnight and between $320 and $640 in unemployment benefits. It is time the minister addressed the matters raised in this report. It is time she provided a full statement to this House about the resourcing issues in her department. It is time she took some urgent steps to ensure that all young people have access to drug services and it is about time she reported to the House fully on the 14 recommendations contained in the report.

MRS PARKER (Ballajura - Minister for Family and Children's Services) [3.04 pm]: We have before us today an issue which is of concern to all of us in the community. I welcome the report of the Auditor General and I find it a sobering reminder of the cost in human terms of the breakdown of parenting. What we see here today is a reminder of the great cost in the short, medium and long-term of the impact of the breakdown of parenting in the life of a child. As members of Parliament, on this side of the House as Government members, as members of the community and as parents we have a great responsibility to our children and the children in our community. I have said in this place before that we can be judged by the way we care for those who are the most vulnerable, and our children fall into that category. I welcome the report of the Auditor General into the accommodation support services provided to young people in Western Australia who, for one reason or another, are unable to live at home. The report confirms the areas of concern which have been identified by the Government for action and response. This report will contribute to the Government's commitment to continue to improve services for young people and the level of cooperation between government departments and agencies working in the area. Family and Children's Services has initiated a number of measures to improve the delivery of services to young people in care since the collection of data for this report began in 1996.

As the member for Kalgoorlie mentioned, the report found that some 3 per cent of children in the State are in care or in contact with the department. It is important to remember that that means some 97 per cent of children are able to live in the

care of one or both of their parents throughout their childhood. While most members who are parents would admit to not being perfect, they would agree that that is the best place for a child. Crisis accommodation and support services are needed for children experiencing breakdown in that parenting circumstance either very early in their life, as usually occurs with wards or later with non-wards, and it is important for us to note that prevention of this breakdown is an imperative. I have talked often about the commitment of this Government to earlier intervention and to supporting parents throughout the State with our parenting packages. When I opened the parent information centre in your electorate of Geraldton, Mr Deputy Speaker, I was impressed to find that some 1 000 parents use it each month. There they find practical supports to prevent the pressure building up to breakdown point. This report highlights the need for departments and agencies to work together to make their services accessible. It also identified several areas where improvements can be made and areas where the department has already taken action.

It is worth raising this issue today because the Government has an ongoing commitment to introducing services to respond to the issues. The first thing I would like to bring to the attention of the House is that specialist teams which work exclusively with children in care have been formed in the department. We have a protection of children team and a care for children team made up of specialists. These teams were established at the end of 1997 to care for children. Also, a team has been established to increase placement time for foster children by supporting the child in placement and supporting the foster carers. This acknowledges the need to support such children.

The DEPUTY SPEAKER: Order! The minister is not taking interjections. The member for Armadale should let the minister continue her speech.

Mrs PARKER: A great deal of material must be placed on the record on this important issue. The Auditor General, after two years of taking material, outlined the need to better coordinate services with a central clearing place so case workers could access information to facilitate appropriate placement for children needing care and support. Since the Auditor General started that review, as he notes in the report, a central placement officer was appointed to facilitate appropriate placements. The member for Kalgoorlie mentioned that it is sometimes difficult to match a child with an appropriate placement. A place may be available which may not meet the need of the child, and the central placement officer's role is to facilitate appropriate placement.

The member for Swan Hills will take a few minutes in this debate to talk about the use of the Hillston site for adolescent and child support services. A more thorough response and assessment is required.

Mr Kobelke: What happened to the site in Forrestfield?

Mrs PARKER: That has been a source of great frustration: Finally, it was refused planning approval by the Environmental Protection Authority.

Mr Kobelke: How many years were wasted trying to get that place established?

Mrs PARKER: It was not wasted. I would like to see that site used; I was keen to see the facilities developed, and I was aware of the process involved. However, the EPA would not give the planning clearance. I instructed the department to identify the sites which have already received clearances so we need not go through that lengthy and frustrating process again. I am delighted by the response of the Mundaring Shire Council. It has been wonderful in its support for the Hillston project. I met with community leaders at a public meeting. The member for Swan Hills will later mention what is happening in that area. That community is a credit to itself and to all Western Australians. It has embraced the project for the area.

Mr Kobelke: Why not address the report?

Mrs PARKER: The report clearly identified the need to thoroughly assess services required from not only Family and Children's Service but also a range of other places. What are people's educational and health needs? What support do families need on the return to placement? All those matters will be conducted in the Hillston centre which we anticipate will be completed by November next year. One of the criteria used in determining who will go to that facility is multi-placement breakdown. We have been working on that aspect. No-one in this House is more keen to see the first brick laid on that project than I am - a desire I share very keenly with the Mundaring community.

We have already spoken about the departmental restructure with the movement of staff from administration to direct service delivery. An increase has occurred in the number of parent-adolescent counselling services provided, and a special services for children who have witnessed domestic violence has been established; this service has never before been provided.

On receipt of the report this morning from the Auditor General, I requested advice from the Director General of Family and Children's Services on all recommendations. The Minister for Health will comment on access to mental health services for young people. Also, the Minister for Youth will contribute to the debate.

I am mindful of the time. I now refer to the need for effective drug and substance abuse support services, a matter raised by the member for Kalgoorlie and clearly identified by the Auditor General. I am very aware of this issue. This Government has a commitment to respond like never before across the sectors, across the community and across the State to the problems

we confront from alcohol and drug abuse. We have a well-funded drug abuse strategy with a comprehensive package of initiatives, which are mostly under way, launched in our Together Against Drugs strategy last year. There are no waiting lists for drug treatment services in this State -

Mr Kobelke: Are you saying that the Auditor General got it wrong?

Mrs PARKER: No.

Mr Kobelke: He said that 83 per cent of kids with a drug dependency could not get a service. Did he get that wrong?

Mrs PARKER: The member would do well to read the report. The Auditor General notes that the services for drug treatment are available, but are not being accessed. We must look at that aspect. The community drug service team has capacity, as do other agencies, to provide more services to young people. However, they are not being accessed for a couple of reasons. I acknowledge that better coordination is needed between the agencies. I am pleased that my ministerial colleagues in the Health and Youth portfolios will contribute to this debate. This response needs to be from across-government. The Together Against Drugs strategy is across-government. A capacity exists which is not being accessed, which is a problem.

Also, it is important to note in the report, if members have read it, that reference is made to Western Australian Young People in Care. This is a group of people who have been in care and have formed an organisation. The department and I have been very supportive of this group and provided funding to it. We have provided a new service to support people as they leave care. People from WAYPIC are reported in the Auditor General's report as saying that an issue of timing arises with counselling. People are not always ready or willing to be counselled at given times. It is important to have the service available to people through the spectrum of their care and time of need. Therefore, we have established a new service to make counselling available for people after they leave the care of the department.

The report indicates that drug treatment services are there, but are not being accessed. That must be addressed. Although we have no waiting list, too high a proportion of young people are not seeking the help available to them. The report confirms that treatment services are available for drug -

Mr Kobelke: Do you say there is not a shortage of drug treatment services?

Mrs PARKER: The community drug service teams have the capacity to take on more clients. We generally have no waiting lists for services for drug treatment in this State.

Family and Children's Services was the first major government department to adopt a frontline staff training program to help staff deal with clients with drug problems. That has resulted in an increase in that department's contacts with clients and an increase in the number of referrals for drug treatment. Nevertheless, I acknowledge that much more is required in this area.

I cannot believe that the member for Kalgoorlie would seriously raise the issue of resourcing. If she wants to provide a statement to the House about the true level of resourcing in the department, as she has called for in paragraph (3), she should have a look at the budget papers and at the annual report.

Ms Anwyl interjected.

The DEPUTY SPEAKER: Order!

Mrs PARKER: She will see that this Government has a very good record on resourcing, which is contrary to the Labor Party's record when in government. The Auditor General's report comes at a time when this department's funding has been increased, as I have said, by $41m over the past five years. The number of full-time equivalent staff positions in direct service delivery has increased in that same period by 170, and by 51 since 1997. It is interesting to compare those figures with the figures during the last five years of the Labor Government. The number of FTEs for the department as it was then was reduced by 200.

Mr Day: They blew all their money on failed petrochemical plants and their mates.

Mrs PARKER: Absolutely. It is interesting that the Labor Government kept cutting back the number of staff while we have seen an increase in the budget. We have also made sure that the FTEs are available in those direct delivery areas. It is important to make the best possible use of resources. Certainly we cannot measure only by the amount of money going in. It is absolutely critical that it is well resourced, but we also need to be committed to continuous improvements of the way we do things.

The member for Kalgoorlie often speaks negatively of the department and she talks continuously about people mistrusting the department. She has made some quite scandalous statements to the media. She must be very careful about public confidence. The Auditor General's report makes it clear that in some cases the staff have onerous requirements for details because of the over-politicisation of some mistakes. All of us in this place have a responsibility about how we affect and impose on the public confidence of an organisation such as Family and Children's Services. I believe that whether the Labor

Party or the coalition is in government, this State's Family and Children's Services has a high level of professionalism and works in a very difficult area. This is the tough end of business in town. The member for Kalgoorlie would have to agree with me that on a national comparison, the department fulfils its mandate well. I understand that what she does from time to time has political motivations and purposes, but she must be very careful about her responsibilities.

Mr Kobelke interjected.

The DEPUTY SPEAKER: Order! I formally call to order the member for Nollamara for the first time.

Mrs PARKER: All members of this House know that the responsibilities of the department are difficult in many respects. The department has over 30 000 client contacts in a year involving often complex and human issues. If those issues were not that complex, we would not need the department.

I cannot believe that the member for Kalgoorlie criticises pilot programs. They are an example of initiatives being taken by responding to new pressures. I cannot believe that she would be critical of establishing some pilot programs and conducting some assessments to see whether they are appropriate.

Several members interjected.

The DEPUTY SPEAKER: Order, members!

Mrs PARKER: In many cases we continue with them and put those pilot programs into statewide initiatives. We have seen that time and time again.

Mr MacLean interjected.

The DEPUTY SPEAKER: The member for Wanneroo will come to order.

Mrs PARKER: It is through innovative policies, such as the new directions in child protection and family support, and through the recent restructure, that the Government has worked on improving the systems that are in place. We will continue to do so. The report presented by the Auditor General today will certainly assist. As I have said, it confirms to us many of the concerns we have identified and have moved to respond to in a very difficult area. I repeat, this report is a sobering reminder of the very sad and high cost of the breakdown of parenting.

MR DAY (Darling Range - Minister for Health) [3.27 pm]: I rise to make some brief comments about this motion moved by the Opposition and in particular to comment on paragraph (2) which calls on the need to ensure that young people have improved access to drug and mental health services. As the Minister for Family and Children's Services indicated, this comes within my responsibility to a large extent as Minister for Health.

The motion moved by the member for Kalgoorlie is based on the Auditor General's report which was tabled today and calls, amongst other things, for the needs of young people in care and at risk to be reviewed to ensure that the services provided are appropriate. It also calls for better integration and coordination of the services which are provided to young people who are in care. It also calls for the establishment of a formal inter-agency and non-government mechanism to formulate and develop shared targets, pool resources and to steer through changes. That is to ensure that we get the maximum possible effectiveness from the overall government role and input into this difficult area. Some very dedicated and hard-working people are doing a great deal in this area, whether they be officers in Family and Children's Services, which has the primary responsibility for children in this category, or whether they be officers in the mental health services of the Health Department of Western Australia.

It is important to recognise that there has been a very substantial expansion of all mental health services in Western Australia in the past three years or so with an additional $40m being allocated over three years. An additional $20m per year is being spent on mental health services throughout the State. In particular, there has been a very significant focus on increasing and expanding the child and adolescent services which are needed. They have been a specific priority. I recall, for example, opening the Armadale-Kelmscott child and adolescent mental health service in September of this year and on the same day opening the new Kalamunda child and adolescent mental health service. They are only examples of the expansion in services and facilities which are being made available to try to deal with these very difficult problems. In particular, $3.26m has been allocated to expanding child and adolescent services and another $3.26m has been allocated to extending the specialist work forces in both of these areas. A range of youth suicide prevention projects have also been implemented in the past three years at the major teaching hospitals of Fremantle, Sir Charles Gairdner and Royal Perth, and in other areas as well.

The motion refers to the difficult area of alcohol and drugs. It is important to recognise that a great deal of additional resources are being put into that area through the community drug services teams, including those in the goldfields area, part of which the member for Kalgoorlie represents. The Office of Aboriginal Health is also very much involved in establishing projects to address the problems of substance abuse in young Aboriginals. I recently announced that the methadone clinic will be transferred from its current William Street site to the Central Drug Unit in East Perth, with an approximate $900 000 expansion of the facility. Amongst other things, the expansion will provide for a specialist youth service to address the needs of young people who have an addiction problem.

Other members wish to speak. I shall leave my comments there but simply sum up by saying that a lot is being done in this area. I am sure more can be done. A lot of interaction goes on between the officers of the Health Department, the mental health services division and Family and Children's Services through, amongst other things, a senior officers forum. The officers will have a look at the report and recommendations to see what further can be done, so that they can build on the very dedicated work that is being performed.

MR BOARD (Murdoch - Minister for Youth) [3.29 pm]: I am conscious that the role of the Auditor General has broad parameters. In identifying performance indicators within agencies and best value for government money, we welcome the Auditor General's report as a mechanism to achieve that. On Monday morning he gave me the courtesy of briefing me on the report, although he did not give me a copy because his reports are always lodged in Parliament first. However, he described the broad parameters of the contents. A couple of fundamental issues must be brought to the fore regarding this report. We are dealing with 2.5 per cent of young people in Western Australia in the age group between 12 and 17, if my mathematics are correct.

