WESTERN AUSTRALIA

Parliamentary Debates

(HANSARD)

THIRTY-FIFTH PARLIAMENT
SECOND SESSION
1998

LEGISLATIVE ASSEMBLY

Tuesday, 1 December 1998

Legislative Assembly

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THE SPEAKER (Mr Strickland) took the Chair at 2.00 pm, and read prayers.

ADDRESS-IN-REPLY

Presentation to Governor - Acknowledgment

THE SPEAKER (Mr Strickland): I advise members that today, accompanied by the members for Mitchell, Rockingham and Wagin, I attended upon His Excellency the Governor and presented the Address-in-Reply to His Excellency's speech at the opening of the Parliament. His Excellency was pleased to reply in the following terms -

> Mr Speaker and Members of the Legislative Assembly
>
> I thank you for your expressions of loyalty to Her Most Gracious Majesty the Queen and for your Address-in-Reply to my speech to Parliament on the occasion of the opening of the second session of the thirty-fifth Parliament.
>
> Michael Jeffery
> Governor

PERTH PARKING MANAGEMENT BILL

Appropriations

Message from the Governor received and read recommending appropriations for the purposes of the Bill.

RETAIL TRADING HOURS

Petition

Dr Gallop (Leader of the Opposition) presented the following petition bearing the signatures of 8 000 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We, the undersigned Petitioners support small business and particularly the small business retailers in opposition to any further increase in trading hours as it will have a detrimental effect on family life, leisure hours and the viability of the small business sector.
>
> The present population, the economic processes in Western Australia and consumer demand, do not warrant any further increase in trading hours.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

A similar petition was presented by Mr Shave (Minister for Lands) (8 099 signatures).

[See petitions Nos 87 and 100.]

CAMPING LAWS, AMENDMENTS

Petition

Dr Constable presented the following petition bearing the signatures of five persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, call upon the State Government to amend certain laws which are seen to be unfair, restrictive and discriminatory towards us, the Australian public.
>
> We therefore ask that the following legislation be amended.
>
> 1. The Caravan Park 50 km protection zone be returned to its former 16 ks.
> 2. The 3 night Camping Law be amended to 28 nights on rate payers own property allowing for holiday visits by family and friends without having to seek special written permission from authorities.
> 3. That country road Park/Rest Areas limit of 4 hours be increased to 12 hours allowing long distance tourists, travellers and truck drivers to vacate roads during the hours of darkness if they so choose.

4. That en-route country Rest Stops of up to 12 hours be not defined as camping.

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

Similar petitions were presented by Mr Prince (Minister for Police) (119 signatures), Mrs Hodson-Thomas (four signatures), Mr McGowan (eight signatures), Mr Osborne (11 signatures), Mr Baker (four signatures), Mrs Roberts (four signatures), and Mr Shave (Minister for Lands) (four signatures).

[See petitions Nos 88, 89, 93-97 and 99.]

CAR REGISTRATION FEES

Petition

Ms McHale presented the following petition bearing the signatures of 138 persons -

To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We, the undersigned citizens are totally opposed to the State Government's decision to impose a new tax on WA motorists through massive increases in car registration fees.

Western Australian motorists already pay directly to the cost of roads through State and Federal fuel levies.

The revenue received by the State Government from the fuel levy and from the sale of the gas pipeline provides government with resources to develop our transport infrastructure. This new tax is unfair and has a disproportionate impact on middle and lower income earners.

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

[See petition No 90.]

CANNING RIVER REGIONAL PARK

Petition

Dr Gallop (Leader of the Opposition) presented the following petition bearing the signatures of 47 persons -

To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We the undersigned petitioners call on the State Government to purchase that portion of the Castledare estate zoned "Parks and recreation" in the City of Canning Town Planning Scheme No. 40 to allow for its full and proper incorporation into the Canning River Regional Park as recommended by a series of reports to Government.

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

[See petition No 91.]

ROCKINGHAM DISTRICT HOSPITAL

Petition

Mr McGowan presented the following petition bearing the signatures of 97 persons -

To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.

We the undersigned, wish to express our opposition to any reduction of services to the Rockingham/Kwinana District Hospital. As Rockingham/Kwinana is one of the fastest growing areas in Western Australia, we believe that there should be an upgrade to existing facilities for this hospital instead of any reductions to nursing staff and specialist services.

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

[See petition No 92.]

COMMUNITY POLICING OFFICE, ROCKINGHAM

Petition

Mr McGowan presented the following petition bearing the signatures of 45 persons -

> To the Honourable the Speaker and members of the Legislative Assembly of the Parliament of Western Australia in Parliament assembled.
>
> We the undersigned, ask that the Government move the Community Policing office out of Lotteries House and back into the Rockingham City Shopping Centre. This would mean an increase in the accessibility of Community Policing and an added security presence in Rockingham City Shopping Centre.
>
> Your petitioners therefore humbly pray that you will give this matter earnest consideration and your petitioners, as in duty bound, will ever pray.

[See petition No 98.]

BAIL AMENDMENT BILL

Council's Message

Message from the Council received and read notifying that it had agreed to the amendment made by the Assembly.

JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

Town of Claremont Tree Preservation Local Law - Correction to Tabled Paper

THE SPEAKER (Mr Strickland): I have received a request from the Chairman of the Joint Standing Committee on Delegated Legislation to insert an annexure to the committee's report on the Town of Claremont Tree Preservation Local Law, which was tabled in the House on 19 November 1998. Due to a printing error, the annexure was omitted from the report. Accordingly, under the provisions of Standing Order No 233, I advise the House that I have authorised the annexure to be inserted in the report.

VLAMINGH PARKLANDS

Statement by Minister for Planning

MR KIERATH (Riverton - Minister for Planning) [2.19 pm]: In November last year I released for public comment a draft plan to combine a series of parks and well-loved landmarks around the Leighton Peninsula into one integrated park. The idea was to preserve those parklands that range from Blackwall Reach, Cypress Hill, the McCall Centre, Chidley Point and Buckland Hill to Minim Cove so that people can fully appreciate the area's diversity and attractions. The collection of parks will be known as the Vlamingh Parklands to commemorate the landing of Dutch explorer Willem de Vlamingh 300 years ago. The final concept plan for the area provides for redevelopment that will secure a good system of parks so that residents old and new, as well as visitors, can enjoy this special part of the city. The peninsula is important because it is linked to the State's early history, Aboriginal land use, colonial settlement, early engineering and industrial use and is an educational, tourism and recreational area.

There were 22 formal submissions, a public workshop and much public interest in the draft plan. The final concept plan sets about creating links through the separated parks to form a single, interconnected parkland through a series of access corridors from the coast to the river. Trails throughout the Vlamingh Parklands with appropriate historical and environmental markers and landscaping within the reserve are also part of the plan. The plan recommends the use of the McCall Centre as an interpretation centre for the surrounding parklands and its partial conversion into a cafe-restaurant for park visitors. Improvements should be made to the Leighton gun emplacement and the Buckland Hill monument. Paths and upgraded barbeque facilities are recommended for Chidley Point, Blackwall Reach, Point Roe and Minim Cove. The concept plan recommends that the last site has potential for the development of tearooms. A pedestrian and vehicle underpass, by extending Wellington Street, would improve safety and ease access to the beach by residents and visitors to the area. Coastal management of sensitive areas at Port and Leighton Beaches, and along the North Fremantle and Harvey Beaches are also addressed by the plan. Finally, it recommends the extension of the Parklands' boundary through Cottesloe up the coast to Warton Road, including the Buckland Hill Monument and the Water Corporation site.

I thank my ministerial colleague, Hon Colin Barnett, the member for Cottesloe, for his work chairing the steering committee that has been the basis for the final concept plan that I table today. I table the document and I commend the report to the House.

[See paper No 503.]

CADETS WA PROGRAM

Statement by Minister for Youth

MR BOARD (Murdoch - Minister for Youth) [2.21 pm]: I inform the House of the latest developments in the Cadets WA program. Tomorrow I will launch the first unit of the newest type of cadet, the Red Cross Cadets, at the Armadale Christian College. Red Cross is the eighth type of cadet unit in Western Australia. It joins Police Rangers, Emergency Services, St John Ambulance and Bush Ranger cadets, and the more traditional Army, Naval Reserve and Air Training Corps cadets. The establishment of the Red Cross Cadets fulfils the coalition Government's 1996 election commitment to investigate the potential of carer cadets to develop young people's social and caring skills.

Red Cross Cadets will develop those skills with their involvement in the community care of the aged and people with disabilities. The Red Cross has a proud history of humanitarian and community service which will be a focus of the cadet program. Red Cross Cadets will develop young people physically, emotionally, intellectually and socially. They will have the opportunity to develop leadership, teamwork and self-discipline, and will undertake training in bushcraft and outdoor pursuits, and in skills to help them as adults in the workplace as well as in their communities. In addition, they will learn the values of loyalty, duty and service to the community, the school and the Red Cross. Red Cross Cadets will have a rank structure similar to that of the other cadet types and young people will progress to the various levels at their own pace. They will begin as Red Cross Recruits and progress to Cadets, Senior Cadets and Officer level.

The Cadets WA program was launched in 1996 with 11 pilot units. Since that time, it has grown rapidly to the stage at which the launch of the Red Cross Cadets at Armadale tomorrow brings to 75 the number of cadet units in WA secondary schools. In addition, we recently signed an agreement with the Federal Government to fund as many of its 53 Army, Naval Reserve and Air Training Corps units as wish to join our program. We already have expressions of interest from more than 20 of those units. Eleven non-school based Police Ranger units have also joined the Cadets WA program. Shortly there will be a total of more than 100 units under the Cadets WA banner.

More than 6 000 young people are now participating in cadets in Western Australia and that number is increasing rapidly. That growth is being driven by strong word-of-mouth recommendation from those young people who are already experiencing life in the cadets. The Cadets WA program continues to be an outstanding success and that is due in no small part to the dedication of a large team of coordinators and instructors, and to the enthusiasm of the youth of Western Australia.

[Questions without notice taken.]

ALIENATED STUDENTS - PROGRAMS AND FUNDING

Matter of Public Interest

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

> That this House calls on the Minister for Education to guarantee -
>
> (1) the continuation of existing programs for alienated students; and
>
> (2) the maintenance of at least existing levels of government funding for these programs.

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.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [3.03 pm]: I move the motion.

The week before last, I received information from the Government, in response to a question on notice, that so far this year there have been 12 assaults on teachers at Carnarvon Senior High School. I am advised by people in the Carnarvon area that there have been additional assaults on teachers which have not been reported. Therefore, the total number of assaults on teachers at Carnarvon may be around 17. Last year, East Maddington Primary School was in crisis because of difficulties caused by a student assaulting other students and teachers.

As members will recall, teachers had to take industrial action to prevent the Education Department from forcing the re-enrolment of a student who was a menace to teachers and other students. Clearly there are problems in our schools. We should take a hard line with those who disturb the learning conditions of others and who threaten the peaceful working conditions of teachers. However, the answer cannot lie in a hard line alone. Provision must be made for the educational needs of these students. They too have their right to education. Apparently, one of the reasons for their behaviour is that

the system has been unable to deliver relevant educational programs which meet their needs, engage them and prevent this sort of disruptive behaviour.

In addition to those children who turn up at school and cause these problems, another group of students are chronic truants who are hardly ever at school. Where are they? They are out in the community. What are they doing out in the community? They are usually causing trouble for other members of the community. There is a very clear link between truancy and daytime burglaries. The police will talk with members about that link any time they care to drop into their local police station and have a chat with them. It is a matter of the right of these alienated students to an education and the right of the community to be free from those students' criminal activities because they are not engaged in schooling programs. It is also a matter of the rights of other students. Only last Friday, I was contacted by a distressed parent of a student at Hollywood Senior High School. Her 13-year-old son had been driven from the school by bullies who had objected to the son's reporting some misbehaviour in contravention of the school rules. We have also had complaints from the State School Teachers Union of WA about teacher stress. The Minister for Education responded most unsympathetically and said that the union should not be linking its complaints about teachers' stress with the Australian Council of Trade Unions' campaign on workplace stress. That response indicated a deep lack of understanding of teachers' stress. The State School Teachers Union is the major professional and only industrial organisation for government school teachers in this State. It has a duty to raise the stress issue and it should not be put off by the minister's saying that the union should not be involved in the matter. It is a question of the wellbeing and health of its members and of the educational chances of children in our schools. Stressed teachers do not necessarily make the best teachers.

One of the things that really concerns me is that there is a threat to special programs which have grown up to deal with these alienated students and chronic truants. I want to deal today with what I regard as a very serious situation in the south east metropolitan area; that is, the future of these programs. There are four such programs in the south east metropolitan area: The VIP program at Victoria Park; the Wandarri program at Armadale; the community links program at Canning Vale; and the Belmont area youth intervention program which was until very recently based at Kewdale Senior High School. These programs are very important in persuading children to go to school and in providing them with programs which will engage them and meet their needs. If the programs are successful, we will have fewer truants in the community, fewer daytime burglaries and less crime, fewer assaults on teachers and on other students, and more peaceful learning conditions for the students who do not fit into this alienated category. We will also have better life opportunities for those alienated students or chronic truants. I will refer to a couple of success stories from the VIP program at Victoria Park. I will not use the names but I will repeat some case details given to the Opposition by people in this program. A 14-year-old boy, whose father and brother committed suicide, was suspended from school after his father's death. He was suspected of being involved in drug use and when his second brother ended up in juvenile detention, the boy started living at the detention centre too. Having gone through the program, the boy is now studying mechanics at TAFE and throughout the Victoria Park intervention program he has demonstrated high levels of motivation and has managed to establish friendships. In the second case from the same program, a boy was excluded from school for setting fire to bushland adjoining the school. He was suspended for extensive graffiti vandalism of school property and for sexually harassing students and teachers. He had a history of self-mutilation and stealing. He now has a full-time job and in his first year his employer offered him increased responsibility and further training.

It is clear that these programs are very beneficial. The Belmont area youth intervention program, with which I am familiar, was established partly at the initiative of the officer in charge of the Belmont Police Station. It is a joint venture involving the Education Department, Family and Children's Services, the Ministry of Justice and the Belmont City Council.

Mr Barnett: I appreciate your support, but what is the point of the MPI?

Mr RIPPER: I will now come to the point of the MPI. I have indicated the great value of these programs, and their role in reducing the level of crime, improving the life chances of students involved in them, and improving the learning circumstances at schools at which these students would otherwise be located.

Mr House: You missed the agricultural schools, particularly Gnowangerup, which are also part of the education process for young people with classroom learning difficulties. They have also been very successful.

Mr RIPPER: I agree that they can be a valuable alternative. However, I am referring to the problems confronting the programs in the south east metropolitan area. They are under financial threat from this Government. Four valuable programs currently are being run, and I am told they are likely to be cut and only two will be available next year. I quote from a document signed by the Coordinator Student Services at the Cannington District Education Office -

> Given expected levels of funding for 1999 the Retention & Participation Program (RAPP),

I assume it means funding for the retention and participation program -

> it is not possible to maintain the four programs currently operating across the district unless schools are prepared to increase their contribution to them.

The district office is indicating that it will not fund these programs to the extent it did this year, and that if school authorities want to maintain them, they must dip into scarce school funds and use money that should be spent on other school priorities on programs for chronic truants and alienated students. I refer also to a document under the heading "Draft for Comment - Supplementary Student Provision" which states -

> The term supplementary support provision has been used to make explicit the notion that the major support provision for all students must come from the school and its own resources.

It is a pretty clear message. The district office will not maintain its commitment to these programs; the schools must dip into their own pockets. There is something even more disturbing in the document under the heading "Operation: Term 1" -

> No student intake, all staff in the program operate on a needs basis through service agreements to provide within school support in the form of policy and process development, professional development, mentoring of students, developing and operating short term individual and group programs.

Nothing will happen in the first term next year in any of these programs if this proposal comes into operation. Clearly the financial crisis has struck home with regard to the provision of programs for alienated students and chronic truants.

Mr Barnett: Which financial crisis?

Mr RIPPER: I will come to that in a minute. First, I want to conclude with more evidence that there is a crisis. I quote again from the document signed by the Coordinator Student Services -

> What is essential is that the district adopts a common approach to the provision of alienated students. Such an approach can then be used as a basis for approaching other agencies and local government to secure resource commitments for alienated student provision for 1999 and beyond.

In other words, the Education Department will go to the schools, other agencies and local government to try to get the money not provided for within the Education budget for these very important programs. I hope the Belmont area youth intervention program will continue because it was guaranteed by the Minister for Education when he announced that the Kewdale Senior High School would be closed. In the fact sheet released at the time of the minister's announcement it is stated -

> The BAYIP students will relocate to Belmont Senior High School as soon as practical.

Despite that guarantee, that program seems to be under threat, on the basis of information given to me by local P & C groups and the information contained in that document.

Mr Barnett: If that commitment was given at the time we announced the amalgamation of Kewdale and Belmont Senior High Schools, it will be honoured to the letter.

Mr RIPPER: I am very pleased to hear that, and I will make sure that statement goes to the authorities at the Kewdale and Belmont Senior High Schools.

Mr Graham: I should look at the letter first.

Mr RIPPER: I thank the member for Pilbara for that interjection, because I believe he will explore that issue. The minister asked earlier by interjection, "What financial crisis?" Everyone knows there is a financial crisis in the Education Department. The department overspent its budget by $22m last financial year and it is headed for overexpenditure of at least $40m this financial year. Despite those problems, the Government is trying to extract a $27m productivity dividend from the Education Department. Given the threat to these programs for alienated students, the Government should back off from that absurd productivity dividend demand and recognise that it cannot cut the Education Department budget by $27m.

It should also look at the appointments of people to senior levels in the Education Department. Some figures have been prepared by the member for Nollamara on the number of people appointed at level 5 and above, based on information provided in answers to questions on notice. From June 1997 to June 1998 the number of positions at that level grew by 262, from 202 to 464. That represents an increase of 130 per cent. The number of paid staff in those positions - sometimes that is different from the number of positions - grew from 177 in June 1997 to 447 in June 1998. That represents a growth of 270 in absolute terms, or 153 per cent. Using a very modest on-cost figure - half the Treasury's stipulated figure - that is an additional cost for level 5 and above positions of $23m. On the one hand, the Government will take $27m for a productivity dividend and, on the other hand, it will spend an additional $23m per annum on positions at level 5 and above in the Education Department.

I return to my initial issue: This financial crisis will have an effect on some of the most vulnerable students in the system, and also on the health, wellbeing and morale of the teachers who will otherwise be subject to the depredations of these students when they are in unsatisfactory courses. It will have an effect on the learning conditions of other students and if these students remain in the community as truants, instead of being engaged at school, it will have an effect on the crime rate. The result of the Government's budget crisis and its lack of attention to the needs of these chronic truants will be to increase

truancy, school assaults and crime and decrease literacy and employment. I appeal to the minister to support this motion and, more importantly, to put it into effect to make sure these programs in the south east metropolitan area retain support from their district office.

MR GRAHAM (Pilbara) [3.20 pm]: I tend to deal with issues in my electorate strictly on a local basis unless and until they fit the statewide pattern. That is what is occurring on this occasion. On 19 October the minister issued a media statement which read -

> The Aboriginal Education Awards of Excellence are designed to recognise outstanding achievements of individuals, schools and Aboriginal organisations.
>
> Mr Barnett said it was particularly pleasing to note the calibre of the award recipients and moving to learn of some of the personal achievements.
>
> "It is sometimes difficult for non-Aboriginal Western Australians to understand the difficulties that exist in the world of Aboriginal students," he said.

I agree with him. When the minister released that statement, he was announcing that the outstanding Aboriginal community education award for this year was being awarded to the Aboriginal Student Support and Parent Awareness Group of the Hedland Senior High School. I congratulate and commend him on that. It was a good decision because it is a good group of people who run a major program in the Hedland high school called the Aboriginal Island Tertiary Aspirations Program. The program is aimed at enhancing the academic achievements of Aboriginal and Islander students during their secondary school years. In effect, it is aimed at keeping Aboriginal students in high school until year 12, modifying their behaviour patterns during that time and ensuring they get an opportunity to go on to tertiary education. It has been remarkably successful. That is why it is the current stakeholder of the award of excellence.

In 1995, there was one year-12 Aboriginal student in Hedland Senior High School; in 1996, there were three; in 1997, there were five; and this year there are nine. That is a huge increase. The overall rate of attendance among Aboriginal teenagers in the school was 87.6 per cent in 1997. In 1998 it increased to 97 per cent. The number of Aboriginal students suspended in 1995 was 127; there were 13 in 1997 and none this year. That is the first time in the history of the high school that there have been no suspensions of Aboriginal students. That is why the program won the award. The minister recognised that. It therefore came as a great surprise to those people when the principal of the school received a letter from the Education Department saying -

> It is with regret that I must inform you that the position of AEST may no longer exist in the school from the beginning of 1999. Carol Garlett, the acting Director of Aboriginal Education informed a recent school administrators meeting that AESTs may be removed from secondary schools at the end of this school year. She informed the meeting that they would definitely be removed from schools by the year 2000. To my knowledge there is no replacement role at school level. This will inevitably reduce the school's capacity to coordinate ASSPA funded projects in the future.

In the same week that the minister recognised this Aboriginal organisation in the Hedland Senior High School as the outstanding organisation in the State in achieving all its goals and ambitions, his corporate plan of taking positions and their funding from the Education Department and putting them into schools without funding laid victim to this very successful program. If I were in any doubt about what happened, that was cleared up last week when *The West Australian* wrote an article in which I attacked the Education Department for axing the program. The department is wrong. The response in *The West Australian* read in part -

> A department spokesman said the decision was made because the program was not achieving the desired benefits for students.

That is absolute nonsense. The minister recognised it as the outstanding organisation in the State. The department is wrong. To continue -

> Money would be redirected to more effective school-based Aboriginal education programs.

That is exactly what is in place. This program has been cut significantly as a result of the minister's policies.

MS MacTIERNAN (Armadale) [3.25 pm]: Schools in my area come under the Cannington District Office. Schools have been advised that two programs for secondary school students which are at severe risk will be chopped unless the schools or the local authorities can contribute more financially to keeping them open. This is an extraordinary proposition. The areas in which the highest proportion of at-risk children live are those that are least able to find funds to divert those moneys. The same applies to the local authorities in our area. The City of Armadale has a very low rate base for the task it has at hand and does not have the resources to contribute to these programs.

The Wandarri Alternative Learning Initiative in Kelmscott provides off-campus support for more than a dozen students,

some of whom have serious social and emotional problems. They represent real difficulties for teachers. Others at this school are chronic truants. It is generally agreed by educationists in our area that if they were put back into the mainstream they would not turn up for school at all. By attending Wandarri, at the very least they are being kept off the streets. The member for Belmont referred to the importance of that in reducing the rate of breaking and entering. It also provides those students with some social and emotional support from a very caring group of teachers.

Additionally, it provides relief for students in the mainstream schools who are entitled to have their education relatively uninterrupted by students who have severe problems settling into the school routine. The proposal that Cecil Andrews School chip in more money is insane. That school has 730 students and it has a comparatively high rate of non-fee payment. Its P & C association is unable to raise much money for the school. In fact, when the principal took over at the beginning of this year, it was so broke it could not afford any prizes for academic achievement. Students had to be content with a simple certificate that teachers managed to create on the school computer.

Mr Barnett: Why didn't you do something about it?

Ms MacTIERNAN: I did take up the issue. The minister may recall that I wrote to him. I also did what I could to obtain support for prizes from members of Parliament. To suggest to a frontline school in an area in which there are relatively high levels of children at risk that its programs will be cut if it does not raise the funds is insane. From a whole-of-government approach, when we are spending $45 000 to $60 000 a year to keep a young person in Canning Vale Prison, surely it makes sense to divert some of those funds to the schools so that we can give these young people a chance of staying out of the criminal justice system. To continue on this road would be to go backwards.

MR BARNETT (Cottesloe - Minister for Education) [3.29 pm]: Before I respond to the matter of public interest, I make the observation that while alienated students and students at risk is an important issue and one on which the Education Department, educators and I spend a lot of time. I find it surprising that the Opposition would raise it as its matter of public interest in the last week of the Parliament. I would have thought there were more highly contentious or topical issues than this one.

Mrs Roberts: There are few things more important than the education of children.

Mr BARNETT: I made that observation. However, in the last week of Parliament the Opposition has raised an issue that has no particular immediacy about it.

Several members interjected.

Mr BARNETT: Members should allow me to look at the thrust of what I think the Opposition is trying to argue which, I find, is both lacking in any real substance and somewhat unconvincing.

Mr Ripper: We have documents from the Education Department showing that money will not be available for those programs.

Mr BARNETT: The Opposition has items of correspondence between district officers and a school. Thousands of pieces of correspondence flow every week around the education system. That is a pretty flimsy basis upon which to imply in the House that the Government or the department is cutting back on programs.

Mrs Roberts: Is the minister supporting the motion?

Mr BARNETT: I do not have a great deal of difficulty with the thrust of the motion. The Government will amend it, but only in a minor way. Every year the Government spends more and more money on students at risk. I want to comment more generally.

Ms MacTiernan: Is the minister spending more money just in the western suburbs?

Mr BARNETT: There is a cultural cringe on the opposition benches.

Let us start with the position of money in education. When the Government came into power about $1 000m was being spent annually on education. That has increased by more than $400m, and has increased typically in the range $70m to $100m a year. The real increase in education spending is 4 per cent to 5 per cent every year. With the exception of the population boom of the 1950s and early 1960s I doubt there has ever been a period in which government spending on education has increased in absolute value at the rate at which it has increased over the past three or four years.

Mr Kobelke: In the 1980s there was a marked participation rate increase.

Mr BARNETT: That was nowhere near this increase. The Government has spent more on education than has occurred in this State's recent history. I could not believe my good luck when the Opposition moved the motion today, because it ties in perfectly with the results of the literacy survey that I released at lunchtime. The motion gives me an opportunity to inform the Parliament. One of the major reasons for students not succeeding - either at school or subsequently in life - is low

literacy standards. The literacy standard in prisons or among disaffected groups of young people is appalling; there is a direct causal link. The results announced today is part of a longer-term strategy. We also have the problems of today.

As part of the longer-term strategy, the federal and state ministers accepted in 1996 that in the post-war years Australia had experienced declining literacy standards in reading, writing and spelling - and probably declining numeracy standards. Anecdotally that is the view of teachers and certainly of employers. In 1996 the education ministers agreed to make literacy the number one priority in education. As part of that we agreed also - it is only one part of the program - to assess the literacy standards of every child in this nation at years 3 and 5 and probably in years 7 and 8.