Mr McGowan: It is 3.3 per cent.

Mr BOARD: We could argue the point, but I will accept the 3.3 per cent. In reality we are referring to a small number of young people. I asked the Auditor General by what measure the State can bring those young people to the same standard as those in a nurturing family and how the State's performance in dealing with a family break-up is measured. How does he judge whether a young person is being adequately cared for by the State compared with those in family situations when probably thousands of young people are in family situations in which they are not as well off as some of the people who are cared for by the State?

Having made that point, it is important we do everything we can to nurture and assist these young people. Ms Anwyl was a participant at Professor Catalano's lecture about a week or two ago in which he indicated it was fundamental that the State spend as much as possible on intervention programs to prevent young people falling into this category. Although I will not address the issues raised by the Minister for Family and Children's Services, because unfortunately she must deal with the 5 000 young people who are in some way in the care of the State, it is important that none of the other 97 per cent of young people falls into that category. That is why the Office of Youth Affairs is spending so much time developing programs to prevent that.

Mr Kobelke: It will be worth nothing because in education and training, particularly as a result of commonwealth cuts, there is a whole area in which there are no programs for young people falling out of the school system.

Mr BOARD: I will not agree with that. However, that can be a debate at another time, because I have only two minutes left in which to address the Auditor General's report. It is a pity that reports such as this are unable to focus on the totality of what the Government is doing. It is a pity that in addressing those issues we are unable to see the vast resources being spent on training and young people's attitudes to stop them from failing in the system. If we did not spend that money, as is recognised throughout Australia and around the world, many more young people and families might be in that situation.

We need a two-pronged attack that requires spending money upfront on preventive services and strategies to deal with the young people who already have those problems. The Minister for Family and Children's Services is in the unfortunate position of having to deal with young people who have been sexually abused and suffered family break-ups and other trauma in their lives. As members know, it is very difficult to reverse the impact of those problems in a short period. That is not to say we spare resources in doing so. However, we must appreciate that prevention is better than cure, and that is where the Government is spending more resources on new initiatives. Not only are we spending money on preventive programs, but also, to our credit - we can give ourselves some credit - we are involving young people in that process. We are addressing hundreds of thousands of young people in Western Australia who have constant contact with the Government regarding these processes.

DR CONSTABLE (Churchlands) [3.35 pm]: I came to hear the minister's defence to the motion, and I was prepared to support her if I felt convinced by what she said. However, I am afraid she has not convinced me one iota. I will therefore support the motion of the member for Kalgoorlie. What disappointed me overall was that the minister began with a list of platitudes, and then went onto a lot of meaningless generalisations, followed by an attack on the member for Kalgoorlie. The minister did not address the important issues in the report of the Auditor General. This report is about 700 young people between the ages of 12 and 17 in out-of-home care. I am not sure the minister has read the report. I will read a key comment at page 3 -

> ***Necessary services are not always provided.....*** The needs of many young people in care are adequately met by available services. However, for a significant proportion the services are in short supply, not readily accessible, or not equitably provided. This could have a significant consequence for the community in terms of long-term financial dependence and anti social behaviour.

It seems to me that the State has taken responsibility for out-of-home care for these young people. When we take that

responsibility we must do the best we can for them. I do not believe we are. That is pointed out in the report of the Auditor General. He lists at page 3 the percentages of young people who are at risk educationally as a result of drug abuse and so on. He says -

> 47 per cent of those requiring specialist education courses were unable to access these services;

Why? We are talking about 200 young people unable to access these services -

> 50 per cent of those requiring training services did not receive these services;

Why did they not? The minister has not provided us with that answer -

> 83 per cent requiring alcohol or drug treatment did not receive these services;

Why was that, when the minister tells us that everything we need is available? Why did 83 per cent of those young people not get those services? Why are her people, who have responsibility for those youngsters, not making sure they get that treatment? She has not answered that question. The report continues -

> 38 per cent of those requiring mental health treatment did not receive these services; and

Why, as the minister has tried to tell us, are they not receiving those services? To continue -

> 51 per cent requiring psychological counselling did not receive these services;

Why did they not receive them?

MR BROWN (Bassendean) [3.37 pm]: At the outset I agree with the observations of the member for Churchlands about the minister's response to this report. The report details the breakdown of the attempt to deal holistically with children who need our support. When I talk about our support, I mean the support of the Parliament and of the State. At page 37 the report indicates that 45 per cent of those using drugs were assessed as requiring either drug counselling or residential treatment; of those, only 17 per cent then accessed services.

Yesterday we had a long debate about effective intervention at a local level. We said that setting up a shingle saying, "If you need help, please come in" is insufficient. We need active intervention at a local level by working with these young people. It does not exist. As I said yesterday, no-one is being provided with resources to do it. The other day the minister wrote to me and gave me a list of the organisations that could be telephoned. I phoned some of them. One organisation said,"We are too busy, but if you can ring during the next week we can tell you when to ring for an appointment." That is, they were saying, "If you ring some time next week, we can tell you when to ring for an appointment." That did not mean I would get any service but, "We can give you an appointment to ring." Then I rang another service which the minister listed in her letter. I was told, "You must understand that we receive $1 000 a year; that is, $20 a week." I said, "Will you come out and fix this problem? We have kids sniffing glue. We have a situation in which people are being abused." They said, "We get $20 a week. It is not enough to pay for the paper that we need." These are the Mickey Mouse programs that this minister is talking about. It is fluff. It is absolutely nonsensical.

Let us look at the question of resources that the minister has talked about. Page 53 of the report of the Auditor General states -

> The examination found most young people have more than one case manager in a year and more than three was not uncommon.

It states further -

> A common reason for this was a failure by previous case managers to document key information such as 'alerts' about a child's circumstances raised at a case conference but not recorded on the Alert Sheet.

It goes on -

> The Foster Carers Association advised that it was not uncommon for a new case manager to visit them and the child having only minimal knowledge of the child's situation.

Later in the report the Auditor General refers to the high stress levels of case workers. What does that tell us? One does not need to be bright to work that out. It tells me that workers are under pressure and stress, and do not have enough time to carry out the job responsibly. That is the only possible interpretation of this document. Yet the minister says, "We have provided all these new resources. We have changed things around so that people who are involved in administration are now involved in service delivery." It is interesting to read what the Auditor General says about people involved in service delivery: "26 per cent of their time is spent on general administration." This is the old thimble-and-pin trick: Change the administration around, divert the administrative workload and then claim that everybody who is involved in administration is involved on front-line work. It is a nice statistic, a nice trick and a nice ploy, but the Auditor General said it is a load of

rubbish and it does not work. The member for Churchlands has quoted other parts of the report about the need for education services. It is interesting that the Minister for Youth has talked about the money that has been poured in. Members should consider the following statistic -

> In 47 per cent of occasions, young people were unable to enrol in a specialist program at the time they were assessed as requiring these services due to limited availability of places.

That is correct; they cannot get into these training programs. These people are crying out for help, they want to enrol in the programs, and they are trying to turn the situation around. The damning report of the Auditor General said that it reflects what has happened with training. I have spoken over and over again in this place about the Index program and the great results it has achieved with young people, but its minuscule amount of funding was chopped off by the Government. We have seen and talked about the needs. One does not need to be a Rhodes scholar to work out what is required to assist these young people. Why should we assist them? The Minister for Youth has said that 97 per cent of young people are okay, implying that we do not need to put money into this area. We are putting the money in for two reasons: Equity and economics. We need equity because we must ensure these young people have an opportunity to develop fully, are given a chance, and are encouraged to live their lives and make contributions to society. However, the soft equity touch is not the only reason we need to put money into this area; we need to do it for economic reasons as well, because unless we supply the resources up-front and intervene and provide these services, these young people will finish up in institutions. As I said yesterday, the Wooroloo Prison Farm, with a capacity for 750 prisoners, will not be big enough. In conclusion, this is a damning report which illustrates how little the Government has done to redress this issue.

Question put and a division taken with the following result -

Ayes (20)

Ms Anwyl	Dr Edwards	Ms MacTiernan	Mr Riebeling
Mr Bridge	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Brown	Mr Graham	Mr McGinty	Mrs Roberts
Mr Carpenter	Mr Grill	Mr McGowan	Ms Warnock
Dr Constable	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*

Noes (30)

Mr Baker	Mrs Hodson-Thomas	Mr McNee	Mr Shave
Mr Barnett	Mrs Holmes	Mr Minson	Mr Trenorden
Mr Barron-Sullivan	Mr House	Mr Nicholls	Mr Tubby
Mr Board	Mr Johnson	Mr Omodei	Dr Turnbull
Mr Bradshaw	Mr Kierath	Mrs Parker	Mrs van de Klashorst
Mr Court	Mr MacLean	Mr Pendal	Mr Wiese
Mr Day	Mr Marshall	Mr Prince	Mr Osborne *(Teller)*
Dr Hames	Mr Masters		

Pair

Mr Thomas	Mr Cowan

Question thus negatived.

PERTH PARKING MANAGEMENT BILL

Second Reading

MR OMODEI (Warren-Blackwood - Minister for Local Government) [3.50 pm]: I move -

> That the Bill be now read a second time.

The Perth Parking Management Bill demonstrates the Government's commitment to the social, commercial and environmental wellbeing of the City of Perth. The Government regards the social vibrancy, environmental sustainability and economic prosperity of central Perth as vital to the wellbeing of the Perth region and the State of Western Australia. The city is the State's major centre of economic and commercial activity and is a major centre for many of the State's political, tourist, educational and socio-cultural activities. As such, good access to the city is vital. Through initiatives such as the Central Area Transit system, construction of the Graham Farmer Freeway, substantial improvements to public transport and the introduction of the Access to the City for People projects, the Government is demonstrating its commitment to a strong, vital and accessible city.

The principal objectives of the Perth Parking Management Bill and Perth parking policy are to promote a balanced transport system to gain access to central Perth, and to limit the growth of traffic congestion and deterioration of air quality in the

central area. The road infrastructure that serves as a principal means of access to the central city is showing signs of congestion. Air quality is also under threat. This has the potential to result in adverse impacts on businesses and social and cultural activities which rely on efficient access to the city centre; on the physical environment of the city as air pollution worsens; and on the quality, character and amenity of the city for the people who work, live and visit it each day. The Bill provides government with the strategic capability to manage critical issues such as road congestion and air quality, to protect urban amenity and access to the city, in a manner consistent with the objectives of the Perth metropolitan transport strategy and city development policies shared by state and local government.

Parking is a critical component of the transport system. The management of the type, cost, supply and location of parking is a necessary strategic planning capability that complements other transport system strategies and initiatives. Central to the parking management strategy is the requirement for all non-residential parking bays within the boundary of the Perth parking management area - which includes central Perth, West Perth, Northbridge and East Perth - to be licensed. Bays located on premises used solely for residential purposes will not be required to be licensed. Similarly, government will utilise the provisions of clause 7(c) of the Bill to exempt bays used by residents in multipurpose premises which contain a residential component and in private residential premises where home occupation is an allowable use. The Bill provides for revenue raised from the parking licensing scheme to be used to enhance accessibility and the amenity of the Perth parking management area. Agreement has been reached with the City of Perth that this revenue will be used to fund CATS.

This Bill provides the statutory authority for the Perth parking policy which has been developed jointly by Transport and the City of Perth in consultation with a wide range of stakeholders in the city's future. Groups and organisations that have been consulted include the Premier's Capital City Committee; the Department of Environmental Protection; the Ministry for Planning; the Property Council of Australia - formerly the Building Owners and Managers Association; the WA Chamber of Commerce and Industry; the operators of public parking stations; and various community and environmental interest groups.

The policy has attracted support as -

a significant foundation for the implementation of the Premier's Access to the City for People initiative;

a basis for the management of traffic congestion and associated adverse impacts within central Perth; and

a funding source for the improvement of the amenity and accessibility of central Perth - for example, through the provision of funding for the CAT system.

The Chamber of Commerce and Industry and the Property Council of Australia have expressed opposition to the inclusion of tenant parking facilities within the new parking licensing scheme. However, on equity grounds, it is considered appropriate that, with respect to licensing, tenant parking facilities be treated in the same manner as public parking facilities, which currently attract a licence fee. Effective parking system management also supports significant public and private-sector investments in transport infrastructure and services, thus promoting economic efficiency and the social and environmental integrity of the State's capital city area. There is also a need to ensure that a range of transport alternatives are available and attractive to people wishing to access the city. The car will remain a major form of access to central Perth. However, consistent with the objective of the metropolitan transport strategy, enhanced roles will be played by other modes of transport, especially public transport. The effective strategic management of the city's parking system will be supportive of a balanced and sustainable transport system for the city.

The City of Perth's diverse roles as a major operator of parking facilities and a parking system regulator, licensing authority and policy developer, will be simplified. Under the Bill, the City of Perth will continue to be a provider of parking services. The City of Perth will retain, through local government and planning legislation, its planning and building approval powers in regard to public and private parking facilities. The City of Perth will no longer license private sector operators of public car parking stations. This will become the responsibility of the Director General of Transport With respect to requirements for the licensing of parking facilities, the City of Perth will be treated identically to any other provider of parking facilities. With implementation of the licensing scheme, the City of Perth will no longer be required to fund one-half of the CAT system costs. Licence fee revenue will cover these costs in future.