Mrs Roberts: Testing does not achieve anything.

Mr BARNETT: If the member for Midland would concentrate, I said it is one part of it.

Mrs Roberts: It is not even part of it; it does nothing. A test does not teach anything.

Mr BARNETT: I will tell the member for Midland what it does: For the first time Governments around Australia have had the courage to objectively assess the standard of literacy of every single child in Australia. We made a commitment to parents that we will do it again, and will do something about it.

Several members interjected.

Mr BARNETT: Members opposite do not like hearing about it, but it is important. If members opposite care about alienated youth they should at least think about literacy, because that is the root cause of many of their problems.

Several members interjected.

Mr BARNETT: I listened to the Opposition in silence, and I want to talk about the issue. Literacy is important. In August this year 24 000 year 3-students - 8-year-old boys and girls - were assessed against a nationally agreed benchmark that was set at a high level. It was certainly higher than the standard used to monitor standards of education. The standard was set deliberately high, because we are about setting a high standard and raising literacy levels. All government and Catholic schools and 50 per cent of independent schools participated in the survey. Of those 24 000 children 80 per cent achieved the benchmark standard. That is probably consistent with the monitoring standards in education results and with the Institute for Child Health Research survey. The results show that the standards of literacy have not changed much during the 1990s. If they declined previously, they have essentially stabilised since 1990.

Mr Ripper: What about those who are alienated?

Mr BARNETT: The Deputy Leader of the Opposition does not want to hear this, but it is important.

Mr Ripper: I want to hear something related to the motion.

Mr BARNETT: This is exactly related to the motion, because it addresses the long- term problems of literacy and alienation among students in Western Australia; it is about doing that seriously and properly. The results indicate that one in five students have problems, and are at risk. That is serious. One in five students have been identified as having literacy levels which are not acceptable in terms of achieving through education, and as requiring special assistance. The challenge now is to provide that assistance. I assure members opposite that, rather than guaranteeing standards for alienated youth or literacy, the Government will spend more and more dollars and effort on those one in five students. The Government has identified those students in year 3 - maybe not perfectly, but it has done it. Western Australia is the only State in Australia that has applied the assessment against the benchmark. We have done that for virtually all students - that is, for 90 per cent of year 3 students. Next week the schools will report individually to the parents of each one of those children on how their boy or girl rates. Western Australia is the first State to do that; it is head of the pack in Australia on that. We will do it again next year for students in years 3 and 5, and in years 7 and 8.

Mrs Roberts: Testing does not achieve anything in itself unless you put some dollars and commitment into programs.

Mr BARNETT: Testing is only one part of it. However, for the first time in this State, member for Midland, a Government has had the commitment and honesty to assess literacy and to tell parents how their children are performing and then to tell them what we will do to improve matters.

Mrs Roberts: What you are doing is cutting things.

Mr BARNETT: I will get to that.

Mr Kobelke: You will do lots of things, but you cannot think of one at the moment.

Mr BARNETT: The member for Nollamara really is a little peanut. If the member's only comment to a serious issue is a singular laugh, it is almost *Phantom of the Opera* in its style. It is absurd.

Mr Kobelke: Personal abuse will not get the minister off the hook for not knowing what he is doing.

Mr BARNETT: If my calling the member a peanut is personal abuse, I apologise.

Among the first things the Government did was to introduce a universal full-time, five-year-old program as of this year; and a kindergarten program will be universal as of next year. The children who were assessed did not have the benefit of those programs. Next year 80 additional teachers will go into primary schools to reduce class sizes. The new curriculum is also important. All of those things are in place. Also, a literacy net program will pick up and target the individual children identified. That will cost more than $4m, yet the Opposition goes on about budget crises in education. The Opposition should support every single dollar spent on education, instead of carping on because a $1.4b budget runs over by $20m and will probably run over by $40m. I accept that I must explain that to Treasury and that we must look at the effectiveness of the way we spend money. The commitment I give is that the Government will put money into helping those one in five kids and will do everything it can to give them a better chance of education and life, and the Opposition should support the Government.

Mrs Roberts: What are you going to do for the one in five kids who have been identified?

Mr BARNETT: I will go through it again for the member for Midland. The one in five students now receive universal kindergarten and universal five-year-old programs, assessment at each stage, and literacy net programs.

Ms MacTiernan: Everyone gets that. What are you doing especially for the one in five?

Mr BARNETT: They will have individualised programs. That will be expensive, but we will develop them. We cannot deliver that immediately, but we will tackle each of those children. Each boy and girl is special and will be helped. It will not be perfect immediately, and it will cost a lot of money and take time to build up. However, for the first time there is a national and state commitment to do it.

Mr Kobelke: When will it start?

Mr BARNETT: It will start next year. Already $4m - it will not be enough - has been allocated to assist those kids. It is one in five - it is a huge challenge. It is about individual children.

I want to comment on some of the results. The results show that girls do better than boys. That is to be expected. Not surprisingly perhaps, in the metropolitan area the results tended to be better than in country areas. Among groups, children learning English as a second language - immigrant children - did exceptionally well. In fact, they are only marginally behind the standard overall. As most members may expect, about 40 per cent of Aboriginal children reached the benchmark, compared with 80 per cent overall. There is no doubt that there is a huge challenge in Aboriginal education. It has always been there but perhaps for the first time we are recognising and measuring it. In that regard, members opposite talk about cutbacks in programs. Members might be interested to know that since 1990 the State and the Commonwealth have spent $540m on Aboriginal education in this State. Despite what politicians in Canberra might say, for every dollar of commonwealth money there are about $4 of state money. It is not commonwealth funding; it is state funding of Aboriginal programs. For about 5 per cent of kids there is $540m.

Mr Graham: Why are you cutting out the successful program in Hedland?

Mr BARNETT: I will consider that example and all the individual programs that have been raised in the debate. I am not -

Mr Ripper: You are not across it, that is right.

Mr BARNETT: No, I am across it, but I am not across the detail of every program. One of the causes of failure in the Aboriginal area is that we have probably had too many small programs with large developmental costs and large administrative overheads. We need to find programs - the Port Hedland one is a good program - that are successful, understand why they succeed and apply them across other schools. We cannot afford every school in every community having its own, unique program. Members opposite talked about the problems of alienated youth. Sure, everyone is aware of that problem in every electorate. Members should forget the western suburbs versus Midland because every area has problems of alienated youth. All schools - government schools and non-government schools - have it.

Ms MacTiernan: You are asking schools that have the highest percentage of alienated youth to contribute more.

Mr BARNETT: That is not true. The funding that goes into the programs is concentrated in the schools that have the greatest problems. That is without any doubt at all. Not much money for alienated youth goes into western suburbs schools; it goes into schools in lower socioeconomic electorates. That is where the money goes.

Ms MacTiernan interjected.

Mr BARNETT: I will get to that point. Many problems of alienated youth extend across a range of factors. Often, the immediate solution to, say, unwanted pregnancies, drugs or driver safety - members can name the issue - is to say, "Let's get the schools to solve it." That happens repeatedly. Three or four things should be done through schools and I would tend to dismiss the others, simply for the reason that our schools are to provide education for young people. The most important

thing that a Government can do is to provide high-quality education and reduce alienation. There are problems involving Family and Children's Services, the Health Department, local government, the police and so on - all sorts of different agencies - those problems are not exclusively the problems of schools and it is wrong to assume so. Many programs for young people cover many agencies and local communities, whether represented by local government, church groups or youth groups in the area, and schools should and do play a role. However, it is simply wrong to say that the schools should fund it. They play a role but they perhaps should not play the major role. That is what I suspect some of the correspondence is about.

At the same time we are giving schools more money to use at their discretion. Members will recall the newspaper headline that there was $70m in school bank accounts. I do not know what the point of the story was but it reflected the fact that schools are being given more of their budget to use at their discretion. They must make choices. Some schools find it difficult to make choices, and that is why their bank balances are going up. They must choose how to help students in their areas.

Ms MacTiernan: Do you agree that schools in Armadale, for example, will have great difficulty raising money through P & Cs?

Mr BARNETT: Yes, I do.

Ms MacTiernan: And that they will have great difficulty in collecting school fees and that they do not gain the same level of funding from those other sources as schools in more affluent areas?

Mr BARNETT: Exactly. The member's interjection is a distraction from the debate, but that is why she should think very carefully about why she does not support mandatory school charges. In my electorate, almost all parents can afford to pay them, and almost all do.

Ms MacTiernan: I wrote to the minister and suggested a way to improve it. I want to know whether he has taken it up.

Mr BARNETT: Let us consider some of the lower socioeconomic schools which have low-income parents in the member's electorate. If we had mandatory charges, which would provide a pool of funds for schools, 40 to 60 per cent of parents would pay. For parents who genuinely cannot pay, the Government will fund it, but we cannot have one without the other. In opposing mandatory school charges, the member will leave the poorest schools poorer.

Ms MacTiernan: Did you make a submission to David Kemp and ask him to ensure that money for Aboriginal students goes, as it goes for non-Aboriginal students, directly to the school?

Mr BARNETT: Yes.

Ms MacTiernan: You made a submission on those lines?

Mr BARNETT: Yes, and I expect it to be agreed to.

Ms MacTiernan: By the beginning of the next financial year?

Mr BARNETT: I hope so. I think it is important. Do not do the obvious and say that we should not have mandatory school charges, because the schools that will be hurt will be the poorest schools. They will miss out on government assistance where it appropriately is required and will be funded.

There are many issues and there are many problems of young people and we cannot reasonably expect a school to solve all of them. A school's main task is to provide education. We are giving schools more autonomy. The new education legislation gives them much more freedom to run programs. I could outline many examples, but I will address funding because, at least in terms of the words used, that is the point of the motion.

Mr Ripper: The point is that programs are under threat.

Mr BARNETT: There are three sources of funding for alienated students. There is retention and participation funding, which is allocated to education districts. That has already been agreed to and funding levels are agreed to 2002. Behaviour management funding has been provided to districts to support behavioural policies in schools. There is also students-at-educational-risk strategy funding. Those three sources of funding have already been allocated and guaranteed through the implementation of the students-at-risk strategy, which runs from 1998 to 2002. The three sources of funding from 1998 to 2002 are in place and guaranteed. The motion refers to maintenance of the level of funding.

Mr Ripper: Maintain at least the level.

Mr BARNETT: I am saying that the three sources of funding are in place until 2002. They are guaranteed.

Mr Ripper: Why are programs being cut?

Mr BARNETT: The member should tell me to increase the level of funding.

Ms MacTiernan interjected.

Mr BARNETT: I am just saying that the level of funding is being maintained.

Ms MacTiernan: Not in real money terms, it is not.

Mr BARNETT: I will consider each program - I am familiar with a couple - and examine its merits. Although funding is being maintained in real terms and being increased, it does not mean that every program will continue, because we must consider what programs are effective. We will give schools choices, and schools may choose to use another program which means that an existing program might disappear. When a program disappears, people always complain about cutbacks in funding. If they consider the truth of the matter, they will find that funding has been increased significantly and will continue to be increased. I will consider each case, but I do not make a commitment to maintaining every existing program. At least one of those programs is extremely expensive given the return it provides.

Ms MacTiernan: The level of funding has remained constant while the on-costs have increased. That means it has been impossible to retain the same number of programs. We all agree that programs must be revised from time to time. However, the government allocation does not allow those involved to run the same number of programs.

Mr BARNETT: Funding has not remained constant. For example, the educational risk strategy called "Making a Difference" launched in June 1998 included the allocation of $3.1m.

Ms MacTiernan: Is that global?

Mr BARNETT: It is an additional $3.1m each year for the next three years.

Ms MacTiernan interjected.

Mr BARNETT: That may well represent decisions made. I will look at each case. However, across the districts funding is increasing, not decreasing.

Mr Ripper: Correspondence from the school indicates that it cannot afford four programs and will have to make do with two. Schools are told to dip into the school grant, approach local government or make other arrangements.

Mr BARNETT: The school grant is to be spent on children. It is not a piggy bank for the school to use to stash away money. I was disturbed to find that schools have $60m in their accounts. When the coalition first came into office, schools asked me to increase school grants and discretionary money. The Government agreed to increase the grants by $1 per student every year, and that has happened. However, the schools have not been spending it.

Mrs Roberts: That is not true for every school.

Mr BARNETT: It is true; the Government has increased the school grant by $1 per student per year.

Mrs Roberts: You said they have not all been spending it, but some schools have.

Mr BARNETT: Yes, some have. However, the school grant has been increasing. It is not unreasonable for education district directors to tell schools to use their school grant for these projects. Although members opposite do not appear to agree, I believe in giving schools more money, responsibility and the ability to make their own decisions. That is part of the process. Unfortunately, there is a tendency in the public sector - certainly in the Education Department - to be happy and supportive when something new is introduced. However, when there is a change, it is very difficult for those same people to say that they have made a decision to back one program rather than another program. They say that they backed one program but did not have enough money for the other program. That is part of the challenge for schools in a devolved management system. They must have the courage to say to the community that they have made a decision to go down one path, which means that another program might be cut back. That is a management, public relations and communication skill that school principals must acquire.

Mrs Roberts: What about the resource centre for Bellevue Primary School that we still do not have? The situation there is terrible.

Mr BARNETT: I am trying to do many things for Bellevue.

Mrs Roberts: None of them has come to fruition.

Mr BARNETT: Young children at risk is a serious education issue within the community. This Government has spent more on education and in areas of need than any previous Government.

MR TUBBY (Roleystone - Parliamentary Secretary) [3.54 pm]: I support the comments made by the Minister for Education. Alienation is a major problem in schools. However, as the minister said, it is a problem that schools must face. More and more funding is being directed into schools. The Government is trying to get the changes to the Education Act through the upper House so that schools can be responsible for raising money through compulsory fees. Unfortunately, the

Opposition is not supporting that move and the funds schools will require in the next few years will be that much greater as a result.

Mr Ripper: Perhaps the Government should provide it.

Mr TUBBY: The Government is providing more and more education dollars. However, if we can provide for compulsory fees for education, government funding will be able to be targeted through differential funding into areas that members opposite have mentioned; that is, to those schools that need more resources because they have a greater number of alienated students. If members opposite do not support that move, they will not be doing students in their electorates the service they deserve.

Schools are able to design individual programs for these students. At present, many schools are doing that outside the legislation because the 1928 Act requires students to attend a school site to be enrolled in education. Under the new legislation they can be anywhere as long as they are involved in an approved educational program. That program can be conducted on a part-time basis at home, at the local primary school, at the high school or at a technical and further education college, or a combination. The only way that can be legitimised and legalised is for members opposite to support the School Education Bill, and I hope they will do so.

Amendment to Motion

Mr TUBBY: I move -

To delete all words after "House" and substitute -

supports the Minister for Education in -

(1) the continuation of programs for alienated students; and

(2) the maintenance of funding for these programs.

There is no one program or set of perfect programs; they will change. Some programs are excellent and will continue, but others are not so effective and will be abandoned. It is nonsense to support all programs, as suggested in the Opposition's motion. I hope members support the amendment.

MR BOARD (Murdoch - Minister for Youth) [3.57 pm]: I support the Minister for Education's response to this MPI. I am also surprised that the Opposition has moved it.

Mr Ripper: People come to us and say that they will lose two or four programs. Why would we not raise it?

Mr BOARD: It does give the House the opportunity to focus on the issue. One of the most important comments made by the minister was that schools do not solve every issue relating to young people. The Office of Youth Affairs has been involved in a range of intervention programs to identify young people at risk and how we might deal with these issues before those young people become truants and fall out of the school system. Many of the programs in which the office is involved attempt to identify those young people.

At a recent lecture, Robert Catilano, a world expert in intervention programs and policies for young people at risk, indicated that an ounce of prevention is worth a pound of cure. He strongly suggested that the Government spend more money on intervention programs for young people before they become truants. Members probably did not expect that young people from Carine Senior High School would be jumping off a bridge 12 months ago. Young people from that socioeconomic group would not be expected to be at risk.

Mrs Roberts: Why not?

Mr BOARD: That is the point: All kids are at risk. The Office of Youth Affairs is trying to develop programs which address a range of young people and which resolve those issues.

Mrs Roberts: That is like saying that domestic violence does not occur in wealthy suburbs, and we know that is nonsense.

Mr BOARD: I agree with the member. All young people are at risk and our programs attempt to identify and assist them. A majority of the 360 000 young people aged between 12 and 24 in Western Australia are saying that they want to be involved in a solution to these problems. They know some of the kids truanting and they know some of the reasons for that behaviour. They may be able to be involved in peer support programs.

The Office of Youth Affairs is currently piloting three programs involving a range of young people around Western Australia to assist the experts in identifying who may be at risk and how it may be able to assist them. Most of the $1.5m in youth grants which the Office of Youth Affairs gave away over the past 12 months has gone to youth programs and groups which are involved in intervention, whether it is at the school, community or youth group level. People have come forward for youth grants and we target those areas to assist these children. The Government can address this issue in a range of ways and it is not just at the school level.

MR KOBELKE (Nollamara) [4.01 pm]: I accept that the Minister for Education is a man with the best of intentions.

Therefore, it is with some regret that I acknowledge that he knows very little about education and would seem to have only a passing interest in the subject. One has only to go into his office to see all the development projects on his walls. When I visited his office nearly a year ago, there was nothing on education. What the minister has said today clearly reflects his mind-set. He tried to chide the Opposition for raising what he considered a minor issue in the last week of the parliamentary sitting. It is not a minor issue. Only a small number of young people are totally alienated from our schools, are truanting and dropping out, or are Aboriginal children, and are having great difficulty coping in our school system. The lack of support and resources for those children and their families is a huge issue. Putting money into those programs to ensure they will work should be a priority for this Parliament, not only because it will give hope and opportunity to a small number of young people in our community, but also because from that small number come huge problems for our community. They are the people who, largely - not totally - are involved in breaking and entering, crimes against people and graffiti. That inflicts huge costs on the wider community and the Government when we put these people in prison. What happens to this small number of people is a huge issue. In the Canning District and Port Hedland, the Government is failing to give adequate support for programs which will meet the needs of the small number of young people who are not coping in our school system. The minister's reference to testing is simply a diversion. Testing is a tool in education; it can be used effectively or it can be a waste of money. It does not enter into the debate today.

The minister has said that he has increased spending on education. He has increased spending and he would like to see more and the Opposition would like to see more. However, that is not the issue. In a few critical areas the Government is getting it wrong. Truancy is an issue when crime breaks out in one suburb. At one time or another, the Minister for Youth and the police might become involved and run a program, but where is the Education Department on truancy? It does not even have a central record. The various levels of support staff in the district office have been decimated. The Education Department does not have the programs. Three years ago I inquired about the officer who looked after truancy in the Kimberley and I was told that he resided in Cockburn. He was in the Cockburn office looking after truancy in the Kimberley for half the year. When I raised this issue about two months ago - this is anecdotal and I might be wrong - I was informed that it is still the situation. There is no full-time truancy officer in the Kimberley. The Government does not take this important area seriously because only a small number of people are involved and it does not fit into the structure to enable it to obtain the money. It is simply overlooked. It is an absolutely crucial area for the education of these young people, for the whole of our education system and for the whole of our juvenile justice system. Even the Minister for Youth is surprised that we should debate such a matter in the last week of Parliament.

As the Ministers for Youth and Education said, schools cannot fix everything. However, how we deal with the children who are alienated and dropping out of the system is a core issue of education. The Government does not think this matter is important enough to debate. That clearly reflects why things are getting worse in this area. As the member for Belmont indicated, the Government can put an extra $20m to $30m into level five and above bureaucrats in one year and yet programs which are on the ground and needed, such as the retention and participation and Port Hedland programs, are being undermined by insufficient funding or cuts to their funding.

Amendment put and a division taken with the following result -

Ayes (29)

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

Noes (17)

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

Pairs

Mr Court	Ms Anwyl
Mr Cowan	Mr Riebeling

Amendment thus passed.

Motion, as Amended

Question thus passed.

GOVERNMENT RAILWAYS (ACCESS) BILL

Assent

Message from the Governor received and read notifying assent to the Bill.

NATIVE TITLE (STATE PROVISIONS) BILL

Third Reading

MR BARNETT (Cottesloe - Leader of the House) [4.10 pm]: I move -

That the Bill be now read a third time.

Obviously, this is very important legislation. While we wait for the Deputy Leader of the Opposition to return, it allows me an opportunity to make some brief comment on it. It is extremely important that we, as a Parliament, pass this legislation. Many people in this community are waiting for the establishment of a Native Title Commission within this State. Many people are also waiting for the validation of their titles. I could go on and make a speech on this issue. However, I do not intend to.

MR RIPPER (Belmont - Deputy Leader of the Opposition) [4.11 pm]: I thank the Leader of the House for his indulgence. On Friday I was interviewed about native title issues by Peter Kennedy on Radio 720 6WF. My interview was followed by an interview with the Premier. Regrettably, I was not given the opportunity by the producers of the program to respond to a number of things the Premier said about this matter. I will now tackle a few of the myths which the Premier perpetrated on the community of Western Australia in his comments in that interview. He said three things which I strongly object to. Firstly, he said that in the debate on this Bill the Labor Party had sought to reinstate the right to negotiate on pastoral leasehold land; secondly, he said that we need workable native title laws in this State because of decisions like the Miriuwung-Gajerrong decision; and, thirdly, he said the federal law on native title is not John Howard's law; it is Paul Keating's law. I summarise those comments of the Premier because I want to say to all people in the community, and in particular to those in the media, that the Premier's assertions on native title must be subject to scrutiny and must be subject to challenge, because in each of those statements the Premier was misrepresenting the situation.

I come to the question of the right to negotiate. In part 3 of the Bill relating to consultation procedures on pastoral leasehold land, the Labor Party proposed to amend the Bill to require parties to consult in good faith with a view to reaching agreement on minimising the effect and compensating for the effect of the act. I paraphrase that rather than directly quote it. Labor has not sought in this debate to apply the right to negotiate to pastoral leasehold land. Labor has accepted the division of the Bill into part 3 dealing with consultation procedures for leasehold land and part 4 dealing with right-to-negotiate procedures for vacant crown land. I will deal with our amendments to parts 4 and 3. In part 4, Labor moved for the inclusion of words regarding future acts similar to those in section 33 of the Native Title Act, which allows parties to negotiate about compensation based on the income or profit or the things produced. Labor did not move for a similar clause to be inserted in the part 3 consultation procedures. The Labor Party clearly distinguished between the part 3 and part 4 procedures.

Equally, the part 4 right-to-negotiate procedures include a set of criteria based on section 39 of the Native Title Act. The purpose of the inclusion of that set of criteria is to govern decisions made by the Native Title Commission when it is considering a determination following the failure of the right-to-negotiate procedures. Naturally, if negotiations fail, the matters which the commission considers when it makes a determination reflect in a reverse fashion the topics which the negotiators will be consequently encouraged to discuss. When it came to the part 3 consultation procedures, we did not seek to include precisely the same words from section 39 as are used in the right-to-negotiate section of the Bill. We moved for a version of the section 39 criteria to be applied to commission consideration of recommendations when consultations fail. However, the important word in that sentence is the word "version". We sought to include in the part 3 consultation procedures the version of the section 39 criteria used by the Queensland Government in its native title legislation. That version provides for the commission to be required to take into account certain matters, with regard to both native title holders and holders of interests in land that are not native title interests. It also provides for the commission to have a discretion to take into account a range of other matters related to the interests of native title holders.

With regard to section 39 of the Native Title Act and its equivalent provisions in part 4 of the state Bill, all of those matters are required to be considered by the commission. The point I am making is that with regard to the wording of the consultation clause, the inclusion of section 33 of the Native Title Act and the inclusion of section 39 of the Native Title Act, the Opposition has clearly distinguished between the requirements to apply to part 3 and the requirements to apply to part 4. Similarly, it has accepted the use of the word "recommendation" to describe the commission's decision under part 3, rather than the word "determination", which is the word which applies to the commission's decision under part 4. We have

questioned why the word "recommendation" should be there, but it must be noted that we have not moved an amendment to change that usage.

It is wrong for the Premier to say that we have sought to apply the right to negotiate to pastoral leasehold land. We have not adopted holus-bolus the position put to us by indigenous interests. It should be noted by this House that indigenous interests would argue for the right to negotiate to apply to leasehold land as well as to vacant crown land. Indigenous interests would not want a separate part 3 and part 4 in this Act. They would rather, in their own interests, have an amalgamated section which dealt with both vacant crown land and pastoral leasehold land. Indigenous interests are concerned that when a court considers this Bill, it will form the judgment that because it has a part 3 and a part 4, the Parliament intended that there be some difference between those two parts, and it will interpret those two parts in a way which reads down the content of the part 3 consultation procedures. In other words, the court will determine that the right-to-negotiate procedures must be different from and superior to the right-to-consult procedures, because the Parliament would not have included those two parts in the Bill if it had not intended them to be different.

I make these points to rebut the argument that Labor has simply adopted the indigenous position and has sought to apply, in a de facto sense, the right to negotiate on pastoral leasehold land. That is not what Labor has done, as can be seen from the differences between the way we have approached the part 3 consultation procedures and our amendments to those procedures, and the way we have approached the part 4 right-to-negotiate procedures and our amendments to those procedures.

My final point about the application of the right to negotiate on leasehold land is that if this state legislation were to fail, the commonwealth Native Title Act would apply in this State. That commonwealth legislation is the John Howard and Brian Harradine Bill, as a result of the compromises they reached in order to get that Bill through the Senate. That commonwealth legislation provides for the right to negotiate on leasehold land. Therefore, I rebut the charge that we are providing for the right to negotiate on leasehold land. However, if that were so terrible, why did this Government's federal Liberal colleagues agree to that arrangement?

The second assertion that the Premier made in that interview was with regard to the Miriuwung-Gajerrong decision. He said words to the effect, "We need state native title legislation because of court decisions like this." He implied that the State Parliament's passage of his native title legislation would prevent decisions such as the one made by the Federal Court in the Miriuwung-Gajerrong case. That assertion is patently false. Even if the State Government's native title legislation were endorsed by this Parliament, decisions on the existence, nature and content of native title would continue to be made by the Federal Court. If the Premier's legislation were to pass through the Parliament unamended, the Federal Court would continue to make decisions on the nature, existence and content of native title. The Premier's legislation will not change the possibility that decisions such as the Miriuwung-Gajerrong decision will continue to be made. Can the Government honestly say that the Miriuwung-Gajerrong decision would not have been made if the Native Title (State Provisions) Bill were passed? I do not think the Government can honestly answer yes to that question.

Mr Prince: If we were to pass this Bill, we would end up with a system that led to a resolution of these matters and would not need to go to court and end up with a decision like Mr Justice Lee's, which has very little by way of authoritative backing, is quite novel in many respects, and will go to the High Court because it must.

Mr RIPPER: If this legislation were passed, which body would make a determination about the existence of native title?

Mr Prince: If there could be no resolution of dispute, then ultimately the Federal Court, the High Court and so on.

Mr RIPPER: Exactly! The same bodies that make the decision now on the existence and content of native title will make the decision if this legislation is passed. Therefore, it was wrong for the Premier to imply to the audience of Radio 720 6WF that the passage of his legislation would prevent decisions such as the Miriuwung-Gajerrong decision being made.

Mr Prince: You are quite wrong. If we had in place an administrative system that could resolve matters without the need to go to court, clearly we would avoid the problem of having court decisions; and that is what we have been trying to do for six years.

Mr RIPPER: The minister is saying that if we could negotiate with Aboriginal people, we might avoid the need for these sorts of court decisions to be made. That is precisely the view that has been put to the State Government by many people in this community for many years, but the State Government has always adopted the legal approach.

Mr Prince: I am not saying that. We need to have a system that leads to resolution. Negotiation has not led to resolution.

Mr RIPPER: That system in this Bill is for decisions with regard to the use of land. Decisions with regard to the existence and content of native title need to be made by the Federal Court. Therefore, it was wrong for the Premier to imply that the Federal Court-type of decision making would not apply if his legislation were passed.

The third assertion that the Premier made was that if his state legislation were to fail, the Keating law would apply to Western Australia. I wonder whether the Premier recognises the result of the elections in 1996 and earlier this year. We

have a federal coalition Government. We have a new Native Title Act as a result of federal coalition Government-sponsored amendments. That amended Native Title Act has come about principally as a result of a compromise between the Prime Minister and Brian Harradine. That John Howard-Brian Harradine legislation would apply in this State if this Parliament failed to pass the State Government's legislation. The Premier said that I had a nerve to make that assertion. I did not have a nerve to make the assertion that the law under which we are operating is the law that passed through the Federal Parliament as a result of a compromise between John Howard and Brian Harradine. Their scheme would apply to vacant crown land and pastoral leasehold land in this State if for one reason or another the State's legislation were to fail to pass through this Parliament.

Mr Graham: Perhaps they are arguing that the Howard amendments are not good amendments and should be ignored or deleted! Perhaps that is the substance of their argument.

Mr RIPPER: That comment has some validity. Clearly the State Government does not have the confidence that one would expect it to have in the decisions that have been made by its federal coalition colleagues.

I have dealt with that interview at some length because it is a specific example of a more general point that needs to be made: The Premier's assertions on native title issues cannot be trusted. The Premier's track record on native title is poor. It began with his reaction to the Mabo decision and his Land (Titles and Traditional Usage) Bill. He said at the time that he had the solution to native title problems in Western Australia. He argued then, and has done since, that his legislation is very effective legislation. In recent days, ministers have argued in this place and in private briefings that the original state legislation is very good and effective. Time and time again, the Premier and his ministers have missed the main point: If that legislation is not valid and is not constitutional, it has no effect whatsoever; and, by definition, it is unworkable in the most absolute and complete sense imaginable. The only legislation which can be workable is that which is valid and constitutional. It is no good the Premier's dreaming up a plausible, intuitive solution; it is not personal opinion, but legal opinion that counts on this issue. The Premier's continued assertions that he had the solution to native title but that he was somehow curtailed, do not hold water. It was not a workable solution if it was not a constitutionally valid solution, and that was found to be the case in the 7:0 decision of the High Court. Plausible populist points should cut no ice when Parliaments must negotiate court recognition of existing property rights, the restrictions of the Racial Discrimination Act and the constraints of the federal Native Title Act. It is no good people saying off the tops of their heads that they have a solution, or promoting to the community solutions which might sound attractive to those who have no knowledge of the constraints that apply in this area. In the end, the decisions of the High Court must be taken into account, as must the fact that no Government in Australia can discriminate because of the provisions of the Racial Discrimination Act and that this Parliament legislates under the authority of the federal Native Title Act. The Premier has a responsibility to explain to the people of Western Australia the complexities of this issue and the constraints under which the State Parliament must operate. He has conspicuously failed in that responsibility. However, it is not his responsibility alone.

There is a particular responsibility on the media in this State to also explain to the people of Western Australia how these constraints operate. The Premier can get away with his glib assertions on native title only if he is unchallenged in the Parliament and the media and if his statements are not scrutinised by the media. The Opposition has challenged and scrutinised his assertions in the Parliament. It has gone into the detail and worked hard to make sure that opposition members understand the full situation and are well on top of the detail of native title. It is now the responsibility of the media in particular to undertake the same work so that it is equipped to challenge the Premier and scrutinise his assertions. If that is not done, there will be an unfortunate continuation of the poor standard of debate which has occurred on native title in Western Australia over the years.

The Premier has not sought to educate the population of Western Australia about the complexities and difficulties of this issue. Instead of adopting the true role of a leader, he has sought to exploit people's fears and to win votes in an opportunistic fashion by playing on the natural fears of people not schooled in the complexities and intricacies of the native title debate. The Opposition's approach to this legislation has been to support a Western Australian solution to native title issues. Given the very poor track record of the Government, the Opposition's reaction has been to not trust the Premier's assertions on native title. The Opposition has examined the Bill in great detail. It has moved substantial amendments to the legislation. Some people have thought that the Opposition would oppose this legislation but it has not done so. It voted for the Bill at the second reading and will not oppose it at the third reading. However, the Opposition moved substantial amendments and it intends to persist with them. The Opposition's approach is standing the test of time. On the other side of politics, the Government's approach is collapsing. Its first strategy was to call upon the Opposition to pass the Bill speedily and without amendment. That approach has completely gone, because the Government itself introduced 46 amendments to the legislation. As the member for Willagee said, quite a number of those amendments were forced upon the Government by negotiations with commonwealth officials. The second reason it can be said that the Government's strategy has collapsed, is that the Government has accepted in principle a number of Labor Party amendments. The Government's approach has collapsed, its credibility is weakening and the Opposition's approach has stood the test of time. The 46 amendments introduced by the Government indicate that the State has been under pressure from commonwealth officials to amend the legislation to comply with the requirements of the federal Native Title Act.

That brings me to a discussion of the ways in which this Bill can fail. A number of people have thought it could fail because it might be voted against in the upper House; however, the Opposition has indicated that its approach is to amend rather than oppose the Bill. The Labor Party does not see itself voting against this legislation in either House of Parliament, but it will strongly support amendments to the legislation. Let us consider the ways in which this Bill might fail, because it will not fail from the approach I have outlined. The Bill will be amended in the upper House. The Labor Party will persist with its amendments and it is up to the other parties in the upper House to make their decisions. There is a reasonable chance that Labor's amendments will be supported by a majority of the upper House. It will then be up to the Government to decide whether to support the amended legislation. In the final analysis, this Government must decide whether it supports a Western Australian solution to native title matters. It will be for the Government to decide whether to proceed with this legislation, and it will not be the decision of the upper House.

If this legislation goes through the Parliament because the Government chooses to proceed with it, there are three other ways in which it could fail. It might be judged by the commonwealth minister, under sections 207A and 207B of the federal Native Title Act, not to comply with the provisions of that Act. That decision of the commonwealth minister is itself subject to judicial review and it may be that someone will judge the commonwealth minister not to have made the determination properly, even if he or she approves the state legislation, and will take the matter to court. On judicial review, the commonwealth minister's decision to approve the Western Australian legislation might fail There is, however, a more serious hurdle over which the state legislation must jump. The commonwealth minister's determination is itself subject to disallowance by the Senate. The Senate is composed of politicians and the majority can be expected to take a political, as well as a judicial, view of the compliance of the state legislation with the federal NTA. It is possible that a majority of the Senate will not regard this legislation, if it remains unamended, as consistent with the NTA.

Mr Prince: You have said that is a political and not a legal view.

Mr RIPPER: I am dealing with the realities. It could well be that a decision will be made on a quasi-political basis because the Senate majority will make a judgment as to whether the state legislation, taken as a whole, is consistent with what they thought they were doing when they passed amendments to the federal NTA. That is a very important consideration. The Opposition's amendments, if carried in the upper House and if accepted by the Government, may assist the Government in achieving Senate acceptance of the legislation. Although the Premier fulminates about the Labor amendments, the Opposition might be doing him and the survival of native title legislation in this State a big favour. Many of the opposition amendments to the native title legislation related to accountability and scrutiny, which are absolute requirements because of the need to promote confidence and a sense of legitimacy in this State's native title legislation.

Those matters are all the more urgent as a result of the State Government's poor track record on native title issues in this State. Everyone in Western Australia needs to encourage an understanding and acceptance of native title. We need to avoid opportunistic and populist exploitation of people's fears. This is a complex and sensitive issue with the potential to divide the community, and all of us should behave with a deal more statesmanship than the Premier has so far displayed on the issue.

DR GALLOP (Victoria Park - Leader of the Opposition) [4.41 pm]: I concur with the remarks of the Deputy Leader of the Opposition, who has handled the legislation on behalf of the Labor Party with great skill and knowledge. He made a significant contribution to our understanding of this issue during debate in the committee stage, and I congratulate him on that.

The Opposition's position on this legislation is not to try to create new rights nor to expand rights beyond where anyone in our community expected they should go; it is to protect an existing right that has now been established through not only the decisions of the High Court and the Federal Court in Australia but also legislation that has passed through the Commonwealth Parliament and some of the other State Parliaments. The Labor Party has come into the Parliament to defend native title rights, because it was clear that the Government's attitude to native title rights is to constantly chip away and undermine the meaningful expression of that right. That is a highly reactionary approach to take and it does not promote reconciliation in our community. More importantly, it means that we cannot establish a certain and workable framework into the future.

The Opposition applied three tests to the legislation in its contributions during committee. The Opposition felt that when each of those tests was applied, the legislation fell short of what was required and therefore we saw the need to move amendments. The first is the constitutional test. Ultimately, this type of legislation might find its way into the highest courts of land where it would be subject to review. The Opposition tried to take on board the sorts of things that courts would take into account in assessing the validity of the Western Australian legislation in terms of how they interpret native title, and the importance they place on the Racial Discrimination Act and its application throughout our society. We saw another example of this last week when the Miriuwung-Gajerrong case came down. Yet another court in Australia made it clear that we are talking about a real property right. It was not just a peripheral and passing interest, but a real property right. Therefore, the Opposition's amendments tried to ensure that should our legislation ever be challenged in some courts in Australia it would be proofed against any rejection by the courts. A good example of the Opposition's application of that

principle is in the area of consultation. The courts have made clear the requirement of parties to act in good faith. The courts have also made it clear that there should be a substantial interest that needs to be given a framework around which it is understood and dealt with.

The second test that the Opposition applied was the test of the commonwealth Act. That is absolutely crucial, because the legislation that Western Australia passes must be consistent with the commonwealth legislation and the Commonwealth Parliament. For example, let us consider the amendments that the Opposition moved to the right-to-negotiate sections of this legislation. The Opposition believes that incorporating section 33 of the federal Native Title Act is absolutely crucial to ensure the state legislation is consistent with the commonwealth legislation at its base. The Opposition has taken other examples on board by looking at what the Commonwealth Parliament said when it passed its amendments to the Native Title Act, so that when the state legislation goes over to the Commonwealth it will get a tick. The Opposition moved amendments to make sure that test could be met.

The third test that the Opposition applied was the practical test. If the legislation is to be successful it must encourage its own use. It is possible for people to go through the court process and to establish their rights solely through the courts. We have seen that in the Miriuwung-Gajerrong case and the Mabo case, and because of this, the Commonwealth Parliament introduced legislation in 1993 to provide an alternative way in which to deal with these matters that would be cheaper and would take less time and therefore have less impact on decision making in our community. There have been various arguments about whether the Native Title Act 1993 succeeded in doing that, and it has now been subject to amendment by the Commonwealth Parliament. However, we are not debating the federal Native Title Act, we are debating the Western Australian version of it and we should encourage people to use it.

The government side displays rank minimalism. It alway goes to the bottom line to make sure that it does not do anything that is more than it feels it must do. In the course of doing that the message the Government sends out to people is, "We are not in this game to provide a fair framework for everyone who needs to use this legislation. We are in this game to make sure the legislation has minimal impact." Why would people want to use such legislation? How does that approach encourage people to use the legislation? The Opposition has also tried to ensure that the way in which the Native Title Commission will operate in its consultation and negotiation procedures will encourage people to use it according to the laws that are laid down rather than, at every step of the process, to appeal to a court for a determination on whether the process has been followed properly. The Opposition believes that is the right approach. We came up with legislation that is workable, and in one important respect, the Opposition believes it has improved the consistency of the federal and state legislation by removing historical tenures from the consultation process and including them in the right-to-negotiate process. That is a reasonable approach which will reduce the amount of overlap and duplication, which can be inconvenient for applicants. We were strongly pressed by people who are passionate about these things to vote against the legislation. That has not been the approach that we have adopted. We can have Western Australian legislation. It is possible to take mining interests on the one side and indigenous interests on the other side and come up with a reasonable approach that takes all those interests into account. Thirdly, we have come up with a fair approach, and that is important. We believe that our amendments were fair and should have been taken seriously by the Government.

I endorse our position, which was to include in the legislation a statement of principle and scrutiny; to enhance the procedural processes in parts 3 to 5; to increase the status and independence of the Native Title Commission, and, of course, the Government came on board with a couple of those proposals that we put up; to expand the scope of part 3 by including the intertidal zone in a limited but nevertheless important way, and we continue to consider the legal implications of that issue; and to expand the scope of part 4 to make it much more consistent with a general understanding of what vacant crown land is and to remove historical tenures in a way that most reasonable people would understand and accept, and of course by so doing make the application of the legislation more practical in the real world. We believe that they were very good amendments. I hope that when the Government seriously looks at the matter it will reconsider its opposition to some of our amendments.

I shall summarise my points. Firstly, the Labor Party's role has not been to expand the definition of rights beyond what has been acceptable in the courts; it has been to defend an existing property right. I urge all members of Parliament to consider the issue in those terms. If other property rights in the community are affected, there is no doubt that we have an obligation to be vigilant. Why should we not be vigilant about protecting indigenous property rights as well? Our definition is based on our understanding of what has been said about that right in other legislatures and in our courts. Let us treat the issue as we treat every Western Australian's right to life, liberty and property. That is what we have done in the debate.

Secondly, I emphasise that the tests that we have applied - that is, the legal-constitutional, commonwealth and political practical tests - led us to conclude that there must be amendments to the Bill if it is to be acceptable to the Commonwealth and to those who are to apply it and if it is to be acceptable in the face of future court action. We have applied those tests and come up with amendments that we believe do an important job in making sure that the legislation will withstand future scrutiny. It is no good coming up with legislation that will not withstand future scrutiny. Thirdly, I reiterate that the amendments that we have moved are reasonable and fair and that they provide for workability in our community.

We have done what we believe all parties should do in relation to the legislation: We have examined the various interests and worked out a way in which they can come together on the ground so that everyone can feel that their rights and interests are being properly protected, but a process is set up for dealing with conflicts when they emerge. In essence, that is what the Bill is designed to do. Unfortunately, thus far in the debate - there is still plenty of time left and we hope that the Government will change its mind - the Government has adhered rigidly to its radical minimalism and thereby exposed itself to review in other jurisdictions and has not encouraged people to use the legislation. That approach has been taken by conservative forces ever since the Mabo decision was handed down and it has prevented an overall resolution to the problem.

If we consider people's perceptions of life in our community, it is interesting to put ourselves in other people's shoes. We try to do that in respect of people who migrate to Australia. We ask, "What is it like to be a migrant in Australia? What should we do to make sure that their identity and being are properly protected and that they can feel comfortable in our community?" When people suffer significant illness, we try to put ourselves into their shoes and ask, "What is it like to have that illness and how can we adjust the way we treat people in hospital to take it into account?" Members should ask, "What must it feel like to be an indigenous person in Australia today?" On the one hand, the courts, in significant decisions, have accepted that indigenous people have rights, particularly a right to land, but on the other hand Governments are continually treating it as a problem rather than as an opportunity. That is exactly what has happened in the native title debate since 1992 when the Mabo decision came down. What the Mabo decision represents and what native title legislation can represent is a genuine desire on the part of our community to accept on an equal basis everyone who lives in this country, by saying that Aboriginal people's rights to their land have equal status to our rights to land through the process that has occurred since 1829. That would be a remarkable breakthrough in the way in which our community works and it would lead to genuine reconciliation in the community. Unless we come to terms with that, we will always feel that we are not a community and that some people do not quite have the same level of right as the rest of us. Of course, that is not the basis upon which we can build a community. In the end, that is what it is all about - building a community and making sure that everyone is part of it. As the American revolutionary slogan stated, it is about making sure that everyone has equal rights to life, liberty and property. In this case we are talking about property and making sure that indigenous property rights have equal status in terms of the way we treat, understand and work with them in our community rather than treating them as a problem or a difficulty which we must compromise. We should see it as an opportunity to bring people together. That is a much better way to consider the problem. We believe that we have put forward workable, reasonable amendments.

I thank opposition members for their contributions to the debate. In particular, I thank the Deputy Leader of the Opposition, the member for Belmont. We now see the legislation pass to the other place and we encourage the Government to reconsider its opposition to some of our amendments and to examine seriously whether its legislation will pass the three tests - namely, the constitutional-legal, commonwealth and practical political tests - and try to come to terms with the fact that what it has put before us thus far will not withstand further review and scrutiny. We live in hope that in the other place there will be fresh consideration of the Government's position.

MR CARPENTER (Willagee) [5.00 pm]: The Native Title (State Provisions) Bill is a most important piece of legislation. It seeks to establish a Western Australian Native Title Commission. Given the prominence that native title has taken in political debate over the past five years in this State, it is clear that with the passage of legislation to enable a state commission to be established we have reached a vital point. It is also a vital point in the history of land and human rights management in this State. Hopefully we are only part of the way through working out how the commission will be able to exercise its powers, because members on this side hope more amendments will be passed in the upper House along the lines suggested in this place.

As the Leader of the Opposition has just outlined, the Labor Party has sought to apply three tests to this legislation: First, whether it is reasonable; secondly, whether it is workable; and, thirdly, whether it is fair. I will address those elements of the legislation briefly.

In looking at the history of this debate in Western Australia, one can fully understand the apprehension felt by a group of stakeholders in the debate; that is, indigenous groups. From the moment the High Court decision was handed down in June 1992 views have been polarised about the impact of that decision and how we should address it. I well recall dealing with those polarised views in the first public debate on the issue held in Western Australia between Sir Ronald Wilson and Mr Bill Hassell. Sir Ronald's view was that the High Court decision on native title provided us, as a State and as a nation, with a unique opportunity to reconcile past differences and to recognise the true history of the country rather than the sanitised view that we had come to accept as a community. Mr Hassell's view was that it was an affront to our civil society that the High Court had established rights in law pertaining to a particular racial group. He was unconcerned that that right was an inherited property right; he concentrated on the fact that it was a right associated with a particular racial group. He said that he considered it a racist decision. He also made the point that the High Court had no business bringing down such a decision because it actively created law, and that was the role of Parliaments. He added that it would be the role of Parliaments, wherever they could, to overturn the decision. It has been from that starting point that the conservative forces in Western Australia have moved in the debate on native title and its implications.

There is a linear logic in the position that the Government still adopts; that is, if native title cannot apply to everyone in the

community equally it should apply to no-one. That view overlooks the significant fact that it applies to that group because it comprises descendants of the original inhabitants and it can apply only to them. The same applies in all other jurisdictions in which native title is recognised to exist. If one starts with the view that native title should not exist and moves forward in a logical fashion, one does everything possible to extinguish it. If that cannot be done, one must take a lateral step and accept that it is the law but do everything possible to minimise its effect. That is what is happening with the passage of this legislation. The State is betrayed by its history in the debate, by almost every utterance that people like the Premier make on this subject and by the clauses of the legislation. In its original draft, the legislation was designed to minimise at every conceivable point the impact of native title and the capacity for potential native title holders to enjoy the concept of native title.

The justification for this position is that there is a need for us to govern for all Western Australians and that special provision should not be made for one group that might disadvantage commercial groups. In fact, the State is supposedly acting in the best interests of Aboriginal people; that is, in providing certainty to the community it is acting in the best interests of Aboriginal people and the rest of the community.

The State Government's justification of its position reminds me of a position taken in an essay written in 1729 by the then Anglican Bishop of Dublin entitled "A modest proposal". The bishop proposed a solution for a significant overpopulation problem in Ireland. There was a shortage of food and resources, so he presented a solution which he said had great logic and which was in the best interests of all concerned. The logic he followed led him to a very startling solution. The essay states -

> I have been assured by a very knowing American of my acquaintance in London, that a young healthy child well nursed is at a year old a most delicious, nourishing, and wholesome food, whether stewed, roasted, baked or boiled; and I make no doubt that it will equally serve in a *fricassee* or *ragout*.

Of course, this essay, which is very famous, was a work of satire by the bishop, who was otherwise known as Jonathan Swift, the author of *Gulliver's Travels*. He was seeking to demonstrate the very considerable injustice being visited upon the Irish people by the British colonial forces, which he represented through the church, even though he was Irish. He outraged people - those who did not understand his satire and those who did.

Mr Trenorden: Spoken like a Catholic.

Mr CARPENTER: He pointed out that a side benefit would be a reduction in the number of papists, and therefore the threat to the Crown.

What we do not have in Western Australia is a person applying satire; we have a Government that apparently means it when it says that its approach to native title is in the best interests of Aboriginal people. However, the macabre joke must be plain to all Aboriginals. They are being told that a severe reduction in their rights is in their best interests.

What is not being taken into consideration - as when purposely omitted from Jonathon Swift's satire - is the concept of fairness and what is right, never mind what might be logical. What is fair and what is right? I have mentioned to the Parliament previously that it must be seen as a macabre development that the member for Albany, the minister previously known as Prince - I am glad he is in the Chamber - was one of the people who was principally involved in drafting the original state legislation to deal with native title and was rewarded for that by being appointed as Minister for Aboriginal Affairs. What we have had since that time up to this day - we heard this even as late as yesterday in a briefing from the Attorney General - is a defence of that first piece of legislation drafted by the State, a claim made that that was the best piece of legislation brought forward so far to deal with native title, and that it was a great shame that it was never able to be put into law. It was not put into law because it failed a number of tests: It failed the constitutional test; it failed the test of fact when it asserted that native title had been extinguished by settlement; and it failed the test of fairness when it fell foul of the Racial Discrimination Act on numerous points. That is the background to the State Government's approach to native title. That is how we have arrived at the situation in which we are now placed whereby the State seeks to implement its own legislation, born out of bigotry and misunderstanding, and apply it to the administration of native title in Western Australia. There is little wonder in that circumstance that indigenous groups have come forward to probably all sides of the political spectrum, but certainly to the Labor Party, to ask us to oppose the passage of the legislation and thereby let it fail; that is, both the Native Title (State Provisions) Bill and the Titles Validation Amendment Bill. They believe they would be better off under the Howard legislation and the National Native Title Tribunal than under the state legislation. Who can blame them for thinking that? What faith can indigenous groups have in the establishment of a state Native Title Commission by a Government which has the history that I have just outlined in its attitude towards native title?

On the one hand, we have had indigenous groups urging us to prevent the legislation from passing through this Parliament, thereby allowing it to lapse. The State would then be required to fall back on the national tribunal, as will all other States except Queensland. I am not sure of the circumstances in Queensland. However, none of the other States will have its own commission. On the other hand, we have other groups who came forward to urge us in the strongest possible terms - in quite remarkable terms on some occasions - to let the legislation that the State brought forward pass unamended. We had some

remarkable briefings from that point of view. It was always the Labor Party's position, which was put forcefully by the Leader of the Opposition, that the State's unamended legislation would not pass the tests that he has outlined: It would not pass the constitutional test or the legal test; it would not be workable; and it certainly was not fair. For our sins in questioning the unamended piece of state legislation, we were attacked in newspaper advertisements by the Government and by the organised mining lobby. We were urged to let the legislation pass.

Remarkably, on the very first day that the legislation was introduced into the Parliament - that is, the 120-page Native Title (State Provisions) Bill - along came 30 pages of amendments. They were not Labor amendments, but amendments brought forward by the Government. We quickly ascertained from the Premier that they were amendments which had been basically delivered down from the Federal Government, via its officials, to help bring the state legislation into line with what was required by the commonwealth legislation, bearing in mind that the state legislation must pass the test of approval of the Senate in the Federal Parliament and the Commonwealth Government. We had been asserting for some time that the state legislation was inadequate in its raw form, and on the very first day that the legislation was introduced into Parliament we were presented with 30 pages of government amendments to change that piece of legislation. The Labor Party's position has always been that we want to establish a workable, fair regime. There is no point thumping the table and demanding certainty in one's rhetoric if the reality of what is achieved is uncertainty, further litigation, and, even worse, gross unfairness. That is the circumstance which may have arisen if we had conformed to the wishes of the Government in the first instance.

The Government has a chance to reassess its position when it comes to the passage of this legislation through the upper House of this Parliament. For the first time in the history of Western Australia, the Government must deal with an upper House of State Parliament which it cannot simply take for granted and with which it must bargain. A considerable amount of frustration has been exhibited by various ministers, notably the Leader of the House and Minister for Education, over the position that the upper House has taken. However, that is real life in most Parliaments around the world, and it is real life in the Western Australian Parliament at present. Whichever party is in power in the lower House, there will be occasions when the lower House will grind its teeth and wish that the upper House would either fall line or fall over a precipice and disappear. The latter option might probably end up being the better option. However, in the short term, it is here and must be dealt with.