Private sector operators of public car parks will also have their car parks licensed by, and pay a licence fee to, the Director General of Transport. All operators of parking facilities within the City of Perth will be required to comply with the provisions of the Perth parking policy. Under the existing parking licensing arrangements, licensing conditions have sometimes been imposed by the City of Perth. The new parking licensing scheme will permit operators of all parking facilities to determine their own hours of operation and their own parking fees.

The proposed licence scheme and licence fee will be applied to all tenant parking bays. There will be provision for exemption from payment of the licence fee or a reduced fee. Tenant parking operators will be required to license their facilities with Transport and operate in conformity with the Perth parking policy. Any parking facility may be inspected by an authorised officer to ensure that it is operating in conformity with the Perth parking policy.

A revised range of desirable per hectare tenant parking allowances will be introduced to ensure the efficient and attractive distribution of parking throughout the City of Perth. The City of Perth, as the town planning approval authority, will have a level of discretion within which to negotiate tenant parking allowances. The new tenant parking allowance will apply only to development applications lodged with the City of Perth during the term of the policy. The effective management of parking will help to ensure that the city centre's economic, commercial, political, tourism and socio-cultural roles are protected from unacceptable traffic delays and vehicle emission; enhanced by the provision of a high standard of amenity for the people who live, work, or visit the city; and enhanced by the provision of a range of parking facilities effectively managed to serve a range of commercial and social needs. The Government fully supports the new arrangements proposed in this legislation. I commend the Bill to the House.

Debate adjourned, on motion by Ms Warnock.

PERTH PARKING MANAGEMENT (CONSEQUENTIAL PROVISIONS) BILL

Second Reading

MR OMODEI (Warren-Blackwood - Minister for Local Government) [3.59 pm]: I move -

That the Bill be now read a second time.

The Perth Parking Management (Consequential Provisions) Bill provides for the repeal of the City of Perth Parking Facilities Act 1956, together with a number of other minor amendments to the Sentencing Act 1995 and the Transport Coordination Act 1966 to facilitate the introduction of the Perth Parking Management Bill.

Significantly, the Bill provides for the continuation of the City of Perth parking fund until 30 April 1999, after which date the balance of the fund will be paid to the City of Perth's municipal fund; and a continuation of existing parking by-laws as though they were local laws made under the Local Government Act 1995. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

PERTH PARKING MANAGEMENT (TAXING) BILL

Second Reading

MR OMODEI (Warren-Blackwood - Minister for Local Government) [4.00 pm]: I move -

That the Bill be now read a second time.

The Perth Parking Management (Taxing) Bill is necessary to facilitate the introduction of the Perth Parking Management Bill, and provides that the licence fee for parking bays provided for under clause 11 of that Bill is a tax. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

NATIVE TITLE (STATE PROVISIONS) BILL

Committee

Resumed from an earlier stage of the sitting. The Deputy Chairman of Committees (Mr Baker) in the Chair; Mr Court (Premier) in charge of the Bill.

New clause 7.45: Parliamentary Joint Committee on Native Title -

Progress was reported after the new clause had been partly considered.

Mr RIPPER: I was previously arguing for the establishment of a parliamentary joint committee on native title. My amendment inserts a new clause to provide for that committee. I am seeking to duplicate a provision in the commonwealth legislation with regard to parliamentary supervision of the operation of the Native Title Act. Given that we are establishing a state version of what is in the commonwealth legislation we should be adopting some of the same accountability mechanisms that the Commonwealth Parliament has adopted.

One of those accountability mechanisms is the establishment of a parliamentary joint committee, which is specifically provided for in the NTA. It would be a useful way in which to hold the Government accountable for the operations of its native title scheme. This is an area of conflicting interests and it has a history of division and controversy. If the Committee were to agree to establish a parliamentary committee to oversee the way in which native title is treated it would inspire a small degree of additional confidence. I am disappointed that my arguments have not persuaded the Premier.

Mr BROWN: I support the amendment. It is important, given the doubts about what it is intended to achieve, that we agree to subject the legislation and its operation to consideration by a parliamentary joint committee. That would have a couple

of positives: First, it would draw to the Parliament's attention at an early stage any difficulties encountered with the Act; and, secondly, in considering the Act and its operation, the Parliament would be able to bring forward any amendments that may be deemed to be of assistance.

We have already debated the annual report and what it should contain. This is simply another transparency process. It is unfortunate that the Government is not prepared to accept this amendment, because it would go a long way towards making the process far more transparent than would otherwise be the case. Perhaps the Government is not enthused about agreeing to this amendment because it does not want this process to be transparent. If that is the case, that would be a strong motivation to reject the amendment. However, if the Government believes that the system should be transparent and it is interested in an equitable and workable system, there is no reason to reject this amendment. This clause would enhance that transparency and give the Parliament, through the committee, an opportunity to review the operation and effectiveness of the Act.

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

Ayes (19)

Ms Anwyl	Dr Gallop	Mr Marlborough	Mr Ripper
Mr Bridge	Mr Graham	Mr McGinty	Mrs Roberts
Mr Brown	Mr Grill	Mr McGowan	Ms Warnock
Mr Carpenter	Mr Kobelke	Ms McHale	Mr Cunningham *(Teller)*
Dr Edwards	Ms MacTiernan	Mr Riebeling	

Noes (30)

Mr Barnett	Dr Hames	Mr Masters	Mr Shave
Mr Barron-Sullivan	Mrs Hodson-Thomas	Mr McNee	Mr Trenorden
Mr Bloffwitch	Mrs Holmes	Mr Minson	Mr Tubby
Mr Board	Mr House	Mr Nicholls	Dr Turnbull
Mr Bradshaw	Mr Johnson	Mr Omodei	Mrs van de Klashorst
Dr Constable	Mr Kierath	Mr Pendal	Mr Wiese
Mr Court	Mr MacLean	Mr Prince	Mr Osborne *(Teller)*
Mr Day	Mr Marshall		

Pair

Mr Thomas	Mr Cowan

New clause thus negatived.

New clause 7.46 -

Mr RIPPER: I move -

Page 104, after line 13 - To insert the following new clause -

7.46. Reports by Equal Opportunity Commissioner

(1) The Equal Opportunity Commissioner (appointed under the *Equal Opportunity Act 1984*) must prepare and submit to the Minister a report on the effect of this Act on the exercise and enjoyment of equality of opportunity of Aboriginal peoples in Western Australia.

(2) A report under this section must be prepared as soon as is practicable after the expiration of 3 years from the commencement of this Act and every 3 years thereafter.

(3) The Minister may at any time, by written notice, direct the Equal Opportunity Commissioner to report to the Minister on any matter covered by subsection (1).

(4) The Minister must cause any report submitted to the Minister in accordance with this section to be laid before each House of Parliament within 30 sitting days from the day on which the Minister receives the report.

The new clause provides for the Commissioner for Equal Opportunity to review the effect of the legislation on Aboriginal people in Western Australia after three years from its commencement and every three years thereafter. It is based on a provision in the Native Title Act. Again, we are trying to replicate the accountability sections of the NTA in the state legislation which gives us a state version of NTA procedures in certain circumstances. Section 209 of the NTA provides for a yearly report by the Aboriginal and Torres Strait Islander Social Justice Commissioner. Members will note from the way in which I have described the amendment to the state legislation that we have not sought to impose a yearly report in this case; to a certain extent, we have lessened the commonwealth requirement by suggesting that the report be triennial.

Mr Court: I would hate to do the report.

Mr RIPPER: Let us consider what the new clause states -

> The Equal Opportunity Commissioner . . . must prepare and submit to the Minister a report on the effect of this Act on the exercise and enjoyment of equality of opportunity of Aboriginal peoples in Western Australia.

We do not say that the Commissioner for Equal Opportunity must second-guess what is going on in the Native Title Commission. If the amendment is carried, the Commissioner for Equal Opportunity will look at the outcomes of the process; for example, land ownership by Aboriginal people, their economic position in Western Australian society, whether Aboriginal people have advanced as a result of the state native title legislation or whether their position has remained static or gone backwards, taking into account a range of social indicators. The Commissioner for Equal Opportunity would consider the social and economic circumstances of Aboriginal people, not the internal operations of the Native Title Commission or the details of land legislation in this State. If the amendment is carried, the Commissioner for Equal Opportunity will consider outcomes - what Aboriginal people have gained, if anything, from the operation of the state native title legislation.

One object of the NTA is to recognise and protect native title. In a sense, the legislation is subsidiary to the NTA. We sought to include in the legislation a version of the objects included in the NTA, but the State Government refused to support our proposed amendment. Nevertheless, the scheme of native title legislation in Australia, even if the State Government would not accept our amendment, is partly to recognise and to protect native title. One thing that the Commissioner for Equal Opportunity could examine is whether there has been any benefit for Aboriginal people from the legislation which is in place partly to recognise and protect their rights.

Mr COURT: I appreciate what the Deputy Leader of the Opposition says, but frankly all agencies must comply with equal opportunity requirements. In a way, it would be a bit of an affront for a native title tribunal to have to go through special reports - I reckon there would be much explaining to do in several respects. It would cause great trouble for Aboriginal people if there were a requirement for such reports.

Mr BROWN: The clause would require a body - not the body that is given legislative authority, but another body that might be regarded as dispassionate in its assessment - to assess the effect of the Act on Aboriginal people in Western Australia. It is not an unreasonable proposition to look at how this statute has affected Aboriginal people. I suggest it will be quite difficult for the commission to make that assessment itself. The commission has a set of procedures outlined in the Bill. Its success or otherwise will be measured by the way it administers the Act when in place, and that may be in a way which is not beneficial to Aboriginal people. If that is the case, it is bound by what is required under the legislation. It cannot make a value judgment. It can judge its effectiveness in other ways. The amendment by the Deputy Leader of the Opposition will require a dispassionate report to be provided on the Act and the way in which the circumstances of Aboriginal people are affected by it. It seemed to be eminently reasonable to ask for that assessment.

Interestingly, when the question of whether the Native Title Act should be subject to the Racial Discrimination Act arose in the Commonwealth Parliament, a move was made by the now Prime Minister to have the Racial Discrimination Act laid aside. He was not successful. This review is not in the same category as that assessment. The amendment attempts to have the Commissioner for Equal Opportunity make that assessment. Unless, again, there is something which the Government is keen not to have exposed, I can see no reason for rejecting this provision.

New clause put and negatived.

New clause 7.47 -

Mr RIPPER: I move -

> Page 104, after line 13 - To insert the following new clause -
>
> **7.47. Review of Act**
>
> (1) The Minister is to carry out a review of the operation and effectiveness of this Act within 12 months after the expiration of 5 years from the commencement of this Act with particular regard to whether the public policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
>
> (2) The Minister is to prepare a report based on the review made under subsection (1) and cause the report to be laid before each House of Parliament within 12 months after the commencement of the review.

This proposed new clause will result in a ministerial review of the effect of this Act and its operation, to be carried out after a five-year period of its operation. It is a standard review clause. I understand that the Government is prepared to support the addition of this accountability measure in the legislation.

Mr Court: Yes, it is.

New clause put and passed.

New clause 7.48 -

Mr RIPPER: I move -

Page 104, line 13 - To insert the following new clause -

7.48. Public consultation on review

(1) In carrying out a review under section 7.47 the Minister must -

(a) ensure that a notice in accordance with subsection (2) is published in -

(i) the *Government Gazette*; and

(ii) a daily newspaper circulating generally throughout the State,

within 1 month of the commencement of the review; and

(b) consider any public comments or submissions made to the Minister within the period specified in such notice.

(2) A notice must -

(a) state -

(i) the fact of;

(ii) the reasons for; and

(iii) the objectives of the review; and

(b) invite public comments or submissions within 2 months from the publication of the notice.

This new clause provides for the way in which the review outlined in the previous new clause will be conducted. I understand that the Government might not support this part of our amendments, which is disappointing. The Government has agreed to a review, but one to be conducted by the minister. As the Bill stands with the passage of our previous new clause, the minister may conduct the review any way he or she sees fit. It might be a review conducted by the minister's principal private secretary. It could be conducted by consultant Bill Hassell employed for the exercise.

Mr Court: Whatever Bill Hassell is asked to do, he does well.

Mr RIPPER: The review could be conducted with no input from the community. The Premier's last comment does not fill me with confidence for obvious reasons!

Mr Court: If you asked Bill Hassell to do a review of the internal workings of the Labor Party, he would do it professionally.

Mr RIPPER: He might find it to be somewhat unusual on the basis of his experience!

Mr Court: I think there would be a lot of similarities between the parties.

Mr RIPPER: The important point is that if a review is to be worth anything, it must take into account the views of the public, particularly native title parties and proponents - that is, people with competing rights to land. We have specified a process which will ensure adequate public consultation in the preparation of the minister's review. We are pleased that the Government supported the first new clause. If it does not support the second, the review could be conducted entirely in-house without public consultation. Although that will not necessarily happen, we do not want to allow such an improper approach.

Mr COURT: As with the previous new clause, we put review clauses in a great deal of legislation. However, we need not spell out the detail of how to conduct that review. Subclause (1) of new clause 7.47 reads -

(1) The Minister is to carry out a review of the operation and effectiveness of this Act within 12 months after the expiration of 5 years from the commencement of this Act with particular regard to whether the public policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

That is adequate prescription for the operation of a review. We have not spelt out procedures similar to those contained in the new clause when carrying out reviews on other legislation.

New clause put and negatived.

Clause 8.1: Regulations -

Mr RIPPER: I move -

Page 105, line 3 - To delete " The " and substitute "Subject to Part 9, the".

I do not propose that we argue the substantive debate now but the Opposition has a proposal to insert a new part 9 - Scrutiny of regulations. This amendment relates to that proposal.

Amendment put and negatived.

Mr RIPPER: Clause 8.1 relates to the power to make regulations required for the operation of this legislation. The Opposition proposes to insert a specific proposal for the scrutiny of regulations before they come into effect. That is why it sought to make clause 8.1 subject to the new part 9 it will move shortly. If the Opposition is successful in inserting the new part 9, it will move for the recommittal of the Bill to the committee and move the consequential amendment which has just failed.

Clause put and passed.

Clause 8.2: Consequential amendments -

Mr RIPPER: I move -

Page 105, line 10 - To delete "has" and substitute "and Schedule 3 have".

The Opposition proposes to insert a new schedule 3 and this will be a consequential amendment should that proposal succeed. I will put the amendment now to avoid the messy business of postponing consideration of clauses.

Amendment put and negatived.

Clause put and passed.

New clause 8.3 -

Mr RIPPER: I move -

Page 105, after line 10 - To insert the following new clause -

8.3. Assistance from Attorney-General

(1) A person who is, or intends to be -

(a) a consultation party; or

(b) a negotiation party,

to a consultation or negotiation, as the case may be, or a mediation or hearing in relation thereto, may apply to the Attorney-General for the provision of assistance under this section in relation to the consultation, negotiation, mediation or hearing.

(2) Subject to subsection (3) the Attorney-General may authorize the provision by the State to the applicant, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance as the Attorney-General determines.

(3) The Attorney-General shall not authorize assistance under this section unless the Attorney-General is satisfied that -

(a) the applicant is not eligible to receive assistance in relation to the matter concerned from any other source (including from a representative Aboriginal body);

(b) the provision of assistance to the applicant in relation to the matter concerned is in accordance with the guidelines (if any) determined under subsection (4); and

(c) in all the circumstances, it is reasonable that the application be granted.

(4) The Attorney-General may, in writing, determine guidelines that are to be applied in authorizing the provision of assistance under this section.

(5) In this section -

"the applicant" means the person referred to in subsection (1).

This amendment is designed to provide a way for consultation or negotiation parties to seek financial assistance from the Attorney General to help with the progress of the consultation, negotiation, mediation or hearing. This money would be for legal purposes. The Opposition appreciates that people might gain assistance from other sections of the public sector; for example, the native title parties might receive assistance through representative Aboriginal bodies. The Opposition is providing a mechanism to allow people to seek assistance if they cannot get that assistance from other quarters, but not to allow them to double dip. I refer members to the wording of subclause (3) of the amendment. In subclause (4) the Opposition provides that the Attorney General may determine guidelines to be applied in authorising the provision of assistance. That would allow for some consistency in treatment of people making applications. Under the Native Title Act, the commonwealth Attorney General has discretion to provide legal or financial assistance for certain matters. This amendment would enable the state Attorney General, at his or her discretion, to provide similar assistance where the applicant was ineligible to obtain it otherwise.

It might be thought that the Opposition was principally interested in providing assistance to native title parties, but the amendment is designed with the interests of all parties in mind. While in many cases the proponents would be large corporations which would not need legal assistance, others may be caught up in the legal process of native title who are neither native title parties with the ability to seek assistance from the Aboriginal Legal Service nor large corporations with their own resources. Small commercial operations could be caught up in native title considerations. Small prospectors or sole operators might find themselves dealing with native title consultations or negotiations. It is the Opposition's view that these people should not be disadvantaged when faced with either the legal resources of a large and profitable corporation or the legal resources available to parties which can seek assistance from some source in the public sector. There should be some provision for the people who would otherwise fall through the gaps and do not have support from rich private sources or the public sector. We all know that in those circumstances someone without access to legal advice or representation could be seriously disadvantaged. I hope the Government supports this amendment. It is aimed at a constituency for which the Government should have some regard. Small prospectors and small players in the mining industry would principally benefit from this amendment. Other small business people faced with the necessity to engage in native title consultations or negotiations could also benefit from the operation of this new clause.

Mr COURT: The Government cannot agree with this amendment. It would be terrific if we had heaps of money but the Opposition is asking the state Attorney General to provide financial assistance to any party in certain native title matters. Assistance is currently provided by the Commonwealth Government but these costs would not be covered by the commonwealth-state financial assistance agreement. The Commonwealth has not raised the issue of having a pool of funds which will be paid out with the State. At present we have some sharing of costs of the operation of the commission, but providing parties with financial assistance would not be covered by that financial assistance agreement. The Government is not in a position to provide this money. Members would be aware that avenues of assistance are available and the Government does not feel it is appropriate for the State to add to that pool.

Mr Ripper: The problem is that while some people have access to that help, others do not.

Mr COURT: The Deputy Leader of the Opposition mentioned prospectors and miners and the like; unfortunately the system now has all these costs which must be paid for.

Mr BROWN: I am surprised that the Premier is not prepared to accept this proposed new clause, because it is not an obligatory clause. Subclause (2) states that, subject to such conditions as the Attorney-General determines, he may authorise assistance. There is an opportunity for the Attorney General to authorise the provision of funds in certain circumstances. The Attorney General would need to consider what those circumstances should be and the breadth of the criteria for eligibility or otherwise. A minister has either to authorise funds under an Act or make ex gratia or act-of-grace payments. Recently I sought some information from the Premier and then various ministers on act-of-grace payments made by various departments and agencies. There are a number, and sometimes the amounts are quite small. However, act-of-grace payments must be made in a particular way, if the minister is inclined to make them, because they are outside of the legislative arrangements through which funds can be easily allocated. This clause sets up an arrangement under which the Attorney General can establish the criteria through which funds may be provided. Looking at the resources of the State, particularly resources where proponents are seeking to develop a mine or undertake another development that may be assisted by a claim being efficiently dealt with under this Bill, I cannot believe that it would not be wise economically for the State to provide that assistance. That assistance may well provide the level of expertise necessary to help one or other of the parties deal with the claim efficiently and expeditiously rather than bumbling along with the best endeavours of someone who may think that he understands the meaning of the legislation but is struggling with it.

In a number of circumstances it is not only a matter of making the payment in the interests of equity, so that parties who do not have access to resources are properly represented; it is also a matter of ensuring that the process is dealt with in a professional way and therefore is expedited. This would provide a benefit for not only the parties but also the State. In that context, the way the clause is framed provides a very wide discretion. It enables funds to be made available in certain circumstances. I do not know whether the Premier is prepared to look at it in that light. In my discussions with some Aboriginal people and organisations they have said to me that if resources were allocated to deal with some of the claims,

they could be dealt with a great deal better than has been the case. The Premier may disagree with that but I believe those people have very good standing. This argument is not simply based on equity. The clause will also enable the Attorney General to provide funds where it is in the State's interest to do so.

New clause put and negatived.

New part 9 -

Mr RIPPER: I move -

PART 9 - SCRUTINY OF REGULATIONS

9.1. Interpretation

In this Part -

"committee" means the Joint Standing Committee On Delegated Legislation constituted by resolution of both Houses or such other committee of one or both Houses of Parliament constituted for the purpose of reviewing or scrutinising regulations;

"exemption certificate" means a certificate issued by the Minister under section 9.6;

"regulation" means a regulation made under this Act; and

"statement" means the statement required under section 9.2.

9.2. Duty on Minister to table statement

The Minister shall cause to be tabled a statement describing the reasons for and objectives of the regulation within 7 sitting days of the date on which a regulation is published in the *Government Gazette*.

9.3. Public comments and submissions

(1) The Minister shall ensure that within 48 hours of the tabling of a statement under section 9.2 a notice in accordance with subsection (2) is published in a daily newspaper circulating generally throughout Western Australia.

(2) A notice must -

(a) identify the regulation to which it relates;

(b) publish the statement tabled under section 9.2;

(c) specify where a copy of the regulation and the statement can be obtained; and

(d) invite public comments or submissions within 14 days from the publication of the notice.

(3) The Minister must ensure that a copy of -

(a) the regulation;

(b) the statement;

(c) the notice required in subsection (2); and

(d) all comments and submissions,

is forwarded to the committee within 17 days of the publication of the notice required by this section.

9.4. Committee may report

(1) The committee may prepare a report on any regulation with reference to the statement and any public comments or submissions relating to that regulation as soon as practicable after that committee receives the documents referred to in section 9.3 (3).

(2) A report of the committee under this section may contain any recommendations that that committee considers appropriate, including a recommendation that the regulation should be -

(a) disallowed in whole or in part; or

(b) amended as suggested in the report.

(3) A copy of any report prepared under this section shall be presented to both Houses.

(4) The committee shall have the power to hold a public hearing and to call for oral submissions for the purposes of preparing a report in accordance with this section.

9.5. Member may move notice to disallow

Notwithstanding any standing order of either House a member may move a notice of motion to disallow a regulation on or before the 18th sitting day after a report of the committee relating to that regulation is tabled in accordance with section 9.4.

9.6. Minister's exemption certificate

(1) This schedule does not apply if the Minister certifies in writing that in his or her opinion the regulation is of a fundamentally declaratory or machinery nature.

(2) An exemption certificate under subsection (1) must specify the reasons for the exemption.

(3) The Minister shall cause to be tabled in each House a copy of the exemption certificate within 7 sitting days from the date on which the regulation is published in the *Government Gazette*.

This proposed part is based on a Bill presented by my colleague, the member for Bassendean, governing the development of regulations for all legislation. I understand that the Bill has been given a second reading speech but the House has not yet considered it. Nevertheless, we have been sufficiently impressed by the work of the member for Bassendean to include his ideas in our amendments to this native title legislation. Although I am formally moving the insertion of this part, the member for Bassendean will carry the debate.

Mr BROWN: This proposed part which provides for the scrutiny of regulations issued under the proposed Act is modelled on the Public Scrutiny of Bills and Regulations Bill which I introduced into Parliament approximately 12 months ago. It sought to meet the concerns of many sectors, such as the business community's concerns about regulations that create unintended consequences, the environmental movement's concerns about legislation that is introduced and that unduly impacts on the environment, and various other groups' concerns about social impacts that could arise from Bills or regulations considered by the Parliament. The purpose of that Bill, upon which this part is founded, is simply that these regulations should be subject to parliamentary scrutiny with a view to seeing if they are the most appropriate way of dealing with the issues that are set out in the regulations themselves.

Clause 9.2 provides for a duty on the minister to table a statement which describes the reasons for and the objectives of the regulations. That statement must be published. There is a mechanism by which people who are interested in the regulations and statement may obtain a copy of the documents to which they relate. People may make a submission on such a regulation, which will be referred to the committee. The committee may then examine the submissions and disallow a regulation in whole or in part or suggest an amendment to a regulation. Essentially this part provides a mechanism for a thorough review of regulations. This means they do not simply get tabled and slip through the Parliament because no-one has objected to them within the requisite period. It means there is an active review of the regulations.

Second and most important in considering whether the regulations are appropriate, we are able to be guided by a statement about what the minister or the Government has attempted to do with the regulations. On many occasions it is possible to achieve an outcome which will be equally as efficient or effective, but in a different way to that specified in the regulations. The tabling of a statement of intent will provide an opportunity for people reviewing the regulations to consider the Government's intention and whether the outcome it desires may be achieved in some other more efficient or less expensive way.

Thirdly, it will enhance the parliamentary democratic process. Rather than this process occurring in many instances out of sight of the public, it will provide an opportunity for the public's comments to be taken into account by all parties in the Parliament before the regulations are affirmed. This is an enhancement process that seeks to result in an improvement in regulations. It is also an enhancement of the parliamentary democratic process in that it will give people an opportunity to comment on proposals before the Parliament.

Mr COURT: The Government will not agree to this new part headed "Scrutiny of Regulations". The regulations are scrutinised by the Parliament. Members of Parliament doing their job ensure that people with an interest in these matters are contacted and consulted. I do not see why we must include a scrutiny of regulations when already they can be scrutinised by the Parliament.

Mr BROWN: As the Premier said, members can move disallowances and have them debated on the floor of the Chamber. However, that does not work as effectively as the referral of matters to a committee that can take evidence and examine matters in detail. Many of the matters covered by regulations, which are subordinate legislation, deal with procedure and fine detail and are of concern to those who are intimately involved in the process. Many of these matters cannot be dealt with properly in general debate. They would be far better dealt with by a committee so that the general public can understand the Government's purpose of the regulation.

We have all read regulations and one of the bitter complaints from the business community is that regulations are often introduced that have unintended consequences. Regulations should be reviewed properly to ensure those unintended consequences do not occur or are minimised or that the Government's intention be handled in a format different from the models under the regulatory arrangements. This amendment will enable that process to occur. It will not denigrate the process; it will improve it in a number of ways: First, by obliging the minister to produce a statement outlining the purpose of the regulations so that people can compare the regulations with the purpose; and second, by a review of those two issues to see whether there is another way of achieving that objective in a cool, calm atmosphere where matters of detail covered by the regulations can be properly examined. It may be that the Government prefers the arrangement of disallowance to be debated on the floor of the Parliament. In that way, effectively many of the things covered by the regulations will escape the attention of the Parliament in which case they will not be dealt with in detail. If they cannot be dealt with in detail under the standing orders of the Parliament the administration of the Act will be the poorer.

Mr Bloffwitch: They are referred to the upper House. If they are not dealt with they are automatically disallowed.

Mr BROWN: I am never sure of the upper House procedures.

Mr Bloffwitch: I am because I was a member of the Standing Committee on Delegated Legislation.