Because of this unique result that has delivered the Government a minority in the upper House, the Government now has the opportunity to reassess its position on the native title legislation which is about to pass into the upper House. It should look with a pragmatic eye at the amendments which are being suggested by the Labor Party and decide whether it is prepared to accept all or some of those amendments in order to have its Native Title Commission established. Alternatively, it can go down a path which will see its legislation fail because it refuses to negotiate in any way, shape or form, in which case it will be left with the Federal Government's legislation and the federal Native Title Tribunal. Some skills need to be developed to go with that, because my observation of the members in the upper House and the attitude of ministers in the lower House is that their proclivity is not to engage in meaningful negotiation with anybody, inside or outside of the Parliament. Unfortunately for the Government, it faces a situation in which it must negotiate to get the passage of this legislation.

One critical area of amendment that the WA Labor Party was seeking to promote was to allow consultation to occur in good faith for acts to be carried out on pastoral leases where there was a native title interest. According to my way of assessment, requiring participants in a process to act or conduct themselves in good faith is not an unduly onerous or unfair requirement. It would be a remarkable achievement if this Government, or any group outside of this Parliament, could seriously stand up and argue in a public debate that it should not be required to conduct itself in good faith and that it should not be considered a requirement of legislation that participants to it should be acting in good faith.

Mr Prince: Since when has that ever been in question?

Mr CARPENTER: The Minister for Police was absent during the debate on this Bill last week, but when we sought to gain the Premier's approval for that amendment, the Premier was steadfast in his refusal to accept an amendment which required the parties to conduct themselves in good faith in the consultation phase. We then asked him whether he believed that parties to a consultation should act in good faith, and he said it was implicit that they should act in good faith, and that it was implicit that by conducting a consultation in good faith, the parties were seeking to reach an agreement. However, the Premier baulked at the proposal of having what he considered implicit made explicit in the legislation. We can only wonder why. What is the problem? When we look through the track record and ask whether the State has ever been found to have acted in bad faith -

Mr Prince: Yes - WA Inc!

Mr CARPENTER: - with regard to the native title issue -

Mr Prince: No.

Mr CARPENTER: The State has never been found to have acted in bad faith?

Mr Prince: Once.

Mr CARPENTER: The minister has now held up one finger, which is about the limit of his numeracy, and conceded that the State has been found to have acted in bad faith. That may be the answer to why the Premier does not want to make explicit in the legislation what he considers to be implicit; that is, that a State or a party involved in consultation about native title should be required to consult in good faith. I cannot begin to imagine what the general public must think of a State Government that refuses to incorporate in legislation the concept of good faith. I can only wonder at the motives and reasons that underlie that position. It is pretty obvious from the track record of this Government that its position is that native title is a major problem that must be eliminated, or minimised at the very least, at every possible turn, and that the potential native title holders must have their capacity to enjoy the rights that flow from native title reduced, minimised or eradicated, wherever possible.

If the Government continues to take that position, this issue will never be resolved in Western Australia, because Aboriginal people will not cease their pursuit of their legal rights, and I believe also of their human rights. The days when we could just brush Aboriginal people aside as insignificant stakeholders and as people who do not appear on a world map with terra nullius written all over it have long gone. Aboriginal people will refuse to accept a position in which their rights are trampled upon. The State Government, and this side of the Parliament - the Labor Party - must understand that times have changed and Aboriginal people now have a strong voice and demand to be given their rights, just as any other group in the community demands to be able to exercise its rights without undue impediment from the State.

Yesterday, after a briefing that we had received, the Leader of the Opposition said that he thought it was quite tragic that the State and the proponents of the State appeared to have learnt nothing in the past five years from the debate about native title. I agree. It appears from the official line trotted out by representatives of the State that they do not realise that the world is different from what they thought it was prior to 1992. It is interesting to note that those members on the government benches who I believe do recognise that the world has changed have not uttered one word in this debate. I do not include you, Mr Deputy Speaker (Mr Bloffwitch), because I do not think you have realised that the world has moved on. I am talking about the Deputy Leader of the Liberal Party, who in public utterances to mining groups and so on has demonstrated a considerable degree of enlightenment and advancement on this issue. Everyone in the mining and resources industry in Western Australia knows his position. I am talking also about the current Minister for Aboriginal Affairs. It is a tragedy that when I challenged the Minister for Aboriginal Affairs to say something, the only words he could utter were, "I have not opened my mouth." What a spineless effort! I do not know how the Minister for Aboriginal Affairs, who I believe is a person of considerable principle, can face Aboriginal groups when he has behind him the lamentable, spineless, lily-livered, gutless performance in this Parliament of the Minister -

The DEPUTY SPEAKER: Order! I ask the member to be careful not to reflect upon another member of the House. I am not saying that he is, but he should be very careful.

Mr CARPENTER: The current Minister for Aboriginal Affairs is a fine man. However, what we have from the occasionally humorous, but more often than not somewhat tragic, Minister for Police, is the occasional interjection which I am sure does not truly reflect his small-l liberal inclinations, because if his performance in this Parliament really displays his true colours, he is not only a very poor lawyer but also a very poor parliamentarian. I do not believe the minister is necessarily either, but he has had the opportunity in this debate of putting up at least some show of consideration for Aboriginal people, and he has not taken that opportunity. That is a great tragedy, and that is something that he will need to wear for the remainder of his parliamentary career, brief as it may be.

We now have a clearly defined position from the Government which falls short of the three-part test which the legislation should try to meet: Whether it is reasonable, because the Government's position is unreasonable; whether it is workable, because despite the opening provided for it by the amendments to the Native Title Act from the Howard Government, considerable doubt exists as to whether in its present form, even amended, the Government's position is ultimately workable; and whether it is fair, because without doubt it is not fair for Aboriginal people. There is no point the Government's beating the drum and demanding certainty if it leaves out, as did the Anglican Bishop of Dublin - as I said, on purpose - the concept of fairness. The concept of fairness is quintessential to what Governments should be all about. Governments are judged not on how their Premier and ministers wear hard hats, point to holes in the ground and claim the credit for the sun rising in the morning, but by how they deal with difficult issues and issues that relate to minority groups in the community that do not necessarily have a powerful political voice.

Mr Trenorden: How are Oppositions judged?

Mr CARPENTER: The same.

Mr Trenorden: Your standing has been very poor.

Mr CARPENTER: Governments are judged by how they deal with groups that fall into the most vulnerable category in the community. On those bases, this Government will be judged very harshly. It has had the opportunity in this debate of

remedying its lamentable record in this area, and it is provided now, because of the makeup of the upper House, with the opportunity of remedying its record when this legislation gets to the upper House. I earnestly hope the Government will take that opportunity, although I am not very optimistic.

MR GRAHAM (Pilbara) [5.30 pm]: The Labor Party, in dealing with this legislation, is confronted with a political difficulty - political with a capital "P". The Labor Party has traditionally represented Aboriginal interests and its members represent the vast bulk of the mining industry in this State. I am one of those members. It is and has been a difficult position for the members of the Labor Party to argue their way through and to substantiate the points in which we strongly believe. I will not address those points because we put together a team of people to handle the legislation. They have done an outstanding job of walking that political minefield with a view to the end result. That is the significant difference between the way the Labor Party has approached the matter and the way our political opponents have approached it. I will refer to the initial Mabo decision and the attempt by the then Court Government to introduce legislation into this Parliament to negate the native title rights granted under the Mabo decision. We said at that time that that legislation would not succeed. The Government based its argument on the fundamental premise that it was a land management matter and not an Aboriginal affairs matter. Members can argue that that is a matter of interpretation, but, in essence, it was nonsense. The Government said, "Grab this bundle of things called native title, take it off these people, give it another name and reissue it under a state jurisdiction; ipso facto the problem is solved." It was not. It was legal nonsense when it was put forward, and it is still legal nonsense, at a significant cost to the taxpayers of Western Australia. I will not dwell on that point other than to say that a great deal of time has passed since that legislation was defeated in the High Court. There has been very little, if any, change in the Government's attitude to native title matters since that date. I take on board what the member for Willagee said in his previous life about the debate between Sir Ronald Wilson and Bill Hassell. I remember that debate on the ABC.

I will draw on a document put out by the Aboriginal and Torres Strait Islander Commission because the Government has targeted, with some vigour of late, me, the member for Kalgoorlie and the member for Burrup in this debate. Obviously, as is normal with native title matters, there is a grand political imperative on the part of the Government; that is, members of the Government feel that we are vulnerable. I do not feel at all vulnerable on native title matters. I am addressing my comments today to the Government and to the Chamber of Minerals and Energy of Western Australia, to which I am in the process of writing. Members would be aware that it placed a series of advertisements in the national and state Press and also at a local press level asking angry constituents or constituents with a concern to write to and ring their local members. The Chamber of Minerals and Energy of Western Australia named us and asked the constituents to ring their members to make them change their minds. I am happy to report to the House the results of that campaign from the Chamber of Minerals and Energy of Western Australia: The telephone log in my office shows zero calls from concerned constituents. However, there was a series of facsimiled letters from goldmining companies around the State, many of which are in my electorate. I will respond to each of those letters individually.

The advertisements placed by the Chamber of Minerals and Energy of Western Australia stated that the Labor Opposition should not simply oppose this legislation because it is in opposition. Implicit in that is the assumption that that is what the Labor Party was doing. The Chamber of Minerals and Energy of Western Australia was incorrect. That was never what the Labor Party sought to do and history now indicates that the Opposition did not do it. We put together a series of complicated - because it is complicated legislation - amendments to a piece of legislation that made it better, workable and fairer. Those amendments, in the main, were opposed or rejected by the Government, which then brought in 30 pages of its own amendments. Given that the Government had all the experience and expertise in developing the legislation, it brought it to this House and then came up with another 30 pages of amendments. I will say to the Chamber of Minerals and Energy of Western Australia that the Labor Party did not oppose the legislation in principle and did not do the things that the Chamber of Minerals and Energy of Western Australia claimed that we should do.

I turn now to the paper titled "Native Title, Mining and Mineral Exploration" put out by Ian Manning from the National Institute of Economic and Industry Research and funded by ATSIC. Members would not be surprised to find that the document supports native title; that is what ATSIC is for. Page 21 contains a significant part which refers to strategic behaviour under the section on Native Title Act processes. It states -

> A major factor which clouds assessment of the present process is accusations of strategic behaviour. Native title claimants have been accused of maximizing delays in order to extract favorable agreements . . . . Mining companies have been accused of failure to make reasonable use of the NTA, so their claim that the Act is unworkable may merely reflect political strategy. Most seriously of all, state and territory governments have been accused of lack of good faith in negotiation and of attempting to maintain the pre-NTA relationship between the mining industry and their mining administrations.
>
> In 1996 the Federal Court found that the State of Western Australia had failed to negotiate in good faith (Walley v Western Australia Carr J.), causing a legal expert to comment 'the problems the NTA presents for the State of Western Australia are largely of the State's own making, and reflect its ongoing determination to deny, and as far as possible discount, native title' (Bartlett 1996).

Members would be aware that Port Hedland has gone through a serious stage of development with BHP's hot briquetted iron plant. When that plant was in its initial stages on the drawing board - not being built - the Government's attention was drawn to the fact that there were land shortages in Port Hedland. A person did not have to be real smart to work it out. There was a town of 12 000 people who were accommodated and a project came along and the population was expected to increase from 15 000 to 18 000, and ultimately to around 20 000 people. Where could we put those people? It is fundamental: To put them anywhere, we must have land on which to put the buildings in which to put the people. Eight months after it was approached, the Government commenced arguing that no land was available because of the native title processes. It is interesting now that, two and a half years on, the project is nearly completed and, to this day, the State Government has not triggered the native title processes in any way, shape or form in Port Hedland. I know that because I asked parliamentary questions about it after the Minister for Planning visited Port Hedland with a plan claiming that there was no land shortage.

Eighteen months later, when rents increased from approximately $150 a week to between $350 and $600 a week because of the housing shortage, the minister said there was no land shortage and that plenty of land was available. That was not what the Government said during the development of the plant. It said there was a land shortage which was directly attributable to the native title processes. It is absolutely fascinating that, when confronted with a pointed question on notice in which the Government was asked deliberately what land was available, what land was not available, what native title processes had commenced, the date on which they were commenced, and the details by which the land release was commenced, it was obliged to say that it had never sought to trigger the processes. On that occasion the Government was not issuing a press release which could go unchallenged. That has been going on in this State, and it was described absolutely and correctly in the document on the impact of native title on mining and mineral exploration, written by Ian Manning. The State Government has set out to strategically place native title as a key political issue. If I have time in another debate, I will raise some of the problems that small prospectors are experiencing in my electorate when trying to get their projects and developments off the ground. One person had a $2m overseas contract cancelled because the Government would not take advantage of the native title process. I recommend this document, particularly to members opposite who do not get greatly involved in these things, and refer to the statistics at pages 22 and 23 that address this matter. The document contains the first serious analysis I have read of the problems in the mining industry in Western Australia. Without drawing down all the detail, I indicate that the Premier has been saying for five years that exploration is collapsing in Western Australia because of native title. I have never been able to understand why the media has written those stories because usually at about the same time the Department of Minerals and Energy and the Chamber of Minerals and Energy of Western Australia have indicated in their annual reports that there has been yet another year of record exploration in Western Australia.

It is nonsense to say that it is collapsing due to the native title regime. It is not true, and no matter how the figures are dollied up it cannot be demonstrated. This document produces, for the first time to my knowledge, what has happened under the native title processes to notices relating to exploration, mining and prospecting in Western Australia. According to this document, the State Government has applied for 82 per cent of its notices to be expedited under the procedures in the federal legislation. Therefore, 8 850 routine, run-of-the-mill mining, exploration and prospecting applications, which could have been dealt with in the normal course of events, have been placed under the expedited procedure by the State Government. Why? It comes back to what I said about strategic behaviour and what this report says about the strategic behaviour of Governments. I suspect it was to create an impression that the system was unworkable. At the time the Government started saying it was unworkable - incidentally, when the first legislation was introduced and nobody had tested it - the Government set out on this course of referring 82 per cent of mining notices for expedition. Why? I argue that it was to test the process. This document makes the point that WA is at odds with the other States in Australia. Of the notices for which the Government claimed expedited procedures, 95.5 per cent were granted in minimal time without attracting objection from native title parties. The member for Belmont said that if people negotiate in good faith, these matters can be sorted out. The State Government has learnt that, because 95.5 per cent of cases it put forward for expedition were sorted out by talking to Aboriginal people. A total of 74 per cent of the overall applications on the right to negotiate, referred through the right-to-negotiate procedures, have been granted on the basis that they did not attract native title claims. I could go on but I will not.

I recommend that people read this document because it puts a completely different, and factual, slant on the situation. Every point is sourced, unlike the political rhetoric of members opposite. I thoroughly recommend it to people. Ian Manning's final finding, after going through the statistics, is -

> It would seem from these figures that:
>
> > delay has been minimal for exploration licences, but
> >
> > where applications had to be resubmitted due to the State government failing to negotiate in good faith in the initial negotiations, delays have exceeded the statutory twelve months

There is minimal delay unless the State Government does not act in good faith. In this case it is challenged and that adds to the time taken. The findings continue -

> delays in excess of twelve months may also arise when applications are appealed before the Federal Court. Though the mining industry has implied that these further delays are due to native title parties appealing (MacDonald 1997), there have also been cases of government appeal.

Where are we today? We are sitting with the decision that the Government of Western Australia is about to appeal, thereby building into the system infinitely more delay than could ever have been envisaged.

I make two points in conclusion. As a member of Parliament representing an area of extensive Aboriginal interests and, arguably, the biggest mining interests in Western Australia, I am extremely comfortable with the position the Labor Party has adopted. I am quite proud of the position it has adopted. It would have been very easy for the Labor Party to fall prey to its natural constituency and to have been a blind supporter of demands for unfettered native title at the expense and disadvantage of the mining interests. The Labor Party has resisted that quite properly, and I know of no other Opposition in this State's history that would have taken the principled position on this legislation that this Opposition has. In some cases that is contrary to the Labor Party's political interests. I am particularly proud of what the Opposition has done to date. Secondly, I have some great concern. Next year when this Parliament resumes, I intend to take the Government to task for its actions and inaction in Port Hedland during the development of the HBI plant, where it is clearly demonstrated that the Government was negligent in handling the native title procedures and did not proceed when it should have.

MR PRINCE (Albany - Minister for Police) [5.49 pm]: I thank members for their contributions to this debate.

Question put and passed.

Bill read a third time and transmitted to the Council.

ACTS AMENDMENT (LAND ADMINISTRATION, MINING AND PETROLEUM) BILL

Second Reading

Resumed from 15 October.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Mr Baker) in the Chair; Mr Prince (Minister for Police) in charge of the Bill.

Clause 1: Short title -

Mr RIPPER: The Bill is largely a consequential Bill dealing with amendments to various Acts, principally the Land Administration Act, flowing from the passage of cognate debate on the Native Title (State Provisions) Bill. I arranged to consult with mining and indigenous interests on the Bill. I thought that at least one or the other side would raise some objection. Remarkably, no issue of major concern was raised by either side. Although the Opposition does not propose to move any amendments to the Bill at this time, it may pursue in the other place one issue, which I do not regard as contentious. I will raise some questions with the minister to canvass that issue, and whether we proceed in the other place will depend on our deliberations and the information that we receive.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 83 replaced -

Mr RIPPER: This amendment appears to have come about for reasons other than consequential provisions resulting from the passage of the Native Title (State Provisions) Bill. That Bill does not require the redrafting of section 83 of the Land Administration Act, and it appears that the Government has taken advantage of the fact that it has an amendment Bill to the Land Administration Act, to include this amendment. What is the connection of this clause to the native title legislation?

Mr PRINCE: For the benefit of the conspiracy theorists opposite - of whom the member for Belmont is not one - there is no plot here. It is simply to amend section 83 of the Land Administration Act to include the ability for the Government to grant crown land to a body corporate. That does not presently exist. It clears up a potential anomaly. It enables a minister to transfer crown land in fee simple or lease not only to persons but also to approved bodies corporate.

Clause put and passed.

Clause 6: Section 152 amended -

Mr RIPPER: What are the implications of changes relating to a permissible future act under section 152 of the Land Administration Act for valid future acts under sections of the Native Title Act?

Mr PRINCE: The amendment will substitute in section 152(a) reference to the new wording used in the Native Title Act to cover the valid compulsory acquisition of land. It is simply maintaining the use of the phrase from the Native Title Act, rather than continuing with what was the previous wording in the Native Title Act. It is a matter of consistency.

Mr RIPPER: Will the minister confirm that there is no legal impact from this change in wording?

Mr PRINCE: There is no particular legal impact, other than to make it transparently clear that we are talking about exactly the same processes. The words "compulsory acquisition act" are no longer used in the Native Title Act, so we have changed from "permissible future act" to bring in the words "valid future act". It will make it absolutely certain that we are using the concepts defined in the Native Title Act as currently written.

Clause put and passed.

Clause 7: Section 152A inserted -

Mr RIPPER: This appears to change the objective expressed in clause 152 of the Land Administration Act by including reference to the Native Title (State Provisions) Bill, so that if the taking of the land is subject to the NTA this part of the Land Administration Act is subject to the provisions of the Native Title (State Provisions) Bill. Do the references to the NTA and to the Native Title (State Provisions) Act cover the field in respect of acquisitions of Aboriginal land or is there another category which, although it is not mentioned in the clause, is covered somewhere else in the legislation?

Mr PRINCE: To answer specifically, it covers the field, on the understanding that the amendment to clause 8 is passed, because the two are part and parcel of the same package. Otherwise it inserts a new section into the principal Act to indicate that "the taking of land or an interest in land" under the principal Act is an act that can be done only if one of the preconditions in sections 3.6, 4.5 or 5.3 of the Native Title (State Provisions) Bill is satisfied. One of those sections would apply if the compulsory taking of native title rights and interests comes within the appropriate sections of the Native Title Act, which are parts of sections 24 and 26.

Clause put and passed.

Clause 8: Sections 153 and 154 replaced -

Mr PRINCE: I move -

Page 5, line 26 to page 6, line 6 - To delete the lines and substitute the following -

(1) This section applies if -

(a) this Act requires notice of any thing to be given to persons who include native title holders;

(b) there has been no approved determination of native title within the meaning of that expression in the NTA; and

(c) section 154 does not apply.

(2) Where this section applies -

(a) the giving of notice in accordance with the NTA satisfies the relevant requirement of this Act in relation to native title holders; and

(b) if the notice relates to a taking, the subsequent service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.

(3) In subsection (2) -

"in accordance with the NTA" means -

(a) if Part 5 of the *Native Title (State Provisions) Act 1998* is in operation and the notice, or the order and forms, relate to a taking that is a Part 5 act within the meaning of that Act, in accordance with Division 2 of Part 5 of that Act; or

(b) if paragraph (a) does not apply, in the manner provided for by section 24MD(7) of the *Native Title Act 1993* of the Commonwealth.

Mr RIPPER: I take all that to mean that Aboriginal representative bodies and registered native title claimants must be notified. Is that a rough summary of the meaning of the minister's amendment?

Mr Prince: Yes, it is.

Mr RIPPER: How must they be notified? Is it a provision that they be notified by certified mail?

Mr Prince: The state provisions legislation provides for the mechanism and the procedures. You have gone through that exhaustively.

Mr RIPPER: Could the minister remind me of the provisions with regard to that matter?

Mr PRINCE: It depends whether it is a part 5, part 4 or part 3 act, and one looks to the state Native Title (State Provisions) Bill for the provisions as to how the notice is to be carried out.

Mr RIPPER: The amendment appears to relate only to part 5 acts, and then there is section 24MD(7) of the commonwealth Native Title Act. My recollection is that it is a reference to representative Aboriginal bodies and registered native title claimants.

Mr Prince: Yes, that is correct.

Mr RIPPER: That is the basic scheme.

Mr PRINCE: Yes. As the member for Belmont speculates, we are endeavouring to follow exactly the basic scheme.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 9: Section 155 replaced -

Mr RIPPER: This is an interesting change. It deals with a clause in the Land Administration Act which covers the effect of taking native title rights and interests. We seem to have reversed the way in which the matter is described. In the existing Land Administration Act, the right or interest is extinguished only to the extent compatible with the operation of the non-extinguishment principle of the NTA, and then there are some further clauses. The proposed clause states that -

> If any native title right or interest is taken under this Part, the right or interest is extinguished to the extent permitted by the NTA.

The minister is seeking to take extinguishment to the maximum extent permitted under the NTA.

Mr Prince: For certainty.

Mr RIPPER: What is wrong with the wording in the current section 155 of the Land Administration Act? It seems to be kinder to Aboriginal interests because one could go only as far as the non-extinguishment principle of the NTA, whereas now, given the amended NTA and the new legislation, the extinguishment will go further than it would have done in the past.

Mr PRINCE: As my adviser has reminded me, and as I handled the original legislation a couple of years ago, in respect of a pipeline under the current legislation that would extinguish, but under this legislation it works much better because we extinguish only to the point at which it is necessary to extinguish. In other words, before the 1998 amendment, the Native Title Act provided that compulsory acquisition of native title rights and interests did not extinguish those rights and interests. The compulsory acquisition did not extinguish; that is a bit strange, but it did not. Native title rights and interests were affected only by the subsequent act, for example the grant of freehold or the commencement of development. One compulsorily acquired the rights and interests but they were not extinguished until one actually did the work. The amended Native Title Act provides for the extinguishment of native title rights and interests by the act of compulsory acquisition. Clause 9 repeals and re-enacts section 155 to reflect that change.

Once again it is an amendment to seek consistency with the Native Title Act as it is presently written. The new section provides for the extinguishment of native title when compulsorily required to the extent allowed under the Native Title Act - for instance, the taking of an interest for the grant of an easement will extinguish native title rights and interests only to the extent necessary for the easement to be granted. A pipeline is a classic example. One seeks an easement of, say, 100 metres wide for the purpose of putting in pipes, but the effect on native title is relatively minimal, depending on whose definition of native title one has - the one from Mabo No 2 or the one from Justice Lee, which is novel - and the result is that there is not necessarily absolute extinguishment but it will depend upon the nature of the right and interest that is granted. In that sense this is probably a fairer result and less artificial than the one in the current legislation, which reflected the Native Title Act as it then was.

Mr RIPPER: I think I understand the argument the minister is making, although the original clause relating to the Land Administration Act talks about the non-extinguishment principle of the Native Title Act. There would be extinguishment only to the extent of inconsistency; whereas what is provided here seems to me to allow for more extinguishment than has previously been provided for.

Mr PRINCE: That would depend on the act or the purpose for which the land is to be used. I am advised that the non-extinguishment principle produced some very odd results of extinguishment. It is a peculiarity. I am trying to think of a practical example of this. A road is not a good example. A power line may be a better one. People seek an easement to enable a power line to be constructed over it. The effect on the land would include pylons and wires being on and over the land. The effect of that is relatively minimal by comparison with a channel that is cut through land to enable water to flow across it. An easement can be used for many different purposes. Under this clause, a native title right or interest is extinguished to the extent permitted. Previously there was provision for compulsory acquisition of the native title rights. Then there was an extinguishment when the physical act was done, whatever that may be. This is a much clearer way of doing things. The native title right or interest is taken, insofar as it is necessary to do so, for the purpose for which the land will be used. That might not be the totality of the native title, depending upon which definition is accepted, that in the Mabo No 2 case or that of Mr Justice Lee.

Mr RIPPER: First, I refer to the minister's latter remark. If that was not the entire native title right or interest, under existing section 155 of the Land Administration Act, that excess native title - that is probably the right description of the concept - would survive, but under this drafting, all of the native title is extinguished. The second point is, what happens if the Government compulsorily acquires some land subject to native title rights and interests and then changes its mind, as quite often happens, and decides not to build a bridge in a particular location, or the land is acquired to pass on to a third party for a certain use and that third party does not make use of it? If the purpose for which the compulsory acquisition occurs no longer applies and the Government or the third party has no further use for the land, is there any way in which the native title can be revived, or is it extinguished permanently?

Mr PRINCE: I am advised that there are some provisions in the Land Administration Act that enable land to be returned. We had this debate quite extensively when those amendments were put through this place about two years ago. The native title rights were extinguished. That was as we understood the concept of native title from the decision of Judge Brennan and the rest of the judges of the High Court of Australia in the Mabo No 2 case concerning user rights and so on. Mr Justice Lee has come up with a concept of some sort of underlying title on which everything else is parasitic and which still exists. Let us take Lake Argyle, for example. There is no connection with that land because thousands of tons of water are sitting above it. That decision is novel and one of the reasons the case must go to appeal is to get some definition of what is native title. It does not seem to accord with everyone's understanding of the definition of native title in the Mabo No 2 case, and some comments that have been made in the Wik and Fejo cases, in particular, the latter. In a sense, it depends on just what is native title and whether it is as Mr Justice Lee sees it - an underlying, quasi-sovereignty issue upon which there are parasitic rights of user passage, ceremony and spirituality and so on which do not necessarily have any connection to occupation or continuous occupation.