Mr BROWN: When we debate my Bill I will bring back this matter. This type of scrutiny has been recommended by the upper House committee. It is indicative that it has never been picked up. It is wanted by many groups in the community to whom I have spoken. For an important piece of legislation such as this, it is critical that the regulatory provisions be thought through. This new clause provides an opportunity to ensure that process is accurately carried out. That will benefit not only the operation of the Act but also the State. Any minor costs involved in that can be justified on the basis that ultimately we will finish up with a better product that will lead to greater efficiency and effectiveness of the Act.

New part put and negatived.

Schedule 1 put and passed.

New schedule 2 -

Mr COURT: I move -

Page 108, after line 19 - To insert the following new schedule -

Schedule 2 - Appointment and conditions of service of the Executive Director

[s. 7.9(2)]

1. Appointment

(1) The Executive Director is to be appointed by the Governor.

(2) An appointment is to be for a term of not more than 5 years.

(3) The Executive Director may be reappointed from time to time at the end of a term of office unless he or she has been removed from office by the Governor under clause 3.

2. Conditions of service

(1) The Executive Director's conditions of service are to be determined by the Governor.

(2) Subject to the *Salaries and Allowances Act 1975*, the Executive Director is to be paid such remuneration and allowances as the Governor determines.

3. Removal

(1) The Governor may, at any time, remove the Executive Director from office —

(a) for disability, neglect of duty or misconduct; or

(b) if he or she engages in any other paid employment without the approval of the Commission.

(2) The Governor must remove the Executive Director from office if he or she is an insolvent under administration as that expression is defined in the Corporations Law.

4. Resignation

The Executive Director may at any time resign from office by writing under his or her hand addressed to the Minister.

".

New schedule 2 makes provision for the appointment, conditions of service, removal and resignation of the executive director. These are similar provisions to those in the NTA covering the Native Title Registrar. It is a change consequential to the changes made to the position of executive director.

Mr RIPPER: The Opposition proposed some amendments to strengthen the position of the executive director who will be like a judicial registrar. If we can enhance the standing and substance of that position we will enhance the standing and substance of the Native Title Commission. Our amendments were to be moved earlier in the Bill. When the Premier came up with the structure of a schedule for the appointment and conditions of service of the executive director we recast our amendments in the form of an alternative schedule 2 which is at page 24 of the Notice Paper. I am not sure of the correct way in which to proceed. I imagine that if the Premier's new schedule 2 is endorsed by the House I am not in a position to move my new schedule. I would like some advice from you, Mr Deputy Chairman, on the best way to proceed to have the two principal differences between the Premier's schedule and the Opposition's schedule considered.

The DEPUTY CHAIRMAN (Mr Baker): If the Premier is successful on the vote on his proposed new schedule 2, it will not be possible for the member to propose amendments to the schedule which are inconsistent with the gist and thrust of the Premier's schedule.

Mr Ripper: Would it be possible or not possible?

The DEPUTY CHAIRMAN: It would not be possible for the member to move it in the current format that he is proposing. He must amend schedule 2 of the Premier's schedule indicating each and every amendment on each and every line. If the member wishes to insert his proposed schedule 2, he should vote against the Premier's schedule 2.

Mr RIPPER: I oppose the Premier's schedule 2 motion. If the Premier's schedule 2 is defeated, I shall proceed to move our version of schedule 2. I draw attention to the two differences between the Government's proposed schedule 2 and the Opposition's proposed schedule 2. In section 1.2 of our proposed schedule, we make the statement -

> Before making a recommendation under subsection (1), the Minister shall consult the parliamentary leader of each party in the Parliament.

We are saying that when the minister is deciding about who should be appointed as the executive director, that decision is formally a recommendation to the Governor. We say that, before the recommendation to the Governor is made, consultation should take place with the leaders of other parties in the Parliament. We are trying to establish legitimacy for the Native Title Commission. Perhaps the Government does not realise how much suspicion and cynicism exists in certain corners of our community about its approach to native title. If the Government wants its Native Title Commission to be accepted as a legitimate vehicle for dealing with native title matters, it must work harder than it would for the establishment of other bodies. The task of the Government in establishing credibility and legitimacy for the Native Title Commission will be harder because of the State Government's controversial history on native title. We are proposing something which should help the Government in that task because if the Government is able to say to the community, "We consulted the parliamentary leaders of the other parties in the Parliament and they all agreed with the appointment of the executive director", that will lessen any criticism which the Government might face from desperate sections of the community about this appointment. If, later on, there is some controversy involving the Native Title Commission and the executive director, the Government has the comfort of being able to say that all parties were consulted before this appointment was made. Given that aspect and the task which the Government faces to establish legitimacy for the Native Title Commission, I am surprised that the Government would not be interested in supporting that aspect of our amendments. The next aspect of our schedule which is different from that proposed by the Government is that part 3 establishes some qualifications which the executive director must meet. We say that the executive director must be a lawyer of at least five years' standing.

Mr Court: Next year you will say that all members of Parliament must be lawyers of five years' standing before they become a member.

Mr RIPPER: Some people in the Parliament would say that would be a wonderful qualification. When it comes to being a member of Parliament, I do not necessarily agree, with all due respect to my lawyer colleagues.

Mr Court: What happens if the person is a geologist and has a huge experience and background in dealing with Aboriginal people and administrative skills? Why can't that person take the job?

Mr RIPPER: The Premier should look at our amendment. Firstly, we say the executive director should be a lawyer of at least five years' standing. Secondly, we say he or she must have substantial experience in Aboriginal societies, the law, administration or any other activities relevant to the duties of the executive director. The credibility of the Native Title Commission will depend to a certain extent on whether it is viewed as a judicial body - at least in a de facto sense - or as a politico administrative unit of the Premier's department. If the Government wants to have it viewed as an independent quasi-judicial body, the Government should have it constructed as a judicial body. A judicial body has a registrar who is a lawyer. That is the rationale for our amendment and I believe it is a sensible rationale. It is a rationale which is in the Government's interests.

Mr COURT: I know the member has received legal advice, but he should not have picked a vested interest to give him that advice. There is no reason that a lawyer could not do the job, but I would have thought more interest would be in a person who has good skills in running an administration and a bureaucracy because it will be a big operation.

Mr Ripper: How big will it be?

Mr COURT: I said in Parliament the other day that it will probably start with about 40 people and I think it will grow reasonably quickly judging by the workload we will get on this exercise. The main qualifications will be for a person who has administrative management skills and the like. Putting a requirement that that person must be a lawyer is discriminatory because few of the people whom I know have a legal background could do this job. In fact, I think a legal background could be limiting in running this sort of operation. We are not being asked to support it now; we are having this debate because that is one of the differences in the Opposition's proposed schedule.

Mr BRIDGE: One of the main problems we have had in dealing with native title has been the absence of the practical understanding of the very basics of the issue; that goes back to the Mabo decision of the High Court and the many events that have flowed since then. If we are to put in place a plan of action that will have a meaningful application, we must recruit people with the capacity to understand the practical aspects of the job and the characteristics of dealing with an issue such as native title. With all due respect to the legal fraternity, they have not assisted a great deal in the processes of this exercise through its entire history. If we are seriously contemplating getting this whole exercise in place, it is critical that we look for the best equipped person to fill this position who can effectively execute the administration of this position. Everything to do with native title must get back to practicality. We have had too much of the technicalities. The technicalities of this issue have been the basis upon which we have continuous impasses and frustrations that have beset this whole exercise. One basic thing that is missing in modern Australia today is the reliance that should be placed upon people who have good administration skills. However, above all, they must have a practical understanding of the operation. They are not the people who have a computer in their office and press a few buttons so that a few nice lines come up that they can read. I have a grandson who is nine years of age who is a whiz-kid at doing that. He can use a computer to do lots of things, but he would not have a clue about the relativities of these issues. As we pursue the final stages of this legislation in our attempts to get it right, the practical application of native title should not escape our thoughts.

Mr RIPPER: One aspect of proposed schedule 2 on which the Premier did not comment related to the minister consulting with the parliamentary leader of each party in the Parliament.

Mr COURT: The process of selection is the same as that for the appointment of all chief executive officers. A panel of people will go through the processes of seeking interest and recommendations will be made to Cabinet. We do not believe it is necessary for there be consultation for this position.

New schedule put and passed.

Schedule 2 -

Mr COURT: I move -

Page 113, lines 20 to 25 - To delete the lines and substitute the following -

(1) Where -

(a) the grant or renewal of a mining lease; or

Page 114, line 4 - To delete "renewal or grant" and substitute "grant or renewal".

Page 118, lines 6 to 10 - To delete the lines and substitute "Where the grant or renewal of a production licence is a Part 3".

Page 118, line 13 - To insert after "relating to that" the words "grant or".

These amendments are nothing do with the Commonwealth Government. They are amendments to the Mining Act, the Petroleum Act and the like. Proposed new section 70O is to be inserted in the Mining Act by clause 10 of schedule 2 and is amended so that the grant of a mining lease is made subject to clause 3.6 or 4.5 of the Bill only if it is a part 3 act or a part 4 act, as defined in the Bill. Section 26D(2) of the Native Title Act could exclude the grant of a mining lease from those parts. The proposed new section 48L to be inserted into the Petroleum Act by clause 19 of schedule 2 is amended so that the grant of a production licence is made subject to clause 3.6 or 4.5 of the Bill only if it is a part 3 or a part 4 act as defined in the Bill. Section 26D(2) of the Native Title Act could exclude the grant of a production licence from those parts.

Mr RIPPER: I have asked the Premier about schedule 2 which I suppose will be new schedule 3 of the Bill following the last amendment. Division 3, clause 24 amends the Petroleum Pipelines Act by inserting a proposed new section 10A in that Act to the effect that a licence is not to be taken to authorise the licensee or any other person to do any act that affects native title. I am concerned about the possible effect of that clause. I wonder whether the Premier could give an explanation of what this clause is intended to do. Will it remove a pipeline licence from the provisions of the Native Title Act by making

an assertion that if there is a pipeline licence, people are not authorised to affect native title even if, in practice, they are affecting native title in an unauthorised fashion?

Mr COURT: Two things are required for a pipeline: First, a pipeline licence; and, secondly, a pipeline easement. We are moving the pipeline licence provision because people must get the easement before they can utilise the fact that they have a pipeline licence. The easement is the concern on the native title.

Mr RIPPER: Would there be circumstances where the easement has already been granted, perhaps without reference to the provision for the NTA, but the licence has not been granted? Will a provision like this advantage any proposed pipeline operators who might be at the stage where the easement is available and it is free from native title considerations because of some past actions of the Government, but they do not yet have a licence?

Mr COURT: That is the case. With the Dampier pipeline there is an easement, and it is possible for other pipelines to be built on that easement

Mr Ripper: Are you thinking of any other pipeline operator?

Mr COURT: No; not that I am aware of.

Amendments put and passed.

Mr COURT: I move -

Page 120, after line 20 - To add the following -

Division 4 - *Constitution Acts Amendment Act 1899*

24. Schedule V amended

Schedule V to the *Constitution Acts Amendment Act 1899* is amended in Part 1, in Division 1, by inserting in the appropriate alphabetical positions the following -

Executive Director of the Native Title Commission appointed under the *Native Title (State Provisions) Act 1998*.

Member of the Native Title Commission established by the *Native Title (State Provisions Act) 1998*.

Division 5 - *Financial Administration and Audit Act 1985*

25. Schedule 1 amended

Schedule 1 to the *Financial Administration and Audit Act 1985* is amended by inserting in the appropriate alphabetical position the following -

Native Title Commission.

Division 6 - *Parliamentary Commissioner Act 1971*

26. Schedule 1 amended

Schedule 1 to the *Parliamentary Commissioner Act 1971* is amended by inserting in the appropriate alphabetical position the following -

The Native Title Commission established by the *Native Title (State Provisions) Act 1998*.

The amendment covering division 4 will include the executive director of the commission and members of the commission in division 1 of part 1 of schedule 5. The amendment relating to division 5 is such that the Financial Administration and Audit Act is amended to make the Native Title Commission a statutory authority, rather than an affiliated body as defined in the Financial Administration and Audit Act. It is necessary as a result of our creating the commission as a statutory authority.

Under the amendment referring to division 6, the Parliamentary Commissioner Act 1971 is amended to exclude the Native Title Commission from the jurisdiction of the Ombudsman. This is necessary because the commission, when acting under a delegation of powers under section 207B of the Native Title Act, is subject to the jurisdiction of the Federal Court and there would be a potential conflict with the equivalent state laws in the case of the review of the decisions of the commission.

Mr RIPPER: This amendment relating to division 6 is of concern. The Government has moved somewhat towards the position of the Opposition on the status and independence of the Native Title Commission by establishing it - in the Government's words - as a statutory authority. Usually a statutory authority would be subject to the supervision of the Parliamentary Commissioner. Given that there will be doubts about the legitimacy of the Native Title Commission and

scepticism about the Government's approach to native title, it would seem unusual for the Government to exclude the Native Title Commission from the normal accountability requirements that would apply to a statutory authority. Every other statutory authority is subjected to the supervision of the Ombudsman. This Government will exclude the Native Title Commission from that purview. I was not aware of the Government's rationale to this amendment until the Premier just spoke. He indicated that there might be a problem with the Federal Court supervision on certain aspects of the work of the Native Title Commission. That may be some justification for what the Government proposed. However, there are plenty of other aspects of the operation of the Native Title Commission that will not be subjected to Federal Court supervision. Those aspects, apparently, will be left unsupervised by anyone. They will not be available to the parliamentary commissioner or to the Federal Court for investigation, should a complaint be made.