All of that in a sense would seem to contradict a good deal of what was said in the Mabo No 2 case. Let us put that decision aside for the moment because it was made by a single judge of the Federal Court. It is not the authority and is certainly not persuasive. Let us go back to the Mabo No 2 case. If any native title right or interest - it is not the totality, but only some of it - is taken under this part, and it is extinguished to the extent permitted by the Native Title Act -

Mr Ripper: Even if the Government changes its mind?

Mr PRINCE: It is not likely to do that the next day.

Mr Ripper: What happens if six months later the Government decides not to build the bridge? Is the native title gone?

Mr PRINCE: Yes; it is. It is gone and the compensation process has commenced and may even have been paid. I use that term loosely because compensation may not always be in money; it can be made in many other ways.

Mr Ripper: What happens to the land of ordinary titleholders if there is a compulsory acquisition and the purpose of the acquisition is no longer on the table?

Mr PRINCE: The compulsory acquisition is the transfer of title; for example, from the Deputy Leader of the Opposition to the State. This has happened again and again with road widening, particularly in country areas, but also in the metropolitan area. The Government of the day has acquired a certain amount of land for the purpose of a road change which has never been completed. About 20 or 30 years later the land is in the crown estate, owned by the State, and has never been used for a road. There are umpteen cases of land having been gazetted for road purposes, but there is no road, and never has been.

Mr Ripper: Presumably the Government, by agreement, can find a way to return the land to the titleholders.

Mr PRINCE: Yes; of course. The Land Administration Act says that that can happen. Of course, a crown origin estate is returned to the Aboriginal person, group or body corporate that will receive a title from the Crown. On a couple of occasions when I was Minister for Aboriginal Affairs I was able to give a number of Aboriginal groups the crown lease or grant, whatever the case may be. Bropho's group relating to the Swan River, a group outside of Kalgoorlie and another one at Marribank near Katanning are three instances that come to mind.

Clause put and passed.

Clause 10: Section 156 amended -

Mr PRINCE: I just make the point that this provision is to be deleted as it is now redundant, following from the amendment to clause 8. There will be no compensation under the Native Title (State Provisions) Bill, as it is dealt with under the Land Administration Act. I shall be voting against this clause. That is the appropriate procedure to have it deleted.

Mr RIPPER: Having just received these amendments I am still trying to understand precisely what the minister is doing. Perhaps he could give a slightly fuller explanation of why a reference to compensation would not be made under the proposed Native Title (State Provisions) Act in section 156 of the Land Administration Act, while references to compensation awarded under the Native Title Act are retained.

Mr PRINCE: Under the Native Title (State Provisions) Bill, compensation does not relate to the acquisition of land as such; it relates to mining and so on. What we have is a compensation system set up under the Land Administration Act. Therefore, this is a redundant, meaningless amendment because the Native Title (State Provisions) Bill does not set up a compensation system for compulsory acquisition of land. It would be confusing to leave it in. Consequently, particularly as a result of the amendments to clause 8, I seek to have this removed.

Clause put and negatived.

Clauses 11 and 12 put and passed.

Clause 13 put and negatived.

New clause 13 -

Mr PRINCE: I move -

Page 8, after line 6 - To insert the following new clause -

13. Section 167 amended

Section 167(1)(c) is amended by deleting "23(3)(c) or (4)(b)" and inserting "24MD(2)(e) or 3(b)".

Mr RIPPER: While the minister has not advanced the argument, I assume the same argument that applied to the previous matter applies to this amendment; that is, there is no compensation for compulsory acquisitions under the Native Title (State Provisions) Bill. Have I guessed the minister's argument in the absence of his putting it to the Chamber?

Mr PRINCE: The member's perception is exceeded only by the member's handsomeness. He is dead right.

New clause put and passed.

Clause 14: Section 170 amended and transitional provision -

Mr RIPPER: I am beginning to doubt my perception following the last remark. Clauses 14, 15 and 16 do not seem to relate to the impact of the Native Title (State Provisions) Bill on the legislation. Is the origin of these amendments in native title considerations, or is it in other considerations?

Mr PRINCE: They are not directly related to the state provisions Bill. We are seeking to give the minister of the day the power to extend the notice of intention beyond the initial period of 12 months, which seems to be a reasonable thing to do. It is related to native title. However, it just takes so long. I am advised that we have never managed to complete one of these within 12 months. Therefore, if we run out of the 12-month period, we start again, which is crazy; we should be able to continue the notice period. It is not related to the state provisions Bill; it is related to the management of native title matters.

Clause put and passed.

Clauses 15 and 16 put and passed.

Clause 17: Section 125A inserted -

Mr RIPPER: This clause inserts into the Mining Act provisions relating to the liability for payment of compensation to native title holders. My understanding is that the liability is passed to the person holding the mining tenement, or if someone is no longer holding the mining tenement, the last person to hold the mining tenement. I am sure this is of interest to the mining industry. However, I understand that the provision for the requirement to apply to the last holder of the tenement was more suitable to it than the provision that applied to the first holder of the tenement. What happens to the compensation if, for some reason, the mining company or the holder of the tenement is not in a position to pay the compensation? What is the situation if the last holder of the tenement is a $2 company that has become insolvent? Does that mean that, although the native title has been extinguished and although there is a liability to pay the compensation, the native title holders will miss out because there is no capacity on the part of the last holder of the tenement to make a payment?

Mr PRINCE: The Deputy Leader of the Opposition is correct. The result of this is to put this compensation regime in the same position as if it were mining on any other form of land; for example, farming land - the compensation is payable by the mining company to the farmer. There are examples of that in the south west, particularly with mineral sands and other forms of mining. If compensation is payable to native title holders, it is payable by the mining company. The only problem which arises is one to which the member has referred; that is, the last holder of the tenement is a person who has disappeared or a corporation which has ceased to exist or is of no value, in which case the State has the residual obligation to pay the compensation because the compensation does not die with the person or corporation who should pay the compensation simply because he or it is unable to do so. The compensation right still exists and is satisfied by the State.

Mr RIPPER: Those remarks are interesting. This is the area in which we are contemplating a further amendment to make it clear that in those circumstances, the State had the final liability to the compensation. The minister seems to be saying that such an amendment would be unnecessary by virtue of other legal considerations. Will the minister elaborate on where we might look to verify that the State has the ultimate liability for that compensation should a mining company be insolvent or if the last holder of the tenement has disappeared down a shaft or something similar?

Mr PRINCE: I suspect that a more probable situation would be the tenement has been surrendered or forfeited at the expiry of the mine life. The corporation that held it may no longer be actively involved in mining, although it may still be a legal entity, and may not have the means to pay. In other words, this sort of thing can happen a little after the event. In those circumstances, the compensation should still be paid in some form or other. Who has the obligation to pay? The Native Title Act says that the State has the obligation to pay. This legislation seeks to make the mining company responsible for the payment. However, if the mining company no longer exists, the State remains liable to pay under the Native Title Act.

Mr RIPPER: How does a person due to receive compensation proceed with such a matter if the mining company will not pay?

Mr PRINCE: It is not a matter of will not; it is a matter of cannot.

Mr Ripper: "Cannot" is the word I should have used.

Mr PRINCE: First, the right to compensation has to be established. In so doing, the public record is searched to find whom the compensation claim is made against and if the public record shows, for example, a forfeiture or surrender of lease, and the last holder is a company that has gone into liquidation and ceased to exist, the claimant would turn to the State immediately. It is a matter of inquiry or public record to determine that in the first place. It is highly unlikely that the corporation or the company will still exist but not have the means to pay. Inevitably, there will be some form of search or inquiry first. That will establish whether an existing corporation pays or the State pays.

Mr RIPPER: I take it from those remarks that the Government would not, in principle, oppose an amendment to make it absolutely clear that the State was finally liable for the compensation.

Mr Prince: I cannot see the point in rewording what is already in the Native Title Act. I made the point when we were dealing with the Titles Validation Amendment Bill. Why restate what is already the law and run the risk of winding up with some sort of incompatibility between the two? There is enough room here for the lawyers to argue anyway.

Mr RIPPER: The Opposition will examine the totality of the minister's remarks and consider whether it should move an amendment in the other place.

Clause put and passed.

Clauses 18 and 19 put and passed.

Title put and passed.

Report

Bill reported, with amendments, and the report adopted.

Third Reading

Bill read a third time, on motion by Mr Prince (Minister for Police), and transmitted to the Council.

Sitting suspended from 6.33 to 7.00 pm

HEALTH AMENDMENT BILL

Second Reading

Resumed from 19 November.

MR McGINTY (Fremantle) [7.03 pm]: The Labor Party believes that the Government's position on passive smoking and smoking in enclosed environments is too weak and will rob Western Australia of the status it has enjoyed since the 1980s of a world leader in this important fight against the health dangers of tobacco smoke. Back in the 1980s, Western Australia

established a leadership position. It was the first State in Australia to have dedicated smoking and health education campaigns funded through increases in tobacco tax. This was the first State to attempt a prohibition of tobacco advertising and promotion.

Some members may recall that in 1981 Dr Tom Dadour, the then member for Subiaco, introduced a private member's Bill to ban tobacco advertising and promotion. That measure was defeated by the conservative-dominated Legislative Council. It was interesting to hear the Premier railing against the excesses of the Legislative Council today; however, I remind him that his party frustrated Dr Dadour's Bill in the Legislative Council in 1981. Also, Hon Barry Hodge introduced similar legislation two years later seeking to ban tobacco advertising and promotion which was also rejected in the Legislative Council. It was not until 1990 that these attempts came to fruition under the Dowding and Lawrence Governments; namely, legislation was enacted which effectively banned outdoor advertising of tobacco, and the sponsorship by tobacco companies of sporting and cultural events. Also, the 1990 legislation achieved a limited prohibition on tobacco advertising at the point of sale. Shortly after legislation was passed in this State, commonwealth legislation came into force which abolished tobacco advertising in the Press. Therefore, a relatively comprehensive regime came into operation.

In addition to the health education campaign and the prohibition on tobacco advertising and promotion, the third area in which Western Australia established a reputation as a world leader was through the establishment of Healthway. Anyone with any knowledge of the work of Healthway understands its success. It is regarded, I am told, as one of the best bodies in Australia in achieving smoke-free sporting and arts venues. That leadership position was enjoyed by the State during the 1980s. Therefore, it is very disappointing that the Government has not taken the opportunity to be more forceful to assert our position as a world leader in the fight against tobacco, tobacco products and the amply demonstrated harmful health effects. Few people in this place and the broader community would deny the connection between cigarette smoke and general poor health, particularly cancer. That imperative should drive us on this issue. The Government's actions on this issue, and its proposed regulations, are a step forward. In a timid way, the Government seeks to restrict or prohibit the smoking of tobacco products in certain environments. The Government could have, and should have, gone much further.

In that sense, we must consider what took place during the last 18 months. Appreciating that it was necessary to do something, the Government appointed a task force chaired by Hon Ian Taylor which released the "Report of the Western Australian Task Force on Passive Smoking in Public Places" in October 1997. Prior to the finalisation of that report, the then Minister for Labour Relations, the member for Riverton, gazetted his own regulations which he claimed prohibited smoking in enclosed workplaces. All subsequent events indicated that those regulations did not have his claimed effect. Hon Ian Taylor's task force report contains ample commentary to indicate that the regulations promulgated by the former Minister for Labour Relations did not achieve his trumpeted claims. One could easily conclude that a little gamesmanship took place as people tried to mislead the public about the effect of those regulations. Most recently, we had the report by senior counsel Jeremy Allanson which recommended further action be taken. My colleague the member for Nollamara will deal with that aspect further in his contribution.

It is against the backdrop of the so-called Kierath regulations that the Government could have gone further and adopted a more principled position. It is clear that the Australian Capital Territory is now the leader when it comes to limitations on the use of tobacco products and government initiatives to clamp down on their use, particularly in enclosed environments. That is a title that Western Australia has lost. It is a title which, in the view of people on this side of the House, we should not have lost. I will refer later in my contribution this evening to the action that we propose to take to ensure that Western Australia regains its position not only as the leader in Australia on this issue, but also at the vanguard of world developments in dealing with this dangerous product and ensuring that we treat it in a way that recognises the harmful health effects involved.

There can be no doubt that tobacco is an extremely harmful product. What was called for was a Government prepared to act on the basis of principle rather than on the basis of political expediency and pandering to economic interests. The Government has capitulated to the lobbying of the hotel industry in particular, more so than the hospitality industry at large. That is a most unfortunate capitulation which will cost the lives of thousands of Western Australians because the Government was not prepared to face up to its responsibility and make the hard decisions. Those decisions might prove unpopular in some sections of the community, but the Government would be applauded for making them, in the same way as, quite surprisingly, the former Minister for Labour Relations was applauded, by not only the medical community but also a range of people in the community, for the strong and principled stand that he took.

The Government has come up with a half-hearted and half-baked set of regulations. When these regulations were presented to the party room, the minister was forced to back down even further, and, in response to lobbying from the Australian Hotels Association and the hospitality industry, to backflip and water down the relatively weak regulations that he was proposing. For example, the environmental health officers being required to obtain the approval of the Executive Director of Public Health before a prosecution can be launched is designed as a mechanism to protect guilty people from prosecution when they have permitted smoking to occur in contravention of this law.

It is a debate which we had most recently this year on the issue dealing with abortion. This Parliament took the view that

a prosecution should not be dependent upon the approval of the Attorney General for that prosecution to be launched. That is certainly what was initially proposed. However, that was removed. What we find now is a further fetter on the ability to enforce these anti-smoking provisions in that no prosecution can take place without the approval of the Executive Director of Public Health. That backflip occurred as a result of internal pressure in the Liberal Party room. The requirement for environmental health officers to identify themselves on entering a building and the issue of private functions being exempt from the regulations are matters which we believe could be open to significant abuse. It is an unfortunate backflip by the Government on those issues. That was the second of the backflips. We started with the Minister for Industrial Relations tabling what purported to be fairly strong regulations banning smoking in enclosed workplaces. We then saw the Government water that down as a result of pressure from the party room.

The Government's proposals do not go far enough; they do not meet what they purported to do; that is, to implement the recommendations of the Task Force on Passive Smoking chaired by Hon Ian Taylor. The Government's proposal is to amend the Health Act - this is what is before us tonight - to allow regulations to be made to prohibit or regulate smoking in enclosed public places. The Government also tabled draft regulations of what it intends to gazette if this amendment is passed. I thank the Government for that because it certainly adds some clarity to the debate. It was unusual, but in the nature of the debate and the history of this issue over the past 12 months, it was a most appropriate step for the Government to take. What is evident from these draft regulations is that the Government has allowed a greater number of exemptions than we believe is appropriate. For example, the regulations permit smoking in all bars and hotel lounge areas; they permit smoking to continue in 50 per cent of nightclubs and 50 per cent of the gaming area of the casino; they allow smoking in multi-purpose licensed premises where food is being served, provided that the predominant activity at the time is the consumption of alcohol, and the example that is given is after lunch and after dinner times.

We believe that the Government in many senses has lost sight of what it was trying to do. What this should have been about was the protection and enhancement of the health of the population. Instead we see a mishmash of varying justifications for what the Government has done. For instance, the justification for banning smoking in restaurants, with effect from the beginning of next year, appears to have been motivated by cosmetic ideas of the nature of the environment in which one can enjoy a meal rather than the fact that inhaling tobacco smoke kills people. The question of health has not featured prominently in respect of restaurants; it is a fact that some people find the odour of tobacco smoke to be unpleasant and to detract from the meal they are enjoying. That seems to have been the motivation in banning cigarette smoking in restaurants, rather than the real reason, which is that it is a deadly product which kills people and which should therefore be banned on that account, not because it might interfere with the enjoyment of a meal by a patron in a restaurant. Therefore, a very hard line has been taken on restaurants, but for completely the wrong reason.

In respect of nightclubs, it is our view that because of the nature of the patrons attending the nightclubs, the Government should have taken a harder line here and said that smoking within an appropriate time frame would not be permitted in nightclubs. We are disappointed that the minister has not come to the party on that issue. The point was made very strongly by Hon Ian Taylor in his report that the most vulnerable group are children; therefore, smoking should be banned in any place to which children have access. That was essentially the recommendation of his report.

Apart from people who are unwell with a medical condition that might render them susceptible to tobacco smoke, such as asthmatics or people with other respiratory conditions, the next most vulnerable group are teenagers, who are the people who frequent the nightclubs. They have their lives ahead of them. They go to these nightclubs and come home, having inhaled tobacco smoke all night long, reeking of the tobacco smoke. However, putting the reeking to one side, the most important thing is that they are endangering their health by being in those premises in which smoking will continue to be allowed under these regulations. What is the motivation for allowing smoking to continue in those places which are frequented by younger people? It is harmful to their health. We should be moving to ensure that those people are protected. However, when dealing with nightclubs, the issue is not only about children or young adults being exposed to tobacco smoke, but also that in Western Australia smoking rates are not declining as they should be. What is most worrying is the phenomenon of an increase in the incidence of tobacco smoking among young adults who are the patrons of these nightclubs.

It is a two-pronged proposition. Firstly, the Government should have moved to more effectively ban smoking in nightclubs because it is harmful to the health of a vulnerable group of people. Secondly, we spend money on a Quit campaign and we are doing what we can to educate people to give up smoking, yet we allow smoking to continue at a venue which is frequented by young people; in other words, we are facilitating their picking up the habit of cigarette smoking. On the basis of trying to work with the Quit campaigns and the anti-smoking campaigns, if young people cannot smoke at their favourite entertainment venues, such as nightclubs, they are more likely to give up smoking and we will see a decrease in smoking among young people. Apart from the health effects about which I have already spoken, discouraging young people from smoking is a desirable objective. Therefore, we should be working towards prohibiting smoking in nightclubs; not putting in place this mealy-mouthed, ineffectual proposal which will allow smoking to continue on 50 per cent of the floor area of a nightclub. Again, what is the Government's motivation for this proposal? It is clearly not health. If health were the motivator, smoking on the dance floor or in the dance areas of nightclubs would be prohibited.

What is the motivation for allowing smoking to continue at the casino and for having a longer phase-out period for smoking

on 50 per cent of the gaming floor? It is economics. We have substituted the important health consideration that should have been driving this issue as the sole determinant with a cosmetic enjoyment of the atmosphere of a restaurant. We have replaced it with economics and a whole range of other justifications, none of which are sufficient to warrant banning smoking in these establishments. The justification must rest on a health basis. As soon as we depart from that, we undermine the very basis for making these regulations in the first place.

The Government's proposal also provides a range of time lines for the implementation of these regulations. They range from 29 March 1999, when smoking will be banned in restaurants, to 1 January 2000 for other licensed premises, and 1 January 2001 for the casino. Being able to understand what the law is requires a common approach to these issues with one approach determining the time phase-ins that will apply generally for licensed establishments. The regulations provide for penalties of $500 for individuals and $5 000 for businesses that breach the regulations. It is that package to which the Labor Party will respond tonight.

I have already indicated that we are concerned that these regulations do not go far enough. It is our view that on the available evidence, the community wants a stronger stand to be taken. In a Westpoll conducted by *The West Australian* on 23 November 1998, 83 per cent of respondents, including 71 per cent of smokers, supported a total smoking ban in areas in which food is served. Suddenly, there has been a drop from that massive support for a ban on smoking in restaurants to a 52 per cent support level for the exemption to allow smoking in public bars and 57 per cent support for a system of separate smoking and non-smoking areas in which food is served. That poll indicates that the general community will support a Government that is prepared to be bold on this issue and that is prepared to act decisively to protect the health of its citizens. That is not what we are seeing on this occasion. The Labor Party's response to the proposal outlined by the Government is that it is clear that the health lobby has lost out in this debate to the interests of the hoteliers and their peak body, the Australian Hotels Association. For that reason Labor believes that we should continue to emphasise the importance of the health and safety of employees - that factor has dropped right out of the equation in recent times. No more do we hear the minister or the Government talking about the protection for employees. The Government talks about the need to accommodate hoteliers and the like. The Labor Party wants to ensure that the health and safety of employees are paramount. It wants to protect the general public that frequents these establishments. However, most of all, it wants strong action to protect young people who frequent these establishments; I am talking particularly about certain hotels and nightclubs.

The Labor Party's position on this package is that we should move towards a smoke-free environment in enclosed entertainment areas. That is the principle towards which we should be moving. However, we appreciate that this will be a significant change to the entertainment patterns that a number of people have established over time. Accordingly, we should allow a number of exemptions to be put in place in the short term. Those exemptions will not be as liberal in many areas as those proposed by the Government. We think that the proposed exemptions should be the minimum necessary to achieve broad public acceptance of the package. We do not believe it is appropriate to pander to sectional interests that do not have the health and welfare of the community in mind.

Accordingly, a hotel front bar, which is an area to which people have gone traditionally to enjoy a beer and a cigarette should be the only area in the average hotel in which smoking is allowed. Someone who is desperately in need of a cigarette should use the front bar. However, smoking should not be allowed in other bars in hotels. The Government's proposal is that smoking should be allowed in any bar in any hotel other than one in which food is served. Therefore, under the Government's proposal, people who use the lounge bar will be confronted by cigarette smokers as they will be confronted by smokers in the front bar. We believe that that is against the spirit of what the Government should be trying to achieve; that is, a satisfactory health outcome for the employees and patrons who attend those establishments.

Smoking in the front bar area should be subject to that area being adequately ventilated and properly isolated from the rest of the premises. In that sense, the Labor Party distinguishes itself from the Government which proposes to permit smoking in all bars of a hotel. Although it is not the most preferred option from a health perspective, it is necessary to alleviate concerns from traditional front bar patrons; for example, a World War II veteran who goes to the front bar of the Willagee hotel each day to enjoy a pony of beer and a cigarette. Frankly, the health concerns of people of that age are nothing like those of children, and young adults who attend nightclubs and other entertainment venues. We should be realistic about accommodating that point of view.

Our proposal will also alleviate the concerns of country pubs. The point has been made that a number of small country towns have pubs that have only one bar. I do not believe that that is the area over which this issue should be fought. In time, there will be no smoking in those establishments. However, this is not the time for that to be achieved. The Labor Party says that counter meals should continue to be served in the front bars of those hotels in which smoking will be allowed in the short to medium term. However, more effort should be made to end smoking in the other bars of hotels.

Mr Osborne: Would you put a time frame on that for front bars?

Mr McGINTY: We have seen a continuum which started perhaps 15 years ago, when the big argument in the workplace was about whether people should be allowed to smoke in the lunch room and elsewhere. The argument was fought

ferociously at that time, and bit by bit since then, smoking has been phased out on buses, trains and aeroplanes, and in government office buildings. People cannot smoke when they go to watch the Dockers win a football match these days at Subiaco Oval.

Mr Barnett: It is pretty rare to see the Dockers win a football match anywhere!

Mr McGINTY: I was given the good word today that that will change dramatically this year.

There are not many places in which people can smoke in enclosed areas. It is only a question of time before smoking will be banned in all enclosed areas. The Democrat members of the upper House have said that the legislation should contain a time limit of five years. We are discussing that matter to see whether we can reach some agreed position. However, our position is that smoking in enclosed entertainment venues should be allowed to continue in the short to medium-term, in the context of a policy to end smoking in those areas. I do not put a finite time on it at this stage, but that is a matter for discussion.

Mr Osborne: Would you rather leave it to the marketplace?

Mr McGINTY: No, I would not. I will tell a story that my good friend the member for Willagee told me, which I had forgotten, but the member for Bunbury has now reminded me. About a decade ago, the Government took the step of banning smoking in TAB shops. A TAB shop, along with the front bar of a working class pub, is a bit of a sacred cow when it comes to smoking. George Grljusich railed against that proposition and said it would be the end of civilisation as we understood it and would provoke an enormous public reaction. Of course, smoking has been banned in TAB shops for about a decade now, and the sun rose the next morning and people got on with their lives. It did not have the enormous impact that some people who wanted to be able to continue to smoke in those venues thought it would have. The same will apply to smoking in enclosed areas.

Mr Osborne: People with asthma and other respiratory diseases started going to the TAB and business improved as a result.

Mr McGINTY: The member for Bunbury may be right. I am not aware of that research. However, a number of people have told me that they will start going to nightclubs and pubs if they can come home without stinking of tobacco smoke and without running the risk of harming their health. It is a two-sided argument. A prohibition on smoking has some upsides from a purely commercial point of view. However, hoteliers and the like obviously have some fears about that issue.

To answer the question asked by the member for Bunbury, I do not propose a specific cut-off point, although we envisage that that will occur as part of this debate. The time line may need to be readdressed if amendments are made to this legislation in the upper House following its passage through this House tonight.

The Labor Party is of the view that the Government has acted appropriately in banning cigarette smoking in restaurants. We believe there is no justification for an exemption for multipurpose facilities. We also have some concern, which is shared by restaurateurs, about the definition of an al fresco area, which is an area that is covered but has openable windows or doors, including wooden shutters. In our view, any exemption from smoking in these food areas should be restricted to outdoor dining areas and not to the artificiality of whether a shutter is open or closed on a particular occasion, which is the view that has been put by some. If people want to smoke in what is truly an outdoor venue, that is their business. However, if the area is enclosed, even though it has some access to fresh air, such as through an open window or moveable shutter, we believe the definition should be clear in order to prevent artificiality from creeping into the application of these regulations.

The Labor Party is opposed to the 50 per cent exception that is proposed by the Government. It is important to provide consistency so that people will be able to understand the law. I believe from reading the newspaper and listening to the media coverage of this issue that the ordinary citizens of Western Australia, with the exception of people who are intimately involved in this debate, and perhaps one or two operators of licensed premises, would have no idea of what is proposed, because myriad exemptions and time frames cloud the issue. People who go to licensed premises would not have the foggiest idea about whether they would be allowed to smoke. Therefore, consistency requires that if smoking were allowed in the front bar of a hotel, then a nightclub or casino should be allowed to provide a smoking room - sometimes referred to as a death chamber or an animals' bar - but that could not be part of the general operation of the nightclub dance floor or casino gaming floor.

The regulations provide for exemptions to be granted, and we have noticed that in this area we might be a little more liberal than the Government in respect of exemptions. We believe that it will not be possible to regulate this number of establishments if the minister is not given the power to grant exemptions in exceptional circumstances which may not be envisaged at this time. In a general sense, that is the Labor Party's reaction to the proposition that has been broadly outlined by the Government. We will be going further than that and will be talking with the Democrats and the Greens (WA) in the Legislative Council with a view to seeking to have the broad principles upon which we can agree inserted in the Health Act by way of a statement of principle. If we do reach that agreement, we will seek to amend this legislation in the Legislative Council to insert those principles into the Act, rather than simply establish in the Health Act the head of power to make

regulations with regard to smoking, as the Government has essentially done on this occasion. We want to write into the Health Act the principle that the objective is smoke-free enclosed areas in licensed premises, and that until that is achieved, the regulations may grant an exemption from that principle. Each licensed premise should be allowed to have one front bar or other smoking room, subject to satisfactory isolation and ventilation. Community-based clubs, such as the Innaloo Sportsmen Club, which traditionally consist of one large room, which includes a bar, a seating area and a general purpose room, are not at the forefront in this fight for a healthier and safer work environment, and we envisage a significant degree of flexibility to enable those clubs to continue operating as they are currently. It may be possible under our proposal for that large room at that club to be considered the equivalent of a front bar. However, that should not apply to places such as the casino or nightclubs, which need to have separate and appropriately ventilated facilities for people who wish to smoke.

The third point the Opposition will seek to include in the legislation in another place is that no smoking be allowed in food preparation or serving areas or bar or lounge areas of any licensed premises, other than where counter meals are served in one-bar hotels. The Opposition's position is very similar to that of the Government's in that area, although I think the Government might have more flexibility about areas adjacent to food areas.

Fourthly, the Opposition believes that the same rules and time frames should apply to all forms of licensed premises, rather than the confusing different time frames and different sets of rules announced by the Government so far. Fifthly, it is the Opposition's view that the legislation should contain provision for ministerial discretion to allow exemptions in exceptional circumstances. One exceptional circumstance might be the casino international room, and the other might be the bingo centre of the Institute for the Blind. They might be able to argue for exceptional circumstances under which the minister would have the power to grant an exemption. However, those exemptions must be tabled in the Parliament and be subject to disallowance, so that a minister cannot achieve by way of exemption that which the Parliament has indicated should not be achieved through the substantive Act or regulations. That is the general proposition the Opposition will advance.

The Opposition appreciates the reality of the numbers in this House and that it would be futile to move amendments along those lines in this place. As this is the last sitting week of the Parliament this year, the Opposition will leave those amendments to where there can be a substantive and real debate, rather than tilting at windmills as we debate this. That is the program the Opposition would like to implement.

The Labor package does not end with incorporation of those principles in the legislation and, therefore, the redrafting of the Government's regulations in accordance with those principles. Two other matters also demand the attention of the Government. The first is in relation to the review of the Tobacco Control Act and the second relates to funding for antismoking campaigns. In 1995 the Government engaged Minter Ellison, the law firm, to conduct a review of the Tobacco Control Act. The report then delivered to the Government made a number of recommendations for the Government to act upon to strengthen the provisions of the Tobacco Control Act. Not one action has been taken by this Government to implement any of those recommendations. This report was received by the Government in 1995 and it has sat on it since that date. The major issue for anyone who participates in the debate about smoking and health and smoking in the workplace, is the way in which the Tobacco Control Act should operate to dramatically reduce the point of sale advertising of tobacco products. Anyone who goes into a supermarket or delicatessen is immediately hit by an enormous amount of advertising, generally at the front counter of the store, with tobacco products displayed extensively. The Opposition believes that sort of advertising should be brought under a similar regime to that applying to advertising in magazines, on radio and television, and at sporting fixtures and the like. The same limitations on advertising should apply to places where people do their shopping. If the Government were serious about an antismoking campaign based on health considerations, it would have embraced and implemented the recommendations in that report. I am at a loss to know why this Government has not accepted and set about implementing those recommendations. There has been an explosion of displays in shops, designed to entice people to buy cigarettes. It is an exception, because that type of advertising is not allowed anywhere else. This is the area to which the tobacco companies have moved to promote their products in the supermarkets and places where people go to buy other products. I am disappointed that the Government has not placed any priority on dealing with the matter. The report on the review of the Tobacco Control Act contains a series of recommendations designed to reduce the incidence of smoking.

The first recommendation contained in the 1995 review related to point of sale advertising. Everyone will be aware of what is going on in the supermarkets. The other recommendations in relation to health warnings on tobacco products have substantially become redundant with the passage of time because of the way in which tobacco companies have changed their way of projecting themselves at retail outlets. Similarly, dummy displays and display cases have been surpassed, and the Government must now address limitations on advertising at the point of sale. I could go through each of these recommendations from the review. I simply ask why the Government has done nothing about these recommendations because it is an area which strikes people as a great anomaly every time they go into a supermarket. The advertising is designed to encourage young people particularly to smoke, and the Government should not continue to condone that in Western Australia. The Government, as part of this package, must respond to the recommendations following the review of the Tobacco Control Act. As the Government has dragged its feet in relation to the recommendations in response to the situation in 1995, the tobacco companies have moved on and invented new promotional advertisements beyond those

considered by Minter Ellison in 1995. If one wanted to be precise, these days it is not so much a matter of implementing the specific recommendations of the 1995 review, with some exceptions, but more of implementing the spirit of those recommendations in their 1998-99 context.

One of the reasons that Western Australia is no longer in the vanguard of the antismoking campaign, worldwide or nationally, is that it has 1.5 officers in the Health Department enforcing the provisions of the Tobacco Control Act. They must cover approximately 6 000 retail outlets throughout the length and breadth of the State. It is clearly an impossible task to fulfill. That token acknowledgment of the issue is dragging Western Australia back from the eminent position it occupied not long ago. It is very important that the Government get on with the nature of the recommendations arising from the 1995 report and implement the spirit of the recommendations, particularly those relating to the point of sale advertising. That is a priority which I hope the Minister for Health will personally embrace and get on with in any event.

The second issue I touch on is the nature of funding for antismoking campaigns. It is the Opposition's view that the most successful antismoking campaigns are those that have a combination of prohibition and education. One wonders whether in recent times Western Australia has gone down the right path; it is certainly not the path mapped out in the 1980s when this State became a world leader in anti-smoking matters. In 1983 when the Burke Government was elected in Western Australia 32 per cent of the adult population smoked. As a result of the initiatives to which I referred in the course of my contribution tonight, during the 1980s great emphasis was given to anti-smoking campaigns - in particular to the prohibition of smoking in closed venues - and the number dropped to 25 per cent. That was the outcome of a concerted effort by the Government of the day and the Health Department through their world leadership role in the anti-smoking issue.

Funding for anti-smoking campaigns must be a top priority. Since 1990 the incidence of smoking in the adult population has plateaued out at 25 per cent. We are stuck on 25 per cent. Of particular concern is the increased incidence of smoking among young adults, particularly in the 16 to 17-year-old age group. Some of the measures that need to be undertaken include an increase in funding to the Quit campaign, and those sorts of activities, coupled with a prohibition on smoking in venues frequented by young people. The Opposition's proposal is a well-targeted package that will work. It is based on success elsewhere, in which the two factors of increased funding and prohibition work in combination, rather than trying to cobble together the varying vested interests of the Australian Hotels Association and the nightclub and cabaret operators. The principal position must be health, and the message must be directed at young people.

A significant amount of research material deals with the issue. California has coupled a dramatic increase in expenditure on anti-smoking campaigns with a smoking prohibition on venues and has reduced the incidence of smoking in its adult population to 16 per cent. California continued the downward trend Western Australia experienced in the 1980s because of its progressive policies designed to effect that reduction. If Western Australia is prepared to make some of the hard decisions the consequences will be a healthier population, far less demand on our precious health dollar and, generally speaking, a far better society in which to live. The two factors are public education coupled with restrictions on smoking in public places.

In 1983 the Quit campaign of the Western Australian Health Department received $2m per annum, which was the equivalent then of $1.46 per annum per head of population. In 1998, to maintain that level of expenditure and to allow for inflation, we would require expenditure of $2.88 per head of population. WA's population has increased from 1.37 million to almost 1.8 million, so the Health Department should be spending at least $5.2m on its Quit campaign; instead, it is spending $1.4m or 43¢ per head, which represents a real decrease in Quit funding over that period. The Opposition believes that the Government has lost that commitment to do the two things that are necessary to achieve a reduction in the incidence of smoking: We have seen a real reduction in the incidence of funding for the major government Quit campaign. We do not see these days the sort of advertisements that were frequently on the television during the 1980s when the Quit campaign was to the fore. It is rare these days to see advertising that is well targeted. It costs many dollars to put forward a good campaign, so we do not see that nowadays, because the money is not there to back it up. To be fair, a lot of money is now directed through Healthway programs, which are designed to achieve in a particular venue or event a promotion of a non-smoking message, which is important. However, we also need a central campaign directed at an overall reduction in the incidence of smoking. The reduction of funding in that area has been unfortunate. The Government cannot simply look at prohibiting smoking by using the heavy hammer approach, and expect that to achieve the desired outcome. The Government must do both things, and it is failing to do enough not only in the prohibition area, but also in the provision of funding for anti-smoking campaigns. The only dedicated anti-smoking campaign run by Healthway is the young people in smoking campaign which involves expenditure of $1m over three years. Healthway's general sponsorship role is important as it requires the use of smoke-free venues. Establishments in my electorate such as the Fly by Night Club have been a great success as a result of Healthway sponsorship and the prohibition of smoking in that venue. This year, funding for Healthway increased by $2m to $15m with forward estimates in line with inflation. However, it is the Opposition's view that, as part of the package dealing with smoking, the Government should, firstly, significantly increase its funding to the Quit campaign as an absolute minimum by $3.8m to bring the funding to the equivalent level of that which was implemented in 1983; and, secondly, reinstate the statutory guarantee that funding to Healthway is linked to increases in the consumer price index.

The view that I have outlined in a general way in the past 55 minutes is that it is unfortunate that the Government has not

seized this opportunity to be stronger and to act decisively in the interests of the health of the community, particularly young adults and people who frequent the lounge bars, night clubs and the casino. Stronger action by the Government would have marked it out as a Government of principle which is prepared to make tough decisions in the interests of the community as whole.

The Opposition has outlined an alternative package that it will seek to implement through discussions with the Australian Democrats and the Greens (WA) in the other place, and to write those principles into the Health Act by requiring regulations be redrawn to give effect to those statements of principle and to be subordinate to that. I hope that the Opposition will be able to convince a majority of the Legislative Council that that is a desirable way to go. If we can, it will be a great step forward for the health and safety of all Western Australian citizens and in particular our young people.

MR KOBELKE (Nollamara) [7.59 pm]: I welcome a Bill which will produce positive outcomes to lower the percentage of people who smoke and thereby take a big step in preventive medicine. The Government is on the ropes through its inability to commit funds to our hospitals. Now is not the time to go over that, but it is clear in the minds of the people of Western Australia that the Government cannot find enough money to meet the health needs of Western Australians. We also find that the Government is not making a commitment to preventive health, which it clearly could do in the area of smoking.

Without going through the facts, the minister will accept that smoking-related disease is a huge burden on our health system. If we can reduce the percentage of the population that smokes by a further few per cent, we will lift some of the burden off our public health system. There is a cost saving in reducing the number of smokers in Western Australia.

I welcome the Government's move in bringing forward this legislation. Given the track record of the Government, I am cynical about whether it has its heart in this move. It has been a long drawn out issue in the party room. The stand has been considerably watered down and one hopes that the Government will give a commitment to taking forward these measures and making them effective. Real concerns exist about the Government's commitment to being effective in this area. It should look as objectively as possible at what the Labor Government did in the 1980s. I will not go over what the member for Fremantle said, but I will make a few comments about how difficult that was. Compared with what the Government must do with the Australian Hotels Association and licensed clubs, it really has a minor problem. When Labor moved in the 1980s, it was a new initiative. We were leading Australia and, in some respects, the world. Key sporting events like the Perth Cup, our cricket and football, which were incredibly popular, had smoking involved in sponsorship. Lobby groups were opposed to the Government's further restricting smoking and cigarette advertising. It had a real battle to make progress. To the credit of the Burke Government and the minister, Barry Hodge, it was done. There was a political cost. We were very much aware at the time that it cost us votes. However, it was the right thing to do. It was an effective, preventive health measure and people can now look back at the change that has taken place in society and see the benefit of it. That Government had principles and gave a lead. I hope that this Government will find some principles in this area and be willing to push forward with the changes that are required.

I thank the member for Riverton who, as the former Minister for Labour Relations, is responsible for getting us this far. The question still must be answered about whether something positive can be achieved by deception. This might be the case in which it works. Perhaps the former minister knew that the Court Government would not move on this unless he tricked them into it and did something against the normal rules and procedures. On that basis, he forced the Government to do something. That is not the way a minister should operate. It caused a lot of heartache for the Government in trying to retrieve the position politically. However, it moved the Government, the result of which is this Bill. The Minister for Health, in his second reading speech, made no mention of the regulations introduced by the member for Riverton. Will those regulations be pushed aside or will they come into force on 1 January 1999?

Mr Day: The Occupational Safety and Health Regulations will be amended to reflect the health regulations once they are finalised and will come into effect at the same time as the health regulations.

Mr KOBELKE: The minister has said that the regulations put in place by the former Minister for Labour Relations are not acceptable to the Government and therefore they will be amended.

Mr Day: They will be amended to reflect the health amendments.

Mr KOBELKE: The regulations are not amended unless the current procedure is not acceptable. The minister has said that they are not acceptable and we will have to wait and see whether the new regulations are more workable than the current regulations and to what extent they may achieve the outcome of reducing smoking in enclosed workplaces.

Mr Day: People should note section 19 of the Occupational Safety and Health Act. You might refer to that. There is that employer's duty of care to employees.

Mr KOBELKE: I will come to Mr Allanson's report and his comments on that in a moment. The fact that the minister did not mention that in his speech indicates, as the member for Fremantle said, that the proposal is more about the enjoyment of the general amenity of indoor areas and the pleasure that people have from being in a smoke-free environment, than making a major issue of the health side of this debate. That is something which I regret and I will refer to matters in the

minister's speech which point to that. The Government must take a much stronger stand. We understand that it is not something which can be introduced overnight. Tobacco is an addictive drug, but it is legal. Many people who have formed the habit wish to continue with the habit. It is not possible in a democratic society, or necessarily acceptable, to force people against their will to change habits overnight. There must be a phasing in and we accept that. The problem with the measures proposed by the Government is that the phase-in looks like a cop-out. It is not a clear commitment to achieving the end goal of markedly reducing smoking to the point at which, hopefully in the near future, it will be stopped altogether in indoor public areas. That is what we must do if we are to safeguard the health of workers. Wherever people smoke in public places there will be workers. Those workers, therefore, will be subjected to environmental tobacco smoke. The other point made by the member for Fremantle is that we do not want one sector being discriminated against while another is being advantaged. The fear with the Government's regime is that not all sectors will be treated equally. If the Government is serious about this, restaurants and hotels must, as far as possible, be treated the same.

At the beginning of his speech, the minister outlined his concerns about the health effects from tobacco smoke. He said -

> Although the detrimental health effects of active smoking have been known for decades, it was not until the mid-1980s that a number of major reviews concluded that passive smoking was harmful to nonsmokers. Currently, over 600 international peer reviewed reports and research studies provide evidence on the health effects of ETS -

That is, environmental tobacco smoke -

> - which show that it can cause illness and disease in nonsmokers. It is clear from this evidence that some groups in the community, particularly asthmatics, those with heart disease and children, are more vulnerable to the effects of ETS than the general community.

That is a very strong statement and I commend the minister for it. However, he makes no mention of the effect it will have on workers in enclosed spaces. The other point which does not indicate a strong enough commitment to implementing these measures is the minister's statement that -

> The regulations will also require a person contravening the regulations to obey a direction of an environmental health officer to cease smoking in a smoking prohibited area.

I do not think too many people feel it is realistic for a council health officer to go into a hotel, particularly a crowded hotel, and enforce such measures. The enforcement provision is a very difficult one. However, the proposals that the minister has made to date will not be effective. The fact that he lobbed them onto local government without prior consultation immediately got local governments offside. The Government must retrieve that situation to see what role local government health inspectors can play in enforcing the regulations. I am not saying there is no role, but the Government must have local government onside and it must ensure that it has adequate provisions and enforcement powers so that effective action can be taken. In that speech the minister made no mention of the regulations under the Occupational Safety and Health Act, and that was a great pity. The Occupational Safety and Health Act 1984 was reviewed as is required under that statute and the report of Mr Jeremy Allanson was dated 9 November 1998. Mr Allanson was asked to address the specific issue of environmental tobacco smoke. I will not paraphrase this part of the report but I will outline some of the key issues to which he referred and then come to his recommendations. He stated -

> The Amendment Regulations do not, in my opinion, offer a coherent approach to the problem. In particular, they do not address those situations of high ETS levels (such as licensed premises) which arise from smoking by persons who are not the employer or an employee at that workplace.

He was talking about the Kierath regulations that were brought in or gazetted on 22 July 1997 - nearly 18 months ago - and which were to be effective from 1 August this year and which the Government has deferred so that they are now supposed to start on 1 January 1999, but, as the minister has said, are to be amended and to come into effect at a later date in accordance with the other regulations. Mr Allanson said that he does not think that they will be effective. My concern is that the new regulations might water down the approach rather than take a stronger approach. I will quote Mr Allanson further to indicate what he thinks must be done to have effective regulation. He stated -

> Accordingly, even should there be legislation, whether under the *Health Act* or specific legislation, limiting smoking in enclosed public places, complementary legislation under the *Occupational Safety and Health Act* may still be required to deal specifically with issues affecting the health of employees at those places. It would, in my opinion, require a substantial amendment of the existing regulations.

Mr Allanson found the Kierath regulations to be lacking in effectiveness. The Government did not even mention the regulations. We are now told by the minister that they will be changed, but we have no indication of whether the changing of the Occupational Safety and Health Regulations will water them down or, as Mr Allanson obviously implied, will strengthen them so that they can be effective. At page 15 of his report, he stated -

> Accordingly, my opinion is that the issue of ETS will not be satisfactorily managed by reliance on either s 19 -

That is, of the Occupational Safety and Health Act -

> - or the existing regulations without a substantial investment of resources in each enforcement action.

The minister rightly raised the duty of care under the Occupational Safety and Health Act and the particular relevance of section 19 of the Act. However, as Mr Allanson, the lawyer who did the review says, the minister will not have effective enforcement in individual cases without a huge commitment of resources. In his report, Mr Allanson, gave a brief sketch of the problem of getting convictions and the case law that currently exists. His report actually has some substance. Simply to say that the general duty of care under the Occupational Safety and Health Act will be applicable is true to the extent that there is a duty of care. However, it can be totally ineffective in providing an enforcement regime to try to do something about protecting workers who must work in enclosed spaces in which other people smoke. Mr Allanson's recommendation states -

> If government is satisfied that the evidence available establishes a hazard arising from exposure to environmental tobacco smoke at work, the regulations should deal specifically with that exposure and not rely on the general duties. The 1997 amendment regulations are not a sufficient answer to the problem - in particular in not addressing exposure to smoke in those workplaces where smoke levels from public smoking are high.

That answers the minister's interjection. The general duty of care provisions are simply not adequate if we are to have enforcement. It is particularly relevant that the introductory sentence to Mr Allanson's recommendation leaves it open to the Government as to how it weighs up the evidence relating to hazards that arise from exposure to ETS. The minister is on the record as saying that he accepts that there are health consequences from exposure to environmental tobacco smoke. That was a very fine statement in his speech. If it is the Government's position that there clearly is sufficient scientific evidence that environmental tobacco smoke is a major health hazard, according to Mr Allanson it must take much more substantial action if it is to protect workers. I am happy to debate whether the minister finds a flaw in Mr Allanson's argument, but I accept it on face value. It seems to me to be a solid argument. On that basis, given the minister's acceptance of the health issues involved, the Government should take a much stronger stand.

It is obviously a difficult matter because we are dealing with people who have long-established habits and patterns and a great deal of money is involved in various establishments being able to cater for people who wish to smoke and drink or engage in other activities while they smoke. However, we must balance the freedom of the individual against the costs to other members of our community - that is, whether that cost be the direct effect on their health because of environmental tobacco smoke, or whether it be that they as taxpayers must pay more money for the public health measures that must be taken to assist people who become ill through tobacco smoke. It is not simply a matter of people being able to exercise their own freedom of choice without consequences for other people around them in wider society. We must weigh up the matter very carefully. However, the time has come to take some decisive action.

Litigation in respect of the liabilities that accrue because of tobacco smoke has been growing internationally. I do not want to canvass what has happened in the United States of America, but we are all aware of the billions of dollars that are being talked about and that have resulted from law suits by Governments taking tobacco companies to court. The flow-on of those decisions internationally and decisions in the Australian courts will mean that proprietors of hotels and other establishments will not be able to continue to avoid liabilities by running establishments in which they allow smoking and leave themselves open to being sued by people who are injured by the environmental tobacco smoke which they inhale while working in such establishments. We must give a lead. Simply to leave the matter open to find its way through the courts is likely to have some similarities with the situation in Mabo, whereby we can simply go to court case after court case and let the matter take its time at huge cost to the State in the interim. The Government must give a clear lead and establish legislation which will set standards and be enforceable. I fear that the minister's legislation is not enforceable. He should take a stronger stand to ensure that it will be effective.

The Opposition will consider the current regulations - that is, the Occupational Safety and Health Regulations which were put in place by minister Kierath. The Government cannot remove those regulations without the changes being laid before both Houses of Parliament. There is a possibility that the Government's changes to those regulations, which if they are a watering down of the regulations, could be disallowed. That is very complex and the Opposition would not want to do so lightly, but it is possible. The Government will not put up the legislation and say, "If the Opposition and the minor parties do not agree to it, we will walk away from it." If the Government is not being fair dinkum and totally committed to advancing health in the workplace and reducing the amount of environmental tobacco smoke, the Opposition will consider carefully the power to disallow the existing regulations.

The complication is that the Government may amend the regulations, or remove them totally, while Parliament is not sitting. However, when Parliament resumes after that action, the possibility arises of disallowance of the replacement regulations. That would cause the preceding regulations to apply retrospectively. Mr Allanson's statement indicates that the Kierath regulations are not that effective anyway. Other legal advice indicates that enforcement of the Kierath regulations presents some difficulties. We are yet to see what the minister will do with the regulations. If he toughens them up to ensure they are more effective, or ensure that they sit alongside the Health Act effectively, I will commend the minister. However, if

he waters down the regulations to make the regime less effective, he should note that the Opposition will consider its options regarding moving amendments in the other place. If the Labor Party cannot reach some accommodation with the other non-government parties and the Government, it will consider options available in moving to disallow the regulations.

This is a very important issue. It is not one on which we can drift. We are conscious at this time of the parliamentary year how difficult it is to pass legislation. This smoking regulations issue has been around since the middle of 1997, and 18 months later legislation is before Parliament. The ensuing regulations will come into effect next year. Therefore, it could be two years after the then Minister for Labour Relations gazetted his regulations that they will come into effect. We cannot say "Come back with another Bill next year to try to tidy up the situation" as the Government may not find time for such a measure in its busy legislative program. We must achieve the best we can in this measure in a cooperative fashion to benefit all involved. We must act for the advancement of health in this State through a reduction in environmental tobacco smoke, and the range of diseases clearly shown to be enhanced or contributed to by environmental tobacco smoke.

MR MacLEAN (Wanneroo) [8.22 pm]: As a non-smoker, I welcome this move by the Government. However, I draw attention to a few inequities in the legislation. The minister has alleviated the concerns of many people in my electorate by exempting front bars from the ban on cigarettes. He has also addressed the concerns of many hoteliers by allowing smoking in front bars which serve substantial counter meals. These were important positions which many people in my electorate support. The exemption allowing tobacco smoke in front bars serving counter meals indicates that a clash of health cultures is involved.

During the short time I worked in the liquor industry, we always encouraged people to eat substantial meals when drinking. This was not to make money from the meals, as we served cheap, good quality working men's meals. We pushed counter meals because of the effect they had on drinkers. People in the hotel at lunchtime were often pressed for time, and would down two or three pots and take off again. If we could get a meal into them at that time, it did not necessarily cut down the amount of drink consumed, but it reduced the affect of that drink. This was obvious in the afternoon when the same people would drop back into the hotel for one or two drinks before heading home for a meal. I refer to Victoria in the 1970s. I have not been in a hotel front bar for close on 20 years. However, I doubt whether much difference exists between Victoria in the 1970s and the way a busy front bar operates today. The customers in that hotel today are probably the sons and daughters of those I served in the 1970s.

Here is where part of the problem with this legislation resides, particularly regarding the regulations. I refer to a cultural aspect: Whether we like it, agree with it, or believe it is unhealthy for these people, their culture is to enjoy a cigarette. The regulations take care of hotel front bars which are exempt from the tobacco ban. If people enter the Burswood Casino, they will be able to smoke within the red lines, so people will be able to find somewhere in the casino to bet and smoke. However, what happens to other people in the community? What happens to the group of old gentlemen who like to frequent the local cafe for a coffee, a cigarette and a chat? They will be barred from a cultural activity in which they have engaged for probably 20 years or more. Also, if the owner of that premise allows the activity to continue, he will become a criminal along with the old gentlemen. These people have probably never been criminals in their lives. That is not fair at all.

Many of the people to whom I refer are from overseas. Whatever their country of origin, they live in this country and are now Australians. One of the reasons they came to Australia was that this country guaranteed them rights, freedoms and liberties. They had a right and freedom to smoke their cigarettes. This right will be restricted because of health issues. That is fine for me, as I do not smoke. I do not have a problem with restricting people's ability to smoke in areas which affect them and others. However, although we are exempting hotel front bars, and are perpetuating the culture in which cigarettes and drinking is encouraged, we are trying to stamp out a social contact many older people enjoy. They will not understand this change. I agree that smoking in restaurants is socially unacceptable; however, it was plain bad manners when I was growing up. At the end of the meal at formal dinners, the master of ceremonies would unbuckle his belt and say, "Gentlemen, you may now smoke!" That was common practice. I am not that old, yet I can remember such a practice.