The Government should be a little more creative about this amendment and provide, so far as is possible consistent with the requirements under the Native Title Act, for the Parliamentary Commissioner to have the oversight of the Native Title Commission. I have said on a number of occasions this afternoon that the Government will have a problem with this commission. The problem is that people do not trust this Government when it comes to native title. This Government is seen as having a particular agenda on native title which is controversial. If the Government wants its legislation to succeed, it must go out of its way to provide for scrutiny and accountability mechanisms. Given its record on native title, it must do more than it usually would with the establishment of a new government body. Instead of doing more, the Government is actually doing less. That will create problems with the necessary public confidence in the Native Title Commission. Is there no way that the Government can provide for oversight by the Parliamentary Commissioner on those aspects of the operation of the Native Title Commission that are not subject to Federal Court oversight?

Mr COURT: This provision offers far more scrutiny than the Ombudsman can offer because it makes it subject to the full scrutiny of the Federal Court. It is a unique situation. No other statutory authority carries out commonwealth powers; and when the commission carries out those functions it will be subject to a judicial review under federal legislation. Therefore, it is subject to even stronger scrutiny than that by an Ombudsman.

Mr RIPPER: Surely there will be matters not subject to judicial review? There will be questions on how the commission handles complaints about its administration. There will be many matters of lesser significance with which the Parliamentary Commissioner would normally deal which will not feature in applications for a judicial review of commission recommendations or determinations. The commission will have a great deal of other work to do not associated with those matters that will be subject to judicial review.

Mr COURT: I appreciate the point made by the Deputy Leader of the Opposition. It is an unusual situation. I will seek some advice along the grounds that there may be a dual oversight and where there is a conflict, one can take precedence over the other, or something like that. I will give the commitment that we will look at that between now and when the Bill goes to the other House.

Mr Ripper: I very much appreciate the commitment that the Premier has given and I give a commitment on behalf of the Opposition that we will follow up this matter in the other place.

Amendment put and passed.

Schedule, as amended, put and passed.

Point of Order

Mr RIPPER: Given the fate of earlier amendments, I am not sure whether I am in a position to move schedule 3. Schedule 3 was to be part of specific annual reporting requirements that I proposed earlier in the legislation. Those specific annual reporting requirements were defeated, therefore new schedule 3 is possibly not capable of being moved. I seek your advice on that matter.

The DEPUTY CHAIRMAN (Mr Barron-Sullivan): I am advised that the Deputy Leader of the Opposition can move this on the proviso, for example, that he might later seek recommittal of the Bill to change other aspects to fit in with this particular schedule, if that adds anything to the sum of human knowledge. If he does not wish to move it, we can get on with another postponed clause.

Debate Resumed

Postponed clause 1.4: Interpretation -

Mr COURT: I move -

Page 3, lines 25 and 26 - To delete the lines and substitute the following -

(a) the date -

(i) fixed under section 3.11, 4.9 or 5.7; or

(ii) applying because of section 4.9(3),

for the lodgement of objections to the doing of the act; or

At the beginning of the debate clause 1.4 was amended by altering the definition "closing date" to ensure that it covers a situation of a change to the closing date because of the lodgment of a native title claim that is required to pass the registration test before a valid objection is lodged. This amendment is as a result of the amendment that we made to clause 4.9.

Amendment put and passed.

Clause, as amended, put and passed.

Title put and passed.

Bill reported, with amendments.

Recommittal

On motion by Mr Court (Premier), resolved -

That the Bill be recommitted for the further consideration of clause 1.2.

Committee

The Deputy Chairman of Committees (Mr Barron-Sullivan) in the Chair; Mr Court (Premier) in charge of the Bill.

Clause 1.2: Commencement -

Mr COURT: I move -

Page 2, line 8 - To delete "Division 1" and substitute "Divisions 1 and 2".

This amendment is consequential to a later amendment that will insert a new division 2 in part 6.

Mr RIPPER: The Opposition is happy to assist the Government with the passing of an amendment which it apparently forgot to move in the earlier committee stage.

Amendment put and passed.

Clause, as amended, put and passed.

Report

Bill again reported, with a further amendment, and the report adopted.

ADJOURNMENT OF THE HOUSE

MR BARNETT (Cottesloe - Leader of the House) [5.30 pm]: I move -

That the House do now adjourn.

I advise members that the Native Title (State Provisions) Bill has been debated for 29 hours over a two-week period. It has been a substantial debate. In addition, the Titles Validation Amendment Bill was debated for 12.5 hours over a three-week period. Therefore, the native title issue has received 41 hours of debate in this House.

Mrs Roberts: I thought the Leader of the House would congratulate the Deputy Leader of the Opposition.

Mr BARNETT: I think that is probably deserved. It has been a good debate. I also advise members that it is -

Mr Graham: The minister should congratulate the member for Nedlands on his side.

Mr BARNETT: I know this is not the time for a speech. However, it was a good debate. It is an important piece of legislation. The Premier, as the minister responsible, and the Deputy Leader of the Opposition worked hard on the Bill. I do not have any complaint. It was a long and important debate.

Mr House: And the member for Stirling for being here all of Thursday.

Mr BARNETT: I think that is freakish.

The ACTING SPEAKER (Mr Barron-Sullivan): Order!

Mr BARNETT: I also advise members that it is highly probable that we will sit on Thursday evening next week.

Question put and passed.

House adjourned at 5.31 pm

QUESTIONS ON NOTICE

Answers to questions are as supplied by the relevant Minister's office.

ENVIRONMENT

Expenditure on Temporary Control Areas

744. Dr EDWARDS to the Minister for the Environment:

(1) What moneys have been spent by the Department of Conservation and Land Management in the last three years in relation to temporary control areas with respect to serving summonses, legal fees and other related activities?

(2) What is the breakdown of the category "related activities"?

Mrs EDWARDES replied:

(1) 1995/96 $24,288 approximately
1996/97 $36,902
1997/98 $80,825

(2)

	1995/96	1996/97	1997/98
Staffing Costs	$354	$10,870	$59,416
Travel & Accommodation			$ 8,341
Vehicle & Plant Costs	$482	$377	$11,402
Materials		$692	$1,350

DRUGS IN SCHOOLS

947. Dr CONSTABLE to the Minister for Family and Children's Services:

(1) Have any surveys or studies been conducted about the use of illicit drugs in Western Australian schools and/or by Western Australian school children?

(2) If yes to (1) above -

(a) when were the surveys conducted;

(b) who conducted the surveys;

(c) how many schools were surveyed;

(d) how many students were surveyed; and

(e) what do the surveys reveal about -

(i) the numbers of students using illicit drugs;

(ii) the quantities of drugs used;

(iii) the types of drugs used;

(iv) the reasons for drug use; and

(v) the frequency of drug use?

(3) If no to (1) above, why not?

Mrs PARKER replied:

(1) Yes.

(2) (a) Mid 1996 - Australian Students Survey of Alcohol & Drugs (ASSAD), discussed below as most comprehensive survey; and 1995 University of Western Australia.

(b) ASSAD is a national survey that is a joint initiative of the Anti-Cancer Council of Victoria and state and Territory Health Departments and Cancer organisations. The Health Department of Western Australia conducted the survey in Western Australia.

(c) 49 schools, including government, Catholic and independent schools (18 upper secondary schools, 32 lower secondary schools, also year 7 students in 32 feeder primary schools for the lower secondary schools). This included 39 schools in Perth and 10 in rural areas.

(d) 3670 students in year 7 to 12.

(e) (i) Fifty six per cent of 12 to 17 year old school students had used at least one illicit drug in their lifetime (including marijuana, inhalants, ecstasy, amphetamines, hallucinogens, cocaine, heroin or tranquillisers other than for medicinal reasons). Forty per cent had used marijuana at some time in their lifetime.

(ii) No information collected.

(iii) The most commonly used illicit drugs were marijuana (40% of 12 to 17 year old school students had used in their lifetime), inhalants (23%), LSD/hallucinogens (11%) and amphetamines (7%). Other illicit drugs had each been tried by no more than 4% of 12 to 17 year old school students.

(iv) No information collected.

(v) 16% of 12 to 17 year old school students had used marijuana in the week prior to the survey and 24% in the month prior to the survey. 15% of 12 to 17 year old school students had used marijuana three or more times in the month prior to the survey. The frequency of use information is only available for marijuana at this time. The full results of the survey are published by the Public Health Division of the Health Department of Western Australia. These is no central record of search warrants executed in schools. With respect to searches involving the use of police dogs, there have been some 12 searches in the last three years. 4 searches did not locate any drugs, 8 located small amounts of cannabis and/or smoking implements.

(3) Not applicable

TIMBER STOCKPILES

949. Dr CONSTABLE to the Minister for the Environment:

(1) Further to question on notice No. 604 of 1998 regarding timber stockpiles, does the Minister consider that one of the preconditions to entering into the Regional Forests Agreement is to anticipate the State's timber harvest needs over the next twenty years?

(2) If no to (1) above, why not?

(3) If yes to (1) above, is it not necessary to know whether, and if so to what extent, those needs may be partly met by existing stockpiles of timber?

(4) If yes to (3) above, why does the Department of Conservation and Land Management not compile information relating to stockpiles?

(5) If no to (3) above, why not?

Mrs EDWARDES replied:

(1)-(5) The Regional Forest Agreement aims to achieve a comprehensive, adequate and representative reserve system and ecologically sustainable forest management in the forests of Western Australia. These are not influenced by existing stockpiles of timber which are transient and vary considerably between companies and with time. Timber stockpiles are a reflection of immediate circumstances and do not influence the levels of timber harvest from State forest over the next 20 years.

DRUGS IN SCHOOLS

959. Dr CONSTABLE to the Minister for Family and Children's Services:

What information does the Minister have in relation to the number of drug searches conducted in Western Australian schools in the last three years, and the results of those searches?

Mrs PARKER replied:

There is no central record of search warrants executed in schools. With respect to searches involving the use of police dogs, there have been some 12 searches in the last three years. Four searches did not locate any drugs, 8 located small amounts of cannabis and/or smoking implements.

GOVERNMENT DEPARTMENTS AND AGENCIES

Use of Private Investigation Agency

1046. Mr RIEBELING to the Minister for the Environment; Labour Relations:

(1) Have any of the Government Departments or Agencies under the Minister's jurisdiction used the services of a private investigation agency since 1 January 1996?

(2) If yes, why was the investigation agency used?

(3) What was the name of the investigation agency?

(4) How much was the investigation agency paid?

Mrs EDWARDES replied:

Commissioner for Workplace Agreements:

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

Department of Environmental Protection:

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

Perth Zoo:

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

Kings Park and Botanic Garden:

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

Department of the Registrar, Western Australian Industrial Relations Commission:

(1) No.

(2)-(4) Not applicable.

WorkCover WA:

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

Department of Productivity and Labour Relations:

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

WorkSafe WA:

(1)-(2) WorkSafe WA has used the services of an inquiry agent on 12 occasions since 1 July 1996 to serve complaints and summonses and locate witnesses in relation to prosecution action under the *Occupational Safety and Health Act 1984*. Information prior to 1 July 1996 is not available.

(3) Westcheck Investigations.

(4) $5 370 since 1 July 1996.

Department of Conservation and Land Management:

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

WOOD PRODUCTION - CROWN LAND

1158. Dr EDWARDS to the Minister for the Environment:

(1) In relation to the Department of Conservation and Land Management's 1996 -97 Annual Report regarding wood production from Crown land of the 46,178 tonnes of firewood and 94,008 tonnes of charcoal logs -

(a) how much was jarrah;

(b) what were the amounts of other species; and

(c) of the 440,808 tonnes of sawmill residue (July to December), how much was -

(i) jarrah;
(ii) karri woodchips; and
(iii) marri woodchips?

(2) Of the 4,085 tonnes of industrial wood, how much was jarrah?

(3) Of the 19,761 tonnes of "other" (poles, bridge timbers, burls, chopping logs, mining timber, pegging logs and fencing material), how much was jarrah?

Mrs EDWARDES replied:

(1) (a) firewood 44 643 tonnes
charcoal logs 94 008 tonnes

(b) firewood 1 535 tonnes
charcoal logs none

(c) not all sawmillers segregate sawmill residue by species. Therefore the question can not be answered with certainty.

(2) None.

(3) 11 017 tonnes.

GREENHOUSE GASES - TYPES AND QUANTITIES

1209. Dr EDWARDS to the Minister for the Environment:

What types of greenhouse gases are produced annually, and in what quantities, from -

(a) fuel reduction burning in the South West native forests;

(b) regeneration burning of native forest areas;

(c) the breakdown of all forms of wood products, such as paper, derived from the approximately 1,300,000 cubic metres of logs produced annually from the South West native forests;

(d) fuel reduction burning and other forms of prescribed burning elsewhere throughout Western Australia;

(e) farmers Bunnings bark dump for their Manjimup woodchip mill; and

(f) the use of machinery for road construction, logging, hauling and log processing based on native forests in Western Australia?

Mrs EDWARDES replied:

Figures for Western Australia have been derived as part of national figures compiled by the National Greenhouse Gas Inventory Committee, using methodology adopted Australia-wide. The inventory and workbooks are described in publications issued by the Australian Greenhouse Office in Canberra.