For something that was considered bad manners to become unacceptable for health reasons is a quantum leap. I do not dispute the medical information about passive smoking. However, I dispute whether people who are charged with the protection of the rights, freedoms and liberties of the people of Western Australia should totally ban a social activity of old men who like to sit in groups, to enjoy a cigarette and a cup of coffee and to talk about old times or their current activities. We are interfering with their rights, freedoms and liberties, something for which they came to this country. I would like the minister to be given the power of exemptions so that, by way of balance, small areas in cafes and restaurants can be exempted from these no smoking rules. I cannot agree with encouraging people to go to a front bar of a hotel with the environment that that provides so that they can have a meal and smoke. I would prefer that those people go to a cafe or a restaurant at which they can have a substantial meal and relax, and not be constantly in an environment where they must drink. I think alcohol is probably a bigger cause of health dollar expenditure than cigarette smoke because it is not limited only to the person who smokes or the people who surround them or live with them. Alcohol is the greatest social problem.

I have trouble with a few other parts of the regulations. I will go through them in no particular order. One of the biggest problems I have is that customers will become victims of this legislation. A person who walks into a newsagent to buy a

paper and has forgotten inadvertently to put out his cigarette breaks the law. If the owner or manager of the store serves that person without drawing his attention to the fact that he is smoking in an enclosed place, he will have breached the regulations. We have assurances from the minister that the environmental health officers will not be going over the top in this matter. I remember well an environmental health officer at a council conference boasting that he nearly closed one of Perth's most popular restaurants on a Christmas eve because he found indications of cockroaches there; not that he found cockroaches, just indications that there might have been cockroaches. Therefore, there are environmental health officers who will go over the top.

I am also concerned that the Bill and the regulations are specific about tobacco products. For the past five years or so, herbal cigarettes brought in from Asia have become very popular. The definition in the Tobacco Control Act reads -

> "tobacco product" means tobacco, cigarette or cigar or any other product the main, or a substantial, ingredient of which is tobacco and which is designed for human consumption or use, but excludes nicotine or a product containing nicotine insofar as the *Poisons Act 1964* applies to or in relation to nicotine or a product containing nicotine;

It does not mention herbal cigarettes. I can imagine one or two of our less law-abiding citizens telling environmental health officers to go away very quickly because they are either smoking herbal cigarettes or - shock, horror - they might even be smoking marijuana. They would not tell a police officer that they were smoking marijuana, of course, but an environmental health officer, who does not have any powers of arrest, can only ask them politely to put it out because it is not nicotine or a tobacco product. He cannot even seize it. He cannot do anything. He could wander out and wait for a policeman or call the police and say, "Someone is smoking marijuana." Shock, horror! However, he cannot do anything about it. In that case, the regulations will not apply. Therefore, what are we to do? Are we setting up little marijuana dens and cafes in Northbridge?

Mr Baker interjected.

Mr MacLEAN: An unkind comment was made that they already exist. I frequent some cafes in Northbridge and they do not exist.

One of the other problems that I have with the Bill is the definition of a public place. The definition is very broad. Although we have been told that the definition will be cleaned up by regulation, we all know that regulations cannot impact on an Act or change the direction of an Act. The problem I have with the definition is that it states -

> **"enclosed public place"** means a public place that has, whether permanently or temporarily -
>
> (a) a ceiling or roof; and
>
> (b) walls, sides or other vertical coverings,

It also means -

> . . . a place or vehicle that -
>
> (a) the public, or a section of the public, is entitled to use;

I have a great deal of trouble with the words "a section of the public". If we want to go to extreme lengths, it could mean that one would not be allowed to smoke in one's own home because a carpet cleaner is in the house. The carpet cleaner could be defined as a section of the public because there is no way of exempting him. We would be relying purely and totally on the person who was hearing the complaint to make that decision. "A section of the public" could also be defined as a passenger in a car. Someone who buys a $30 000 car is entitled to think that he is allowed to smoke in it. However, a passenger could be classed as "a section of the public". That section of the public would mean effectively that no-one is allowed to smoke in that car. However, if it were my car, the passenger would not be a passenger for very long, and I do not smoke.

This legislation will impose a commercial decision on restaurants and cafes. The exemption that applies to hotels, main bars and non-eating areas, and areas that do not serve food as long as they are not defined under the Liquor Licensing Act as a restaurant, does not apply to cafes and restaurants and other enclosed public places, which means that this Bill discriminates against sections of the public. It also means that the Government is imposing a commercial decision that some of these restaurants and cafes would in the fullness of time probably make anyway. Not a lot of people smoke in cafes and restaurants these days. It is almost an exception to find someone smoking in a restaurant. Many restaurants have reduced their smoking areas from half of the restaurant to only one or two tables, but they still have one or two tables. This Bill imposes a commercial decision on them to do away with those tables.

The definition of a cafe is a restful stop. As I say, many cafes have only one or two tables or a small area set aside for smokers. Some cafes allow smokers to sit wherever they want to sit. It is then up to a person who does not like the smoke to move. If I see people smoking in a cafe, it is my decision whether I go in. It should not be an imposition by me that

people cannot smoke in a cafe. The cafe and restaurant owners should have the same rights and privileges as a hotel owner or a bingo parlour. What happens at the bingo parlour in Mirrabooka? It has no smoking but many people like to smoke when they go there. Many people do not like to smoke when they play bingo; however, many do. What will they do now? They will go to the one bingo parlour that allows smoking. I do not support this legislation.

MS WARNOCK (Perth) [8.44 pm]: As we have heard tonight, smoking is another one of those issues which divides the community into two vigorously warring camps. Although it is clear that only about 25 percent of the Australian population now smoke as opposed, I would guess, to nearly double that 40 or 50 years ago, and although reputable surveys have made it absolutely clear that a large majority of people do not want smoking in enclosed public spaces, which is what we are talking about here, smokers demand their rights and are defended by the Australian Hotels Association and others, like restauranteurs and caterers, who believe that they should be able to exercise that right. There are even cries, commonly in conservative circles, that we are over-regulated and being overseen too much by nanny. Bill Hassell, a former member of this place, and the late Paddy O'Brien have both used that line many times in this context. However, it is clear that thanks to a very high quality public education campaign which took place in the 1980s and which has been referred to by my colleagues on this side of the House who have spoken before, Western Australia led not only Australia but also the world in persuading people not to smoke. Although tobacco remains a legal product, it kills people. Most people now realise that and have sensibly given up. As I have said, something like 25 per cent smoke now as opposed to a very much larger percentage 40 or 50 years ago.

What has become something of a problem for the community is that although one can sympathise with tobacco addicts and understand their need to indulge - I certainly understand it - it is now obvious that passive environmental smoking - copping smoke from other people's cigarettes - is not only unpleasant and for some of us very unhealthy, but also generally agreed to be a serious health risk. Many of us who for various reasons do not enjoy other people's smoke find it very offensive. As I say, it is generally realised by reputable surveys all over the world that it is very unhealthy for other people.

How do we as a community deal with the problem of people who really like to smoke, although in diminishing numbers I am glad to say, and how do we as a community allow smokers, however misguided we believe they are, to exercise their free will while at the same time protecting others from their habit? It has become the job of the present Government to try to come up with a workable public policy. The protracted debate that has gone on and the protracted business of getting this Bill into the Parliament, not to speak of the problems the member for Riverton's proposals encountered or those of any other tobacco regulations, indicate how very difficult it is to arrive at a proper public policy position in a community with somewhat divided views. Many lobby groups in the community also have an intense interest in this issue. All of us have experienced the views of those various lobby groups over the past several months.

Let me immediately declare a personal prejudice. I am a reformed smoker. Having watched several close friends and relatives die of lung cancer and emphysema I am not well disposed towards smokers. I frankly admit that, and it would be dishonest of me not to. I find it a stupid, unhealthy habit. I do not know why any adult, knowing what we now know about this dangerous habit, would go anywhere near it. I admit that many older people in the community have been smoking all their lives. Some people smoked a lot when they were young and knew nothing about the dangerous effects. Let us not forget that for many years tobacco manufactures concealed the dangerous effects of this weed. They knew well how terribly dangerous the substance was, as did the people who manufactured asbestos know how dangerous asbestos was. That is an historical fact. None of us can do anything about it now but now we all know. That is what those campaigns during the 1980s were based on - the new knowledge that we now have about smoking and how it affects human beings and how we should avoid it. That has brought us to the situation of the present Government looking for a proper public policy stand on smoking in public places.

I draw attention to a story which appeared in *The West Australian* of 20 November. Many other stories about smoking and smoking regulations were in that issue. Further into the paper was a simple story which came from overseas. I also saw it in some English newspapers. It reads -

> Tobacco will kill nearly 150 million people in the first quarter of the 21st century and another 300 million in the second unless long term smokers quit en masse, new research has found.

It referred particularly to smokers in places like China, where, as we all know, there has been a Communist regime for a long time. Such things as advertising have not been allowed. Advertising is now allowed and smoking advertising is now being directed towards places like China, cynically one must say. According to the *British Medical Journal*, one in three cigarettes smoked in the world is smoked in China. Obviously this will very badly affect the Chinese.

Mr Prince: When I was Minister for Health, I spoke to the Minister for Health in China. He is a very senior minister. He had copied part of our Quit campaign and recently banned smoking in public thoroughfares. On the streets of Beijing where I had been previously no-one smoked. In cafes they smoked like chimneys. In Shanghai they smoked anywhere they liked, but there I don't think they acknowledge that Beijing has any authority. It was remarkable that the Minister for Health, a former orthopaedic surgeon, had the power to tell everyone to stop smoking. The fine was the cost of a packet of cigarettes.

Ms WARNOCK: Do we have an advocate for the communist system?

Mr Prince: No; you don't, but the paradox was that they produced trillions of cigarettes a year from government factories. He and I debated the paradox of having an industry and trying to stop people from using the product.

Ms WARNOCK: We have the same dilemma. We do not produce cigarettes any more, but we collect the tax on them. It is a dilemma; nonetheless, when we were producing cigarettes we did not know the ill effects. Now we do. Now we are dealing with public policy. While 25 per cent of the population smoke we must accommodate them in some way. As my colleagues the members for Fremantle and Nollamara said, the Government's efforts are timid. We should be concerned about the health of workers in places such as hotels, restaurants and the casino and the health of non-smoking patrons as well as those who smoke. I know how difficult it is to persuade long-term smokers to give up smoking.

How do we manage this equation when all of the different forces are coming together? In a hotel we must accommodate people who need to smoke in one bar. As has been suggested, that should be the front bar, not the lounge bar or other bar areas, providing the place can be properly ventilated to protect both the staff and patrons and that it can be isolated from the rest of the building. We must be prepared to isolate people with this habit from the rest of the people who are using the facilities.

The use of the front bar by people who smoke should take care of that situation. However, some small country hotels have only one bar or perhaps a large area in which everybody who comes to the hotel spends their time. In those situations counter meals should continue to be served, although I agree with the Government that smoking should be banned from areas in which meals are prepared and in general where meals are eaten. Some of the many restaurants in my electorate have smoking areas outside or areas designated for smoking in a small part of the restaurant.

In my experience more and more people are seeking out places in which smoking is banned because they would rather be accommodated where they do not have to endure other people's smoke. From the surveys undertaken in California I do not get the impression that has been a disadvantage. I am staggered to see the figures on the incidence of smoking among the adult populatiion in California, the home of the free and of civil liberties. That State has embarked on campaigns like our Quit campaign of the 1980s. I thought the rate of 25 per cent was good when we reached that figure, from a very high figure many years ago, only to find California's rate is below 20 per cent. Eventually people will not be allowed to smoke inside restaurants. Obviously outside cafe tables and enclosed garden sections of restaurants are different.

As I said, I do not think the hospitality industry would suffer from this. My experience is that more and more people are seeking out non-smoking areas. One of my colleagues referred to the fuss made about Totalisator Agency Boards banning smoking. People said that the TAB system would fall apart if people were not allowed to smoke because in effect they were like front bars. That has proved not to be true. People go onto the pavement if they want to have a cigarette and return to the TAB to place their bets. More and more people go outside to smoke if they are in a restaurant.

People have not smoked inside my house for about 20 years. No doubt many other members here have the same rule. They can smoke on the enclosed veranda or in the garden. More and more people are taking those options. It is not simply that many of us find the effects of cigarette smoke incredibly unpleasant. I have a respiratory disease which makes it unbearable for me if people smoke around me. Smoky bars make our clothes smell. Anyone who has a musician in the family will know that someone who works in bars or nightclubs will spend much time hanging his clothes on the line because they smell so bad. However, it is not only that unpleasantness and that some people's sinuses are affected; but also we now know very well that cigarettes are drugs that kill us.

Someone referred to alcohol which without a doubt is a dangerous drug if abused. A huge amount of the Health budget is spent on helping people recover from the terrible effects of alcohol whether it be from drunken driving or the many other diseases it causes, but we can drink alcohol without abusing it. However, there is no proper way to use nicotine; it is simply a dangerous drug. I imagine that if approval were being sought for its use in the community now, the National Health and Medical Research Council would not approve it. As I said, it is a legal drug and we must make some accommodation for people who want to use it. My colleague, the member for Fremantle, referred to alternative ways of dealing with smoking in nightclubs and the casino. Our view is that the new arrangement should be phased in by the end of March next year for restaurants and by January 2000 for all the other venues. That will give people sufficient opportunity to prepare themselves for what, at the moment, some people regard as a difficult situation.

One of the speakers on the other side voiced some concern about environmental health officers. There is also a question about who should do the policing of this situation. That is very difficult. The police have enough to do. No doubt everybody here will say that the police are under-resourced in their electorates and that they need more police. I cannot imagine the police having to deal with one more thing. I imagine another level of inspectors will look after this, whether it be environmental officers from the local councils or some other group.

According to material we received from the Western Australian Municipal Association - I have no doubt the Government received it also - it is very concerned about not only the inadequate consultation about this Bill, but also the genuine

difficulties of enforcement. I understand it is concerned over the practicality and the workability of the legislation. WAMA is saying that local councils do not have the staff to enforce it. How do they enforce the regulations when environmental health officers do not have the same powers as the police?

One of the members opposite referred to an overzealous environmental health officer. My experience has been that it is difficult to find an environmental health officer because they have so many concerns to take care of. When I was doing work on noise regulations in my area I constantly heard complaints from constituents who were annoyed by terrible noises in their area. When they telephoned the one officer responsible in the local council, they found he lived 20 kilometres away and at 2.30 in the morning was not keen to turn up and measure the noise. Rather than overzealousness, it is likely that there will not be enough officers to go around. I understand that is what the WA Municipal Association is trying to draw to our attention. WAMA is concerned about some of the clauses of the Bill but it says in its letter -

. No additional resources have been identified to assist either the HDWA or Local Governments to cope with the new rules.

. There has been a clear "cost shift" of an unfunded mandate to Local Government.

It must be unnerving to find local government has been made responsible for something and no money has been provided. To continue -

. No funding package for Local Government has been outlined and the statements to date on support for prosecutions, enforcement, training and promotion from the HDWA for Local Government are completely inadequate.

. The possible industrial ramifications and flow on financial impact on Local Government have not been considered in any real way.

In other words WAMA feels that local government has been made the fall-guy. It is not the police that should be dealing with this; they have far too much to do. It appears to me that local government either believe it has too much to do or does not have enough funding to take on the new responsibilities. I can see another level of bureaucracy being required if enforcement is what we need, rather than a great deal more money being spent on education to persuade people to follow these new rules. I will leave it to my colleagues to further outline the Opposition's stand on this. The member for Fremantle has drawn the attention of the House to our stand in general and we will be seeking to go into more detail on these matters when the debate moves into the other place.

MR BAKER (Joondalup) [9.00 pm]: I support the Bill and the draft regulations which were tabled to assist in explaining what is intended in due course when the regulations are officially tabled. I support the Bill for many reasons but primarily because there can be no dispute that tobacco smoking is harmful and that passive smoking, environmental tobacco smoke, is also harmful. It is interesting to note that the definition used in the amendment Bill and the draft regulations simply refers to smoke from a tobacco product as opposed to the other types of products that can be smoked by various means. Nonetheless I understand and accept that currently tobacco is the most commonly smoked product.

We cannot dispute the fact that smoking of tobacco is harmful and that passively inhaling tobacco smoke is harmful. It is interesting to note the way in which the tobacco industry has acknowledged this through time. I read yesterday an extended warning or risk notification on the back of a packet of cigarettes that some tobacco companies are now using. The second section of the warning reads -

> Children who breathe your smoke may suffer asthma attacks and chest illnesses.

It then gives an information line. An acknowledgment is made for children, but perhaps it would be more appropriate to delete the word "children" and substitute the word "people". People for whatever reason in life will take risks and do whatever they want to do, whether it is playing football, boxing, driving cars, or participating in marathon runs. When they do such things, they necessarily voluntarily assume the risks associated with whatever they are doing. Even the common law recognises this and it provides a clear defence to a negligence claim known as the voluntary assumption of risk defence, or volenti non fit injuria, which is the Latin equivalent.

I make some brief comments in response to matters raised by members opposite, particularly those about the inter-relationship between the Occupational Safety and Health Act and the regulations that were referred to by the member for Nollamara as the Kierath regulations. I am concerned at the inter-relationship between section 19 of the Occupational Safety and Health Act and the Kierath regulations as they are known. It is interesting to note some of the provisions in the Occupational Safety and Health Act. I refer firstly to the general duties of employers under section 19, and the duty of employees under section 20. We hear much in this place about the duty of employers, but not much is said about the duty of employees. Section 26 of that Act has the title "Refusal by employees to work in certain cases". My concern, being practical, is that it may be difficult to see a situation in the future whereby section 19 of the Occupational Safety and Health Act can sit hand in hand with this Health Amendment Bill, and the regulations known as the Kierath regulations in general.

I share the concerns noted by Jeremy Allanson in the report he prepared some weeks ago and published on 9 November this year. A problem appears to arise, at least in my view and in Mr Allanson's view, when we look at the inter-relationship factor. If smoking in enclosed public places and the workplace were totally banned, section 19 would sit very well with what one could expect in the real world. Perhaps I can give some brief examples of the difficulties that will follow in any event of trying to intermesh the provisions of the Occupational Safety and Health Act and the regulations and also the Health Amendment Bill. Section 19 of the Act deals with the duties of employers. I quote from subsection (1) and a couple of subparagraphs. It reads -

> An employer shall, so far as is practicable, provide and maintain a working environment in which his employers are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall -
>
> (a) provide and maintain workplaces, plant, and systems of work such that, as far as is practicable, his employees are not exposed to hazards.

I think we accept that ETS is a hazard. It further states -

> (d) where it is not practicable to avoid the presence of hazards at the workplace,

Many people would agree that it is possible to avoid ETS altogether through a total ban in the first instance and through adequate ventilation -

> provide his employees with, or otherwise provide for his employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees;

That provision deals with the duties of employers. Section 20 of the Act is headed "Duties of employees", and subsection (1) states -

> An employee shall take reasonable care -
>
> (a) to ensure his own safety and health at work; and
>
> (b) to avoid adversely affecting the safety or health of any other person through any act or omission at work.

Subsection (2) goes to on to set out circumstances in which an employee will be deemed to have contravened that general duty. I wish to make two points. The duty that we hear about under this legislation is imposed not only on employers but also on employees. If one reads further into the body of the Act, section 26 headed "Refusal by employees to work in certain cases" indicates that an employee may in certain circumstances refuse to work in a work environment if he has reasonable grounds to believe that to continue to work would be to expose him or any other person to risk of imminent or serious injury or imminent or serious harm to his health. That provision appears to allow employees in certain circumstances to refuse to work in environments if there are real and appreciable harms in existence or if one can foresee those harms arising in the future. I wonder how it can be said that if smoking is to be permitted in front bars, public bars, general bars or animal bars, employers or specifically licensees of licensed premises can take reasonable steps to adequately protect the health of their employees working in that bar or how can they properly fulfil their duty under section 19 of the Act.

Mr Kierath interjected

Mr BAKER: The minister has suggested a total ban. Being practical, I think that is the only way. I think Mr Allanson would agree with that assertion as well. Section 19 provides practical ways of preventing these risks or hazards appearing in the workplace. The only practical way is a total ban on smoking in public places. It is practical in the physical sense but is it practical in terms of the need to try to balance the competing interests of people who want to smoke in the community as opposed to those who do not want to be opposed to ETS? This Bill tries to strike a balance between those who do want to smoke at a licensed bar and those who do not want to smoke but want to eat food - that is, they do not want to smoke passively - and those who merely want to attend licensed premises. It allows for freedom of choice.

Mr Kierath interjected.

Mr BAKER: I accept what the minister is saying. Once again, I acknowledge that the only way an employer can appropriately fulfill his duty is to have a total ban in the workplace. The regulations commonly referred to as the Kierath regulations did not effect a total ban on smoking in the workplace. They specifically provided for an exemption in circumstances in which the workplace provides a designated smoking area.

Mr Kierath interjected.

Mr BAKER: I will do that if I can. I agree with what the minister is saying 110 per cent. I refer to the definitions in the Kierath regulations of "workplace" and "designated smoking area". The fact is that any workplace is any part of land which

is subject to a certificate of title or is a clearly identifiable area where work is carried out. Surely notwithstanding the existence of a designated smoking area in a workplace, that designated area is still a workplace and hence employees - either smokers or nonsmokers - who are exposed to environmental tobacco smoke in the designated smoking area are still at risk, in the same way as are employees who may be working in a public bar in a hotel. Surely the mere provision of a designated smoking area in a workplace could, of itself, be said to be a clear admission of a breach of duty. The regulations provide that an employer cannot require an employee to work in a designated smoking area. Of course, that is not to say that employees may not as a matter of fact do that. I note the use of the word "required", which indicates that the employer can give some sort of choice or discretion to the employee. It is one thing to tell employees that they are required to work in that designated smoking area; it is another to tell those employees that they may work in that area if they want to.

Mr Kierath interjected.

Mr BAKER: I accept what the minister is saying. The use of the word "required" in other legislation normally means a mandatory requirement; for example, a police officer may stop a motor vehicle and require that the driver submit to a preliminary test or later at the police station require that driver to undertake a blood alcohol analysis through either a Drager breath test or blood test. At the end of the day this duty can be fulfilled only by an employer through a total ban. All members will agree that that simply is impracticable.

Mr Kierath: Why?

Mr BAKER: I ask the minister to bear with me. Even if we accept some of the amendments that have already been foreshadowed by the member for Fremantle, the shadow Minister for Health, there are other problems. The member for Fremantle has foreshadowed that an amendment may be moved in the upper House to allow for a phasing-in period of the front bar exemption during five years from the passage of this legislation. During that five years, it is quite easily argued that the section 19 duty is still being breached. If in due course that employee can establish -

Mr Kierath: That is why I reduced the phase-in period.

Mr BAKER: I accept what the minister is saying. In due course if that employee can prove that his medical health or illness or disease was caused in whole or in part as a result of his time in the workplace during the five year phase-in period proposed by the member for Fremantle, there can still be an arguable case for a breach of the section 19 duty, a statutory duty of care, and for that matter a simple negligence claim at common law.

Mr Kierath: I agree with you wholeheartedly. That is the point I was trying to make.

Mr BAKER: I accept that. We must try to be practical. With many changes in society there is a need -

Mr Kierath interjected.

Mr BAKER: I accept what the minister is saying. How practical will it be when insurance companies refuse to insure workplaces or licensed premises because smoking is permitted by them in a bar? We must remember that this Bill and the draft regulations do not purport to impose an obligation upon a licensee to provide one bar for that purpose. When insurance premiums either go through the roof or when there are many exclusions and limitations placed in the policies, I agree that, for all intents and purposes, the policy will be totally useless. It does not purport to effect any real indemnification against liability arising from injuries in the workplace caused by environmental tobacco smoke or passive smoking. These are the practical considerations.

To put it simply: We have either a total ban or we do not. If there is not to be a total ban, what exemptions will be allowed? In the short term, it is a matter of educating the community so that people, of their own volition, will desist from smoking. As with any other harmful illicit substance, there must always be a two-pronged approach. We have the strong prohibition approach in which we create offences and provide for penalties. Under this Bill and the proposed regulations, there will be only fines. At the same time we mount education campaigns. Sometimes it must be acknowledged that the messages become somewhat blurred. In the past I have commented that we as a Government, and for that matter Governments generally, send competing messages to the community, particularly young people, when trying to address the issue of illicit drugs. As I have indicated before in relation to the smoking of tobacco products, the Government simply says stop. With alcohol, we say that people should use it safely. With illicit substances, such as cannabis and heroin, we seem to say that people should stop, but if they do not want to, we will provide needles, syringes and safety disposal units at train stations and airports and will exchange them on a free basis. Of course, other people say that we should go further and provide safe shooting galleries while others will go further still and say that we should also provide the heroin because medically provided heroin is pure. It is a matter of balancing these competing messages. It is very difficult to do. Beyond that, I support the legislation. I believe amendments will be moved in the upper House. Many of those amendments may agreed to. I thank the minister for proposing the amendment Bill. It was a courageous step to take, and I applaud him for that. It is a step in the right direction going down the path to a licit, and for that matter an illicit, drug-free community.

Mr Day: I think my predecessor, the member for Albany, should also be applauded for the courageous step he took in this regard.

Mr BAKER: I also applaud him.

DR EDWARDS (Maylands) [9.16 pm]: As the second reading speech states, the aim of the Bill is to provide the power to make regulations to control exposure by the general public to environmental tobacco smoke in enclosed areas. As all members have said, this is a very important Bill. Before I comment on environmental tobacco smoke, I will deal with smoking generally. I start with this statement of fact: There is one Australian death every 30 minutes from tobacco-related diseases. In the time we have been debating this Bill tonight and in the 20 minutes taken by the minister a couple of weeks ago, over five people will have died from these diseases. That is a pretty awful statistic. I repeat: While we have been sitting here since the dinner suspension, five people in this country have died from tobacco-related diseases. It shows the seriousness of the problem.

Mr Kierath: It is horrendous and can be prevented.

Dr EDWARDS: As the minister has just said, it is eminently preventable, provided members of the public are taken with us and there is political will. We could see more of both. Earlier this year the *Medical Journal of Australia* published a large article that looked at the smoking behaviours of Australian adults in 1995. The article indicated that, in 1995, 27 per cent of men and 23 per cent of women were smokers. It was particularly alarming that those levels were not declining. We all expect, with increased awareness about tobacco smoke, with publicity campaigns, with better education of the community, that fewer people are smoking; however, this study indicated that we might have bottomed out, or reached a stable level. That is of great concern. All we need is more subtle advertising from the tobacco companies and we will see those figures start to increase again and more people will have health and morbidity problems from tobacco smoke.