(a)-(d) The National Greenhouse Gas Inventory Workbook 4.2 for Carbon Dioxide from the Biosphere assumes that there is no change in prescribed burning over time, and that therefore, there is no change in the average fuel loads over the region. Under these conditions, and following recommendations of the Intergovernmental Panel on Climate Change, it is therefore calculated that the net result from CO_2 emissions during the fires and CO_2 uptake during subsequent regrowth is zero. Other gases are produced during burning of vegetation and the inventories for 1990 and 1995 show for the whole of Western Australia that the following quantities emitted:

	1990	1995
methane	4.42 Gg	4.48 Gg
nitrous oxide	0.08 Gg	0.08 Gg
oxides of nitrogen	3.34 Gg	3.38 Gg
carbon monoxide	130.52 Gg	132.19 Gg
NMVOC	15.85 Gg	16.05 Gg

NMVOC = non-methane volatile organic compounds.

(b)-(c) The National Greenhouse Gas Inventory Workbook 4.2 for Carbon Dioxide from the Biosphere describes the method used for calculating emissions from harvesting and regenerating managed forests. Components of harvest emissions include

1. decay in the year of harvest, including the slash which may be burnt in a regeneration burn and short lived products such as paper,
2. the fraction of timber with a short-medium term life (10 years) such as panel products,
3. the fraction of timber with a medium-long term life (25 years) such as sawn timber for packing crates and furniture, and
4. the fraction of timber with a long life (50 years) such as building timbers, fence posts.

Inventories for 1990 and 1995 for Western Australia show:

	1990	1995
Total annual harvest	5837	6260 Gg (CO_2 equivalent)
Total annual growth increment	-10341	-10914 Gg (CO_2 equivalent)
Net sink	- 4504	- 4654 Gg (CO_2 equivalent)

(e) No specific data on this location has been calculated.

(f) The National Greenhouse Gas Inventory calculates emissions from the energy (including transport) sector at a State-wide level. This is disagreggated by types of vehicles and fuels used but no separate information is given for the activities requested.

QUESTIONS WITHOUT NOTICE

CHIEF JUSTICE OF WESTERN AUSTRALIA, COMMENTS

485. Dr GALLOP to the Premier:

I refer the Premier to the continuing crisis in our prison system and the revelation today of a complete breakdown in relations between his Government's Attorney General and the judiciary in Western Australia as revealed in the unprecedented tabling of a report to the Parliament by the Chief Justice of Western Australia. When is the Premier going to show some leadership and sack his incompetent and arrogant Attorney General?

Mr COURT replied:

The Attorney General is not incompetent.

Mr Riebeling: He makes a good try.

Mr COURT: And he is not arrogant. In answer to the two issues raised by the Leader of the Opposition, the Chief Justice has made submissions in relation to the Sentencing Act. The Chief Justice often makes public comments on these issues. The Government does not necessarily support his view on some of these matters. This is an elected Parliament. We have a responsibility for making the sentencing laws in this State and we accept the input that anyone wishes to make, including that of the Chief Justice.

There has been a neglect in the requirements in our prisons for years. Currently, we are seeing a considerable growth in our prison population with changes to the sentencing provisions. The Government is doing two things: It is going to build a major new prison, and it is making some short-term changes to cater for that increased demand.

FAMILY AND CHILDREN'S SERVICES, CHILD PROTECTION WORKERS

486. Mr BRADSHAW to the Minister for Family and Children's Services:

Yesterday in this place the member for Kalgoorlie asserted that crisis talks had taken place between the Civil Service Association and senior executives of Family and Children's Services. What was the nature of any discussions that may have taken place?

Mrs PARKER replied:

The member for Kalgoorlie is known to make assertions both in this place and in the media. Yesterday when she made the assertion that there had been crisis talks, the reason I was unaware of any crisis talks was that no crisis talks had occurred. Usually we say that we do not let the truth get in the way of a good story; with the member for Kalgoorlie sometimes it is the truth getting in the way of a good media statement.

Several members interjected.

The SPEAKER: As members are aware, I allow interjecting, particularly from someone who is pursuing a line of questioning. We cannot have a situation where several people are interjecting at the same time across the Chamber. The minister is entitled to be heard.

Mrs PARKER: May I remind the House again that the Government has increased its annual funding to Family and Children's Services by 38 per cent since coming into office. Not only have we increased the funding but also the department has gone through a major restructuring. One of the outcomes of the restructure was an increase of 51 full-time equivalent staff in direct service delivery. I am aware that the union has welcomed the impact of the 51 extra staff in service delivery. During the process of the restructure, and since that time, the department has consulted with a range of key stakeholders, the Western Australian Council of Social Service being one and the union another. We value our relationship with WACOSS and with the union, working constructively through the issues and considering how we can improve things. I close by confirming that there have been no crisis talks. Following major reform, such as we had in Family and Children's Services, ongoing consultation with key stakeholders is a part of the way that we conduct our business.

NATIVE TITLE, COMPENSATION IMPLICATIONS

487. Dr GALLOP to the Premier:

I refer to the finding in the Miriuwung-Gajerrong case that some 31 forms of land tenure do not extinguish native title and ask -

(1) Will the Government now reconsider its position to include extinguishment of scheduled interests in its Titles Validation Amendment Bill given the major compensation implications that this will have for Western Australian taxpayers?

(2) At the very least, will the Government undertake an assessment of the potential compensation involved?

Mr COURT replied:

(1)-(2) The Government is assessing what the ramifications might be. That material has not been provided to the Government at this stage.

Dr Gallop: Will you table that in Parliament?

Mr COURT: I understand that the Leader of the Opposition has written asking for discussions with the Crown Solicitor's Office on what may be some of the ramifications. That will be appropriate after the Cabinet has been properly briefed. It would also be appropriate for him to discuss some of these matters with the Crown Solicitor's Office. I cannot give a specific answer because we are yet to receive specific information.

NATIVE TITLE, COMPENSATION IMPLICATIONS

488. Dr GALLOP to the Premier:

When the Government completes its assessment of the potential impact on taxpayers' dollars in Western Australia, will the Premier guarantee to table that in Parliament?

Mr COURT replied:

Nobody would be able to carry out an assessment of what the compensation is likely to be.

Dr Gallop: You are asking us to pass a Bill, Premier.

Mr COURT: My friend, a Bill has already been passed - the federal native title legislation - and it contains compensation arrangements.

Dr Gallop: We are talking about Western Australian taxpayers and we will support their interests in this Parliament.

Mr COURT: And we are currently debating legislation which also contains compensation sections. The former Keating Labor Government would not provide this State with support on compensation payments - knowing that this State would be the most affected by compensation decisions. The coalition Government has agreed to a 75-25 split.

Mr Kobelke: Because they knew that you passed racist legislation. That was the problem, Premier, because of your unworkable legislation of 1994. Get the facts straight, Premier.

Mr COURT: The coalition Government is prepared to accept its fair responsibilities on compensation. The Opposition want to comment on the legislation that we introduced in 1993. If we were operating under that legislation today, some positive results would be flowing through.

Mr Kobelke: You would have crooks doing good business too, Premier, because they avoid the law. There are plenty of criminals and thugs in this State doing very well because they do not obey the law. Are you putting yourself in that same category?

Mr COURT: The member for Nollamara always judges people on their performance. We have had four years of the Labor Party's native title legislation and virtually everyone in this country now agrees that it was unworkable.

FIRE AND RESCUE SERVICE - UNDEREXPENDITURE OF CAPITAL WORKS BUDGET

489. Mrs van de KLASHORST to the Minister for Emergency Services:

Yesterday in this House the member for Midland claimed that the Fire and Rescue Service of Western Australia underspent its capital budget for 1997-98 by $4m. Will the minister inform the House of the true situation, as I would be terribly concerned if her statement were correct?

Mr PRINCE replied:

Mr Speaker -

Mrs Roberts: The minister has the report now.

Mr PRINCE: Yes, I do have the report in front of me. The member for Midland referred to only part of it yesterday. She referred to the variance column on page 70, which shows the variance of $4.153m. The member did not refer to pages 71 and 72, which detail the work in progress. It is the work in progress which amounts to that $4m. With regard to the medium pumper replacement project, the cost is $286 000 per truck. I know that is happening at the present time because the vehicles are being built. With regard to most of the fire stations which are mentioned in this report -

Mrs Roberts: We are beyond 30 June now. I looked at those three pages. As at 30 June, that money had not been expended.

Mr PRINCE: I will come to that in a minute. With regard to much of the replacement work for buildings, particularly for fire stations, a lot of that is now collocation work. In the past, much of it has been done in conjunction with local government. That will also be the position in the future. Roleystone wants to have a new fire station. However, that project requires the local authority for that area to find the money, as well as the Government providing money through the Fire and Rescue Service of Western Australia. The Fire and Rescue Service has allocated the money; the local authority has not yet done so. Therefore, that money remains unspent, but it is allocated. The same situation applies to Kalbarri. Morawa is unlikely to find its share for at least another 12 months. The project at Dunsborough is due for completion in May next year, Lancelin in February next year, and Onslow in September next year. However, other local authorities have yet to budget their share, or the voluntary association - whatever it is - has not yet managed to find the wherewithal to meet its share of the costs.

I think the Western Australian Fire Brigades Board - now the Fire and Emergency Services Authority of Western Australia - is probably the only agency of government that runs on a five-year plan and carries forward from year to year that which has not been spent. However, it must be accountable under the Financial Administration and Audit Act in this form. Therefore, although these moneys were not spent in that financial year, they are still allocated, they are still available to be spent, and they will be spent. I think it is the only agency of government that works like that. Consequently, perhaps when we consider it, we get it wrong in the context of the others.

Mrs Roberts: Why did the minister not know that yesterday? He is the Minister for Emergency Services.

Mr PRINCE: Because I did not have the report in front of me when the member sprang up with the question. I have come back with the information, which the member could have worked out for herself. However, she did not read beyond one page.

MINISTER FOR ABORIGINAL AFFAIRS - PARTICIPATION IN NATIVE TITLE DEBATE

490. Mr CARPENTER to the Minister for Aboriginal Affairs:

Will the minister explain to the House why he has made no contribution to the debates on the Government's native title legislation, even though he has prime responsibility for Aboriginal Affairs? Is it because he is so disinterested in the welfare of Aboriginal people in this State, or is it because he does not support the Government's position on this issue?

Dr HAMES replied:

I am pleased to inform the House that neither of those two things is true. The reason that I have not made a contribution is that the Premier has responsibility for the carriage of this legislation, as well as the responsibility for native title in Western Australia. While I am the Minister for Aboriginal Affairs, that portfolio has a very broad focus, and its role is coordination of government departments. Therefore, for the same reason, I do not specifically deal with Aboriginal issues relating to the Police Service, or Health, or Family and Children's Services. Those ministers have that responsibility. I have an overview and an involvement in the native title subcommittee, and I keep abreast of all those issues.

NATIVE TITLE LEGISLATION - DEPARTMENTAL ANALYSIS

491. Mr CARPENTER to the Minister for Aboriginal Affairs:

(1) As a supplementary question, has the minister's department prepared an analysis of the Government's native title legislation?

(2) If not, why not?

Dr HAMES replied:

(1)-(2) Once again, it is the responsibility of the Premier to prepare that analysis. However, the Premier has had a meeting with senior executive officers, which includes the chief executive officer of the Aboriginal Affairs Department, who has reported to me on that meeting.

SCHOOL EDUCATION BILL - PUBLIC CONSULTATION

492. Mr BARRON-SULLIVAN to the Minister for Education:

Having chaired a public meeting in Bunbury as part of the consultation process in developing the School Education Bill, I was astounded to hear of comments made by Hon Kim Chance on radio today when he said that the problem that the Government is experiencing now is as a result of its failure to listen to what was said in the consultative process. Does the minister attribute the slow progress of the Bill to a lack of consultation, as implied by Hon Kim Chance?

Mr BARNETT replied:

I thank the member for some notice of this question. He and a large number of other members on this side of the House took part in the public consultation on the School Education Bill. I think I can validly claim that no Bill in the history of this State has had such extensive public consultation as this Bill has had. The comments by Hon Kim Chance seem to be at odds with members opposite. I refer to *Hansard* of 10 March 1998. The Deputy Leader of the Opposition, with responsibility for Education, said -

> I give the Minister some praise because he adopted the process of introducing a Green Bill, followed by a consultation process, followed by a final version of the Bill. It was a good process which should be adopted when dealing with other legislation.

The Leader of the Opposition said on the same day -

> The members on this side of the House were very pleased to see the efforts of public consultation that have gone on by way of a draft School Education Bill being released last year and we are more impressed with the fact that a direct and personal interest has been shown in this matter by many Western Australians; parents of school age children, teachers, school administrators and members of the community have all shown a very great interest in this legislation.

I remind members that the consultation process involved, among other things, over 30 public meetings throughout this State, attended by well over 1 000 people, and over 14 000 plain English versions of the Bill were distributed on request throughout the State. The Government has not been inflexible on this process, as Hon Kim Chance and others suggest. In fact, following the introduction of the Green Bill, which I remind members was in June 1997, nearly 18 months ago, the Government made some 100 amendments as a result of public input to that. Even when the Bill went through this Assembly, with 48 hours of debate, we accepted some 40 amendments. What has happened in the upper House? After 18 months, 140 amendments have been moved. This was despite claims from members opposite that they would support this Bill on a largely bipartisan basis. I do not blame the Greens (WA) and the Australian Democrats; I blame the Australian Labor Party. One hundred and forty amendments have been moved. The Labor Party has essentially butchered a Bill that is long overdue in this State. The Bill is wanted by 1 100 schools in this State, thousands of teachers, the Catholic education system, parents of disabled children and parents of different religious groups who want their place in the system to be recognised. There is one chance to save the Bill, and that depends on the Opposition being true to its word of 12 months ago.

NATIVE TITLE RIGHTS - FEDERAL COURT'S DECISION

493. Mr CARPENTER to the Minister for Aboriginal Affairs:

(1) Does the minister agree with the Liberal member for the Mining and Pastoral Region that the Federal Court of Australia's granting of native title rights to the Miriuwung-Gajerrong people means that these people can put a tollgate at the entry to the Kimberley and charge people for coming in?

(2) If not, will he counsel his colleague against making such inflammatory and divisive statements?

Dr HAMES replied:

(1)-(2) I have not heard or read the comments from the member of the upper House. If the member from that place wants to make comments, that is his business. In the near future Cabinet will be given a full briefing on the issue.

SENTENCING LEGISLATION - CHIEF JUSTICE'S REPORT TO PARLIAMENT

494. Dr CONSTABLE to the Premier:

(1) Does the Premier accept that the remarks of the Chief Justice contained in his report to Parliament on the sentencing legislation are tantamount to a public expression of no confidence in the Attorney General?

(2) In particular, I refer to the Chief Justice's remarks which include his warning that judicial independence is put at risk, his assertion that the Attorney General has breached a longstanding convention to consult the judiciary, and his statement that Hon Peter Foss' department has failed to develop an adequate system of data collection over sentencing. In these circumstances, is it appropriate that Hon Peter Foss remain as Attorney General?

Mr COURT replied:

(1)-(2) I am trying to find a copy of the paper to which the member for Churchlands referred. I have not gone through all of the detail in this paper, because I have been in the Chamber dealing with the native title legislation. With regard to confidence in the Attorney General, that was the first question that I was asked today, and I have said that I do have confidence in him. With regard to the comments that have been made, a lot of consultation has taken place -

Several opposition members interjected.

Mr COURT: Judge Hammond gave us a detailed report about a number of sentencing issues. The judges have certainly expressed broad support for the changes that have been incorporated in our sentencing legislation. This Government has introduced changes to our sentencing legislation to cover issues such as remission, parole, and the establishment of a sentencing matrix. The chief justice may not like those changes and may not support them, and he can say so publicly, but as an elected Government, we have introduced those changes into the Parliament, and members opposite will need to make a decision about whether to support them.

LOCAL GOVERNMENT BOUNDARY CHANGES

495. Mr MINSON to the Minister for Local Government:

I ask the minister, with some trepidation, whether he has received the report of the Local Government Advisory Board about the various proposals for boundary changes among councils in the Geraldton region?

Mr OMODEI replied:

I thank the member for Greenough for some notice of the question and for his constructive and ongoing interest in this important issue. Today I have been advised by the Local Government Advisory Board that it has recommended that an order be made abolishing the City of Geraldton and the Shire of Greenough, including that part of the Shire of Chapman Valley, to create a new council. Such a recommendation supports the proposal that I put to the board. At the same time, the board has recommended the abolition of the Shire and Town of Northam to create a new council. The other recommendation was with regard to the Town and Shire of Narrogin, and I anticipate that I will receive that report within two weeks. The board will advertise the Geraldton and Northam recommendations, and if within one month the petition has been signed by 250, or at least 10 per cent, of the affected electors, a poll must be held. If at such a poll more than 50 per cent of the eligible electors vote, and a majority oppose the recommendation, I as the minister cannot approve of that recommendation; under any other scenario, I can.

PERTH INTERNATIONAL AIRPORT, ELECTRICITY SUPPLY

496. Mr MASTERS to the Minister for Energy:

I refer the minister to the announcement today that TransAlta Energy and Normandy Power will supply electricity to Perth International Airport from 30 November this year. What are the implications of this announcement for the energy sector in Western Australia and for Western Power in particular?

Mr BARNETT replied:

I thank the member for Vasse for the question. Today's announcement is a significant step forward in the opening up of the electricity sector within this State. I am conscious that there has been quite a lot of debate, and there is continuing debate, in industry about that matter. As of 1 July this year, the Government has opened up competition for any customer consuming over 5 megawatts of electricity. Today's announcement is the first example of a major contract where Goldfields Power Pty Ltd, which is a joint venture of TransAlta, a Canadian company, and Normandy Power, has won, in competition with Western Power, the right to supply power to Perth International Airport.

Mr Grill interjected.

Mr BARNETT: It won the competition. It beat Western Power on price, and it will pay a wheeling charge to convey electricity from the goldfields to Perth International Airport. The value of that contract is in the order of $3m to $4m and represents the commencement of the wide opening up of the electricity industry in this State. As of 1 January 2000, a little over 12 months away, the market access will reduce from 5 megawatts to 1 megawatt. That will provide an opportunity for both the growth of independent power producers and a great deal of extra competition within the electricity sector. I add that despite the interjections by the member for Eyre, we have not had a catastrophe in our energy deregulation, as have other States, and I am willing to foretell that that will result in decreasing energy prices in this State.

MINISTERS FOR TRANSPORT, LEGAL COSTS

497. Ms MacTIERNAN to the Premier:

Notice has been given of this question. Has the former Minister for Transport, Hon Eric Charlton, applied for financial assistance for legal fees to defend or take interlocutory procedures in a conspiracy case being taken against him and the current Minister for Transport by the Maritime Union of Australia? If yes, what sums have been approved, and what law firm is so funded; and what firm is acting for the current Minister for Transport in this matter?

Mr COURT replied:

No formal application has been made. However, were an application made, it would be dealt with in accordance with the cabinet guidelines that have been in place since 1990. These guidelines require any application for an indemnity for legal costs to be decided by Cabinet, after receiving an assessment prepared by the Attorney General, with the assistance of either the Solicitor General or the Crown Solicitor. The current minister is represented by the Crown Solicitor's Office.

MINISTERS FOR TRANSPORT, LEGAL COSTS

498. Ms MacTIERNAN to the Premier:

I ask a supplementary question. What informal discussions have taken place?

Mr COURT replied:

I am not aware of any informal discussions. I have said that no formal application has been made.

REGIONAL BUYING COMPACT

499. Mr BAKER to the Minister for Works and Services:

The Government's contracting program has delivered in my area buildings and infrastructure which clearly conform to world's best practice. The minister has previously mentioned the resounding success of the regional buying compact for regional contracts and for the purchase of goods and services in regional areas. Is local government a partner in this process, and do metropolitan municipal councils share in this program?

Mr BOARD replied:

I thank the member for Joondalup for the question. This is an important day for government in Western Australia, because this morning, in conjunction with the Minister for Local Government, the Department of Contract and Management Services, the State Supply Commission and the Western Australian Municipal Association signed a memorandum of understanding with regard to cooperating in adopting the "Buying Wisely" State Supply Commission policies across Western Australia. That is very important, because the 144 local government authorities spend about $1.3b a year in order to procure, and they are also looking for value for money contracts. This memorandum of understanding provides an opportunity to enter into common-use contracts. It also provides an opportunity, as a result of this cooperation, to involve local government in the education process which is taking place across state government authorities, with programs which require contract management skills at a lower level in government agencies; and local authorities are very keen to see those programs take place.

The regional buying compact referred to by the member for Joondalup has been a great success. About 85 per cent of all contracts that are let in country areas go to regionally-based companies. They are not necessarily applying the regional buying compact or being offered one in their own right, but the compact is playing a role in gaining additional contracts in those areas. Local governments are very keen to pursue that matter as a way of gaining even more work in their areas and procuring jobs and futures for young people in regional areas. This memorandum of understanding will join local government and State Government in a partnership, with the assistance of electronic commerce, where they will share the same web site. The future looks bright for regional business.

EDUCATION DEPARTMENT EXPENDITURE OVERRUN

500. Mr RIPPER to the Minister for Education:

(1) What are the options of the Director General of Education for containing projected expenditure overruns in the Education Department in 1998-99, which apparently the minister is now considering?

(2) Will the minister guarantee that no option will impact on school staffing, funds or support services?

(3) Will the Government assist schools by removing the absurd $27m productivity dividend being imposed on the Education Department in this financial year?

Mr BARNETT replied:

(1)-(3) The Education budget is very large - $1.4b - and as members know, last year expenditure ran ahead of that budget by $22m. Much of that was due to the program for early childhood education for four and five year olds, which involved more children and sites to staff than anticipated. This year the projection in the early stages is that the budget may overrun by about $40m. That is obviously a serious situation. The Government has increased spending on education between 4 and 6 per cent over the past five years, and WA is probably the only State with that sort of increased expenditure on education. However, the Government must be conscious that the budget needs to be limited and a range of options, essentially within the administrative side of education, are being examined.

Mr Ripper: Will you give that guarantee?

Mr BARNETT: I have not answered the question yet. If a Government wanted to make substantial cuts to education spending - this Government does not want to - there are only two ways of doing that. One is by closing schools and the other is by increasing class sizes. The Government will not do either. It has just announced that it will reduce class sizes in early childhood years, and, despite members opposite hoping that the Government will close schools, it announced at the beginning of this year that five new high schools will be built. In that program, $4m will be allocated to Belmont and $14m to Cannington in the electorate of the Deputy Leader of the Opposition. A total of $88m has been allocated to secondary education. I make no apologies for that. Education is growing in this State and there are great demands on and expectations of the system. The Government has a responsibility to use taxpayers' money as effectively as possible, and it is reviewing many administrative structures within the department. It is an ongoing process and, although I cannot say the Government will bring in the budget on schedule this year, I hope the overrun can be kept down to $30m or so.

CHIEF JUSTICE OF WESTERN AUSTRALIA, COMMENTS

501. Dr GALLOP to the Premier:

I refer to page 23 of the report to the Parliament by Hon David Malcolm, Chief Justice of Western Australia, at which he said -

> In order to prevent the appropriate sentences which the court considers should be served from being imposed, Parliament is proposing to compel the courts to impose sentences less severe than they presently consider appropriate. That is wrong in principle.

Does the Premier intend to press ahead with this legislation or will he support Opposition moves to have the sentencing matrix further considered?

Mr COURT replied:

The Government definitely wants to proceed with this legislation.

Mr McGinty: You are not listening.

Mr COURT: The member can make his own judgment on whether the sentencing matrix is a good way to go. The Chief Justice has indicated his disapproval of the establishment of a sentencing matrix. That is not unusual because the judiciary do not like Parliament putting in place mandatory sentences or any other guidelines. I believe the public strongly supports the Government's proposal. The judiciary has the same objections to the Parliament - whether this Government is in office or a Labor Government - introducing minimum mandatory sentences. The Government believes the sentencing matrix is a superior way in which to give the public greater assurance that sentences are appropriate for the offences being committed.

Dr Gallop: Less severe?

Mr COURT: Members know that under the current system people are sentenced to six years' imprisonment and they serve only two years. That is the reason for the changes to remission and parole. The criticisms referred to are not shared by the other sections of the judiciary. A committee chaired by Chief Judge Hammond considered for two years the matters of remission and parole and handed down a report with a series of recommendations. The Government has accepted those recommendations and they have been incorporated in the sentencing legislation. The Chief Justice has made his criticisms, but members of Parliament will be able to show where they stand when they vote on these matters.

CHIEF JUSTICE OF WESTERN AUSTRALIA, COMMENTS

502. Dr GALLOP to the Premier:

I have a supplementary question, Mr Speaker. Is the Premier aware that at page 3 of report to the Parliament it is stated that -

> The preparation and content of this report to Parliament by the Chief Justice is made with the express and unanimous support and concurrence of the Judges of the Supreme Court and of the District Court, except that the comments on Parole and Remission are made on behalf of the Judges of the Supreme Court only.

The SPEAKER: Order! In my view that is not a supplementary question.

TOODYAY ROAD, UPGRADING

503. Mrs van de KLASHORST to the minister representing the Minister for Transport:

Are there any immediate plans to upgrade the Red Hill section of Toodyay Road?

Mr OMODEI replied:

The Minister for Transport has provided the following response: There are no plans to upgrade this section of the Toodyay Road in the Main Roads' 10-year program. As Minister for Local Government, I must say that the member for Swan Hills has represented her constituency very strongly in these matters. The Minister for Transport further stated that if any sections of the road are of concern to the member for Swan Hills or her constituents, he would be pleased to arrange for Main Roads to discuss the situation with the member.

BUSSELTON COMMUNITY HEALTH SURVEY

504. Mr MASTERS to the Minister for Health:

On 20 November the Premier launched "The Busselton Study Mapping Population Health", which summarises the 30-year history of the Busselton community health survey. Will the minister outline some of the major research findings of the project, and will there be continuing state government support for the study?

Mr DAY replied:

I thank the member for some notice of this question. As the member said, the Premier launched this significant study last week. It is the second longest population study conducted in the world. Part of its success in maintaining the long-term interest of the community has been through a policy of returning all results to the participants with information and advice about how they can engage in a healthy lifestyle. Where necessary, the feedback included recommendations for participants to see their medical practitioners for follow-up advice or treatment. The success of this study approach in altering the risk of disease is demonstrated by the fact that the people involved in the study generally survive longer. I understand these people have death rates which are about one-third of those for the rest of the south west, and they are much better than the rates for people in the metropolitan area.

One of the important achievements has been the discovery of a gene which is important in the development of asthma. That discovery was made in collaboration with Western Australian graduates currently located at Oxford University, together with the Busselton study group. It has been a significant study which has resulted in the storage of material for further investigation, using genetic markers and deoxyribo nucleic acid tests that are not currently available but perhaps can be made use of in the future. Research funding to continue the study is available through the National Health and Medical Research Council.