The same survey revealed that more men than women are past smokers. That is totally consistent with trends. This survey suggests that males smoke 20 cigarettes a day and females smoke 18 cigarettes a day. Another factor that came through loud and clear - I do not think members of the community are always aware of this - was that there is an inverse relationship between occupation and level of occupation and the amount that is smoked. If people have had the benefit of an increased education or are working in a very skilled occupation, they are far less likely to smoke than those who have had less education or are in a lower occupational group. For example, in the 1995 survey, only 18 per cent of men and 16 per cent of women in the highest occupational group were smokers. When that is contrasted with the lowest occupational group, 40 per cent of men and 31 per cent of women smoked; the figure is more than double for men and nearly double for women. That is a very serious statistic because, from a health point of view, people in the lower socioeconomic groups are more likely to suffer from a range of other diseases. If the effects of tobacco-related deaths and the other impacts of tobacco smoking are added to that statistic, it can be seen that that group of the population is a huge health burden. That is a problem to us all because any health burden on the community ultimately ends up as a burden to taxpayers. What worried me most about the article in the *Medical Journal of Australia* was that it pointed out for the first time in eight successive surveys that the prevalence of men smoking was no lower than in the previous survey. In the eight previous surveys, the numbers had been decreasing, but suddenly that trend stopped. Similarly, it had bottomed out with women. If we do not see a further decline, we will face huge problems.

The issue of smoking has been recognised by Australian health ministers. The primary public health goal of the Australian health ministers is to decrease the prevalence of smoking in men and women to 20 per cent by 2000. However, as we can see from those figures among people in the lowest occupational groups, we are a long way from reaching that target. We need action. Although we welcome the legislation, we have signalled that we will be seeking to amend it in the Upper House to make it stronger and more effective so that it tackles the problem more efficiently.

Mr Barnett: Will you send it off to a committee?

Dr EDWARDS: The Leader of the House will have to ask the minister. I am not aware of that. I have been negotiating with the Minister for Planning to try to push through the Planning Legislation Amendment Bill as quickly as possible.

I now turn to what is commonly referred to as passive smoking or the problems with environmental tobacco smoke, which is what this legislation is all about. Environmental tobacco smoke is the smoke that is in the environment when people are smoking; it is the sidestream smoke, the exhaled smoke and all the other smoke and gases that are emitted when cigarettes are smoked. Members of the Government might ask why we are worried about it. One reason is that there are more than 3 800 chemicals in cigarette smoke. Fifty of these chemicals are known to be carcinogens; that is, they are known causes of cancer. Six of them are reproductive or developmental toxicants, which means that they can have an impact on developing cells. Cigarette smoke also contains carbon monoxide, hydrogen cyanide and can contain pesticides and toxic metals. It is not a good environment to which to be exposed. It has been estimated that heavy exposure to environmental tobacco smoke in the workplace can be equivalent to smoking five to six cigarettes each day. It has also been estimated that over 20 years a nonsmoker is 500 times more likely to contract lung cancer from working all day in a smoky room than from working in a building containing asbestos. We have seen very dramatic examples of measures taken to stop people's exposure to asbestos, and quite rightly so. For many years we did not recognise the problem with asbestos, but we now have very strong regulations and we ensure that people are not exposed to it. In the second reading speech the minister said we have now reached the point with passive smoking at which we were with smoking in general in the 1970s. We are not

moving quickly enough now to address the warning signs and my comments about asbestos bear that out. One issue that fits in with what the member for Perth said is that for non-smokers there is no safe dose of environmental tobacco smoke. That fits in with the issues that the member for Wanneroo raised about alcohol; there are safe limits with alcohol. However, there are no safe limits with environmental tobacco smoke; there is no threshold. Potentially and statistically, people will experience problems no matter how small their exposure.

In the past 20 years, literature has emerged proving the scientific link between passive smoking and health problems. I am pleased that has not been questioned in this debate, because some people in the community question it. As the minister said, over 600 internationally reviewed, scientifically-based reports bear out that link. Therefore, it is an argument we should not bother to have. Each year in Australia it is estimated that 140 people die of cancer linked to passive smoking. In addition - I am alarmed by this figure because I had not realised it was so high - it is estimated that the number of deaths from heart disease due to passive smoking is about 10 times that of cancer, which means that each year about 1 000 Australians die from heart disease linked to passive smoking. Perhaps even more alarming to those members who are non-smokers, non-smokers appear to be more sensitive to tobacco smoke and are more likely to suffer these effects. It is also said that every year in Australia 46 500 cases of asthma are caused by passive smoking. With our extremely high asthma rate which is particularly high in children, we must do everything we can to remove one pollutant; that is, tobacco smoke. Asthma causes not only death, but also significant ill health and decreased performance abilities, particularly in children who suffer from it. The member for Riverton has alluded to the fact that workplace exposure to environmental tobacco smoke is 1.5 times higher for restaurant workers and 4.5 times higher for bar workers than for individuals in a domestic situation. It is very important that we look at restaurants and bars and consider the health and safety of the people who are employed in those areas. I expressed some disappointment with the legislation which is before us because we could have had better amendments.

Over the past 20 years a remarkable change has occurred with tobacco and that has been followed by a change in community attitudes. A range of credible surveys indicate that people do not want to go to restaurants and bars and be exposed to tobacco smoke. As the member for Perth pointed out, in other parts of the world where governments have been strict about this, trade has not fallen away, people have not stopped going to bars nor have they stopped spending money. I have outlined the problem and I will now make some comments about what needs to be done to address it. We need a comprehensive approach, including comprehensive legislation. We are one step towards that. Ultimately we need the total prohibition of tobacco promotion, so that young women in particular do not take it up because it is trendy or something that their peers do. We also need comprehensive and effective public education campaigns. It is sad how these campaigns have dropped off recently. The other critical factor is to help people quit. The best indicator of whether someone will be successful at quitting is whether they have tried previously. We must assist people. We must recognise that nicotine is an addiction and that it is beneficial to stop people from smoking; their health outcomes will improve. Much must be done to assist them. The article from the *Medical Journal of Australia*, to which I referred earlier, spelt out very clearly what still needs to be done. The first point in the antismoking policy areas which needs to be addressed is point-of-sale advertising. Anecdotal reports from environmental health officers, young people and parents indicate that point-of-sale advertising has increased. As the member for Fremantle said, members need only go into any delicatessen or 24-hour shop to see the advertising of tobacco products. The cartons and the small signs in delicatessens and 24-hour shops are powerful advertisements in themselves. I know that from observing people when they enter these shops. They look at the signs above the packets of cigarettes and choose according to the advertising.

We also need to address access by minors. The Australian Council on Smoking and Health regularly conducts surveys which show how easy it is, despite pretty good laws and policing in this State, for minors to get access to tobacco products. I have a 17-year-old stepdaughter, and she has somehow been able to get access to tobacco products. Indeed, some conflicts exist between tobacco and sexism. When her boyfriend told her that he did not like her smoking and she gave up, I thought his comments were extremely good. Normally, if her boyfriend told her not to do something, I would probably have some issue with that. However, when he told her to stop smoking and she did, I commended both of them.

We also need to look at packaging and pack warnings, and at pricing. Until we have all those policy factors in place, I do not believe we will see any further decline in the prevalence of smoking. In addition to that, more work needs to be done on the anti-smoking programs. We need comprehensive, integrated school programs. As I said previously, we need the cessation services to help people who really want to stop. As stated in this article, we need persuasive, pervasive and persisting public campaigns.

That leads me on to my next comment. In the 1980s and early 1990s, we had very effective, cutting-edge, exciting, innovative anti-smoking campaigns in this State. I think everyone would remember the Quit campaigns and the successes that flowed from them. In the early 1990s, we had the establishment of Healthway. This was a whole new way of tackling the problem which was extremely successful in raising community awareness. However, looking recently at the Australian Council on Smoking and Health so-called league table, I was disappointed to see that from being number one in 1994 and 1995, Western Australia had dropped to second among the States in 1996, third in 1997, and fifth in 1998. The ACOSH league table looks at a range of issues and scores the States out of 100. In the past we have scored quite well. However, this year we came equal fifth, with a score of 34 out of 100. It looks at things like public education, school education,

smoke-free workplaces, industry accountability, health promotion foundations, and the like. Perhaps the worst insult this year was that our then Minister for Health received the "Dirty Ashtray" award. That is not a good thing for a state health minister to receive.

Mr Barnett: That was a particularly insulting thing, and I think many people felt it reflected very poorly on the Australian Medical Association. It was a most disgraceful example of public behaviour by an otherwise respectable organisation at the time.

Dr EDWARDS: One must consider that 18 000 people a year die from tobacco-related illnesses. I think the award was probably very effective, given the response I am receiving from the other side of the House. Perhaps the saving grace of the day was that the current Minister for Planning received a lot of accolades for the type of work he was doing.

Mr McGinty: The president's medal.

Dr EDWARDS: That is right. The president's medal and the "Dirty Ashtray" are very apt. I think it is a measure of accountability.

Mr Barnett: No-one denies the impact of smoking. I will not delay the member. However, as I say, I think that was a disgraceful act by the AMA. It lost enormous respect from me and many other people in the community.

Mr McGinty interjected.

Mr Barnett: It can do whatever it wants in terms of awards, but that "Dirty Ashtray" award was disgraceful.

Dr EDWARDS: To be frank, I do not have any problems with it. I was a medical student in the days of the BUGA-UP campaigns when people used to go around defacing billboards to raise attention to smoking and the problems that it caused. When so many people are dying, when we are going backwards and we are not being listened to, I applaud the AMA, which normally is a conservative body, for taking that step. I am sure that when it was working up to it, it probably caused some heartache within the organisation. However, when a group of conservative doctors take that action, it underlines how strongly they feel about the issue, how they do not like watching their patients die, how they do not like seeing their patients with emphysema, and how they do not like having to prescribe oxygen for people to use in their homes. There is no doubt - the member for Perth supported this - that when one witnesses people dying those types of deaths, it really has an impact. When I was led into the chest ward at Sir Charles Gairdner Hospital in the 1970s, it was a horrifying experience to hear the rattling breaths of everyone as they took their last gasps, knowing that most of those men in there smoked. What concerns me is that in the future, in the medium term, the men in those wards will be overtaken by women, because tobacco advertising has been targeted at women - young women in particular - and it has been extremely successful. The surveys are starting to show that.

I now turn to my electorate and comment on the Royal WA Institute for the Blind. I am pleased that the Government has given it a transitional period to permit smoking in the bingo centre. For me personally, this creates some difficulties.

Mr House: In view of what the member just said, I should imagine it does.

Dr EDWARDS: It does. It is a place that I have visited on a number of occasions.

Mr House: Is the member saying that if they are blind, she does not mind?

Dr EDWARDS: No, I am not saying that. I am saying that a huge proportion of the institute's funding comes from its bingo. It could close down the bingo tomorrow. However, will the Government rescue the institute? Will it send the extremely disabled and intellectually handicapped people in the hostel out onto the streets?

Mr Barnett: So the member's principle evaporates if it is a matter of money involved for supporting the blind society?

Dr EDWARDS: Why does the minister not call me a liberal? Is that not effectively what he is doing?

Mr Wiese: When is the member coming over?

Dr EDWARDS: I will stay here, thank you very much. The issue with the Blind Institute is extremely difficult. I declare a conflict of interest. I am on the board of management of that institute. Therefore, to the extent that there is a conflict, that is declared. I obviously receive no benefit but a lot of headache from being on that board of management.

Mr Barnett: What is the member's position on bingo? Where does she stand on bingo?

Dr EDWARDS: I am pleased we have these transitional arrangements. For many years the institute has been working on putting in -

Mr Barnett: So the member is soft on passive smoking for bingo players?

Dr EDWARDS: No. I am being practical. I guess tonight I am quite aligned with the member for Joondalup. I hope the

Government will be practical as well. If it wants to close down the bingo tomorrow, it should go out and do it. However, the Government will not do it, because it is more reasonable than that. If the Government did that, many people who are employed there would be without jobs, and social security benefits would markedly increase. The people in the hostel would have nowhere to live. I do not know where they would be housed. Some of them have extremely difficult problems. The people in the independent living areas would also have nowhere to go. Until the Government gives more grants to institutions like the Royal WA Institute for the Blind, there will be conflicts like this. The bingo has a gross turnover of $4 million a year. In terms of the turnover of the institute, that is extremely significant. Having said that, I have had many conversations with people and staff at the institute. They are working hard on improving their ventilation units. They will all be in place in three years.

In conclusion, I have demonstrated on a personal level that this is a difficult issue. I feel strongly about it because of the problems of tobacco-related deaths and morbidity in the community. I personally appreciate the difficulties with this type of legislation; I have the problem in my own electorate. It is difficult to achieve a balance. Having said that, although I support the legislation, I also believe that it could go further, and I am hoping that in the upper House there will be some amendments that make it go further.

Mr House: In your medical experience, are there more people in hospital as a result of alcohol-related incidents or smoking-related incidents?

Dr EDWARDS: I do not know for sure. I think it would be smoking. However, ask an expert.

MR WIESE (Wagin) [9.38 pm] I want to take the opportunity to say a couple of things on this subject, because I had a reasonable involvement with the progression of this Bill before it reached the Parliament. I have a great deal of sympathy for the minister who has been given the responsibility of bringing this piece of legislation and the regulations that accompany it, to the Parliament. I suspect that the minister has inherited a problem which arose from the introduction of a series of regulations which were brought in under occupational safety and health legislation to try to ensure a safe working environment. Those regulations were brought in last year to ensure a safe working environment for people who worked in places such as hotels, clubs, pubs and the casino. We are now proposing to enact legislation and associated regulations which will have the effect of banning smoking in all public places. That is a considerable step forward from dealing with smoking under the occupational safety and health legislation, which dealt purely with workplaces, because this legislation deals basically with the whole community and all of the public places in the community, and it may be said that it bears absolutely no relationship to the original purpose of the regulations, which was to provide a safe work place for workers.

In my opinion, we will create many anomalies if we try to deal with the problems created by the Occupational Safety and Health Regulations by trying to stop people from smoking in public places. One example of an anomaly which will be created by this legislation is my shearing shed. That shearing shed falls within the definition of a public place. It is totally enclosed, and it is open to the general public during shearing operations and during my on-farm sheep sales. That shearing shed is specifically designed so that it has openings all around it and is adequately ventilated. The floor in about two-thirds of the shed has grates which have half-inch gaps between them to ensure that the manure can drop through, and also to ensure that the areas in which the sheep are held have adequate ventilation. The reality is that under this legislation, none of the workers, who have a traditional smoko at half past nine and three o'clock, and have their lunch at 12 o'clock, will be able to smoke in that shed. I can tell members unequivocally that my shearing shed is a far safer place to work than is any of the pubs or clubs for which this legislation will provide exemptions.

Mr Day: If it is used simply as a shearing shed, it will not be regarded as a public place.

Mr WIESE: It is not used simply as a shearing shed, as I have explained. It is used as a building in which we serve all the meals for the people who come to the on-farm sales, and to which all of our farm-stay guests are taken to see shearing operations. It meets the requirements of a public place. Literally dozens, if not hundreds, of shearing sheds will be in a similar situation.

Another example of the anomalies that we will be creating is the merino field days which are held all around the great southern of this State during late July and August. A great number of those sheep are shown in a huge tent or marquee which is probably 150 metres long and 60 metres wide, and that is totally open along the full length of one side so that the wind howls in. However, because that tent or marquee falls within the definition of a public place, no person will be able to smoke in that tent at any stage while it is being used for that purpose. That is the situation at Gnowangerup and Wagin, and also in a number of other places where merino sheep field days are held.

I agree that these situations may not be as serious as the situation with which we are trying to deal. I have no truck with people who smoke, particularly people who smoke in restaurants. I hate it. It is appalling. Nevertheless, that will be the effect of this legislation. I do not have a problem with the intent; I have a problem with what may result from those anomalies. One of the anomalies is how on earth it will be possible to police the legislation. Another issue is that while the regulations will provide exemptions to allow the public to smoke in workplaces such as hotels, clubs, restaurants, nightclubs and the casino, it appears to me that no attempt has been made to deal with the people who will be working in those venues.

I suspect that under the exemptions we will have the farcical situation where the smokers will be allowed to smoke like chimneys in those venues or sections of those venues, but under the Occupational Safety and Health Regulations, no-one will be allowed to work in those areas to serve those people. That problem does not appear to have been addressed, and I would like to know the answer to that anomaly.

It appears to me also that the definitions in the Bill and some of the situations which will be created by the exemptions that will be provided in the regulations contain a number of contradictions. Proposed section 289E, the interpretation section of the Bill, states in subsection (2) that -

> For the purposes of the definition of "enclosed public place" in subsection (1) it is immaterial that an existing closeable opening is open at any particular time.

The legislation creates the situation where no smoking is allowed in a public place. However, the regulations create specific exemptions with regard to, for example, covered areas. The exemption for a "covered area" states that where -

> One or more of the windows, doors or retractable coverings referred to in paragraph (c)(ii) of the definition of "covered area" in regulation 3 are open so that the covered area is not substantially enclosed.

Therefore, while the Bill states that it is immaterial that the existing closeable openings may actually be open at a particular time, so that it is an enclosed public place even if the doors and windows are open, the regulations state the exact opposite. There is a total and absolute contradiction between the two which may well create some real problems when dealing with the regulations in either the delegated legislation situation or the other place.

The other problem I raise, and I hope the minister will deal with it in his response, relates to a further complication with regard to bars or lounge areas or other exempt areas. In the regulations all these exemptions require that there be adequate ventilation. Eligibility for exemption is dependent upon that requirement. Adequate ventilation requirements appear to be not much more than a door or window in the building. The Australian standards state that for the purpose of meeting the definition of "adequate ventilation" the area must have -

(a) natural ventilation complying with F4.6; or

(b) a mechanical ventilation or air-conditioning system complying with AS1688.2 . . . .

I am told that virtually any old airconditioning units in existing pubs and clubs will meet the requirements of Australian standard 1688, because it is a very old standard. An old airconditioning unit that battles to tick over will meet the requirement.

To meet the requirement for natural ventilation, it is necessary to have only a window or door space of not less than five per cent of the floor space of the area required to be ventilated. That is pretty minuscule but it meets the requirements of the legislation. The problem I raise is that there appears to be no requirement for the airconditioning to work or for the doors or windows to be open. I hope the minister can clarify that. If I am right, all these places meet the requirement for adequate ventilation, in that they have a door or window, and it will not matter if they are closed. When a howling south wind or a south-west wind is blowing, all the doors and windows at the Highbury tavern are well and truly closed because they all open to the south. There are probably enough cracks in the building to provide adequate ventilation anyway! That will be the situation in most areas endeavouring to meet this requirement. On most occasions, except perhaps the middle of summer, the openings which are a requirement for natural ventilation under the legislation will not be open.

Although I commend the minister for introducing the legislation and for being very receptive to many of the suggestions made to enable this legislation to proceed, and I sympathise with him for the difficult situation with which he must cope, I am concerned that at the end of the day it may create as many problems as it solves.

My concluding comment relates to the enforcement provisions. I understand it will be the responsibility of local government to enforce the regulations under the Health Act. Despite protestations to the opposite effect, I do not believe that in-depth discussions have been held with local government as to whether or how it will enforce these provisions. No attempt appears to have been made to ensure that local government will have some financial recompense or financial ability to deal with the system of enforcement for which it will be responsible. I have a great deal of sympathy especially for local government in non-metropolitan Western Australia with regard to the enforcement of this legislation, bearing in mind that probably the most busy times and the times when there is greatest potential for breaches to occur will be outside the normal working hours of all the environmental officers employed by local government. It will happen after five o'clock at night, and in many pubs and nightclubs probably after 11 o'clock at night. If this legislation is to be enforced, local government will be lumbered with the cost of paying the overtime rates to those responsible for enforcing it. I do not think that should have been allowed to occur, and it needs to be addressed somewhere down the line to ensure that if local government has this responsibility, it receives some financial compensation for the extra costs being foisted on it.

MR DAY (Darling Range - Minister for Health) [9.57 pm]: I am pleased to have the opportunity to make some comments in response to the debate on the Health Amendment Bill, and I thank members on both sides of the Parliament for their

support. It has been an interesting and constructive debate, and significant issues have been raised. The range of views expressed in the debate reflects the range of views in the community about this legislation, bearing in mind that I think there is overwhelming support for the general direction this legislation is taking. It is significant legislation that will put in place controls on smoking in public places through legislative means, as opposed to the voluntary means that exist at the moment, albeit substantial progress has been made in the past 10 to 20 years in Western Australia through voluntary means and public education campaigns.

I know that some people feel this legislation should go further, particularly in the proposed regulations, and that there should not be the current range of exemptions in the legislation. However, it is important to recognise that the legislation and regulations the Parliament is putting in place will mean this State has the strongest smoking control regulations of any State in Australia. I emphasise the word "State", because I accept that the Australian Capital Territory has legislation which can be regarded as more restrictive, as far as smoking in public places is concerned, than that proposed in Western Australia.

I do not make the distinction because the Australian Capital Territory is a Territory as opposed to a State, but because conditions in the ACT are different from the broad range of conditions that exist in the three million square kilometres of Western Australia and, for example, in the metropolitan area compared with the front bar of a hotel at Wiluna, Fitzroy Crossing and elsewhere. Putting aside the ACT, Western Australia will have the strongest legislation of any State. I am aware that New South Wales has passed legislation to control smoking in public places. However, a significant complication is that New South Wales has not been able to agree on a suitable ventilation standard and the legislation cannot take effect until that happens. In any case, once that happens the legislation will not come into effect for five years after that time, so NSW is a long way from achieving the sort of progress made in Western Australia. South Australia also has similar legislation, but it applies only to public dining or cafe areas, including licensed premises, which does not cover the situation in hotels, whereas the Western Australian legislation will cover to a reasonable extent smoking in hotels, albeit some argue that it should go further. I am not aware of any legislation in any other Australian State.

Western Australia is putting forward progressive and significant legislation which is based on the fundamental principle, which is virtually universally accepted within scientific circles and widely accepted in the community as a whole, that tobacco smoke is potentially harmful. It is the most potentially harmful when people are actively smoking, but it is also widely recognised that it is potentially harmful when people inhale it in a passive manner; in other words, through not consciously wanting to inhale it themselves - albeit the risk is less than if somebody were smoking. As I said in the second reading speech, and as referred to by other members, a lot of completed scientific studies and literature reviews lead to the conclusion that environmental tobacco smoke is a potential health hazard.

A lot has been made of the progress in Western Australia over the past 10 to 15 years, and I acknowledge that a lot of that progress was made in the time of a Labor Government - in particular, the legislation put in place to prohibit advertising of tobacco products in almost all circumstances in Western Australia, and also the establishment of the Health Promotion Foundation, more commonly known as Healthway. Healthway has a significant budget of $15m to distribute to community organisations for health promotion activities generally. In its early years it also used its budget to replace tobacco sponsorship, particularly of sporting and arts organisations, which existed prior to 1990. Now we are taking another significant step forward. This legislation for the first time will put in place legislative controls on the ability of people to smoke in enclosed public places. Although this is a significant step forward, there will be further moves in future years to put in place further restrictions. We must accept that Governments can move only if they take the community along with them. The Government is providing leadership, and I acknowledge and am appreciative of the bipartisan support which is being shown for the steps that are being taken. In general terms Governments need to take the community with them and I have no doubt that further steps will be taken in the next five to 10 years to put in place further restrictions. That will occur because continued public pressure will be exerted and further scientific studies will be completed which will no doubt further highlight some of the risks associated with tobacco smoke. Together with that public pressure and legislative changes, we will see further progress made in future years.

The Bill is a straightforward piece of legislation with six clauses. The most significant clause is that which enables the Governor on the advice of the Government to make regulations under section 341 of the Health Act for the regulation or prohibition of smoking in enclosed public places. The Bill contains a range of other provisions which primarily put in place a number of definitions and which set the general framework for the establishment of the regulations and specify the maximum penalties which can be applied through the enforcement of the legislation. One of the significant provisions of the Bill is the clause which ensures a review of the operation and effectiveness of the legislation and the regulations as soon as practical after three years from the commencement of the new provisions. That is a significant inclusion that will allow everybody who has an interest in the issue - those who have concerns about the effect of tobacco smoke on the health of the community and individuals, or those with the perspective of business or hotel operators who have concerns about the practical problems in the detail of the regulations - to have those concerns heard. Their comments will be assessed and reviewed by the Government and the assessment will be tabled in both Houses of State Parliament. It may be that we will see some changes following the completion of that review in three to three and a half years' time.

It is also important to recognise, as has been pointed out, that section 19 of the Occupational Safety and Health Act is not

impacted upon by this legislation in any way. Section 19(1), which, in general terms requires an employer to provide and maintain a working environment in which the employees are not exposed to hazards, remains. That poses significant legal questions that employers will need to address. From my perspective as a layperson, anybody who has control of a workplace and who acts as an employer, and who allows smoking in that workplace, would need to think seriously about their responsibilities and possibly obtain legal advice to ensure they are not putting themselves in a position where they may be vulnerable to legal action from an employee who may acquire an illness. With the body of scientific literature and direct scientific studies which have been undertaken, there are some clear statements about which employers collectively should take some account.

Mr Wiese: Is the minister verifying with that statement the issue that I raised that this legislation will allow people to smoke in hotels, the main purpose of which is to serve drinks, yet people may not be able to serve in that workplace?

Mr DAY: The member for Wagin raises a significant point. It highlights the fact that the Bill we are debating and the regulations that will ultimately be put in place are intended to restrict smoking in enclosed public places. It does not directly go to the responsibilities of employers to employees. That is covered by the Occupational Safety and Health Act, which, although related, is a separate issue and one of which employers need to take some account. I am not here to give legal advice to employers; I would not pretend to have the training or expertise to do so.

Mr Wiese: People can smoke in public but they cannot serve beer in places where the public smoke.

Mr DAY: I was not saying that at all. I am not sure the member for Wagin came to that conclusion. We are talking about the possible harmful effects of tobacco smoke.

Several members expressed the view that we should go further with the proposed regulations and not have the range of exemptions which we propose to put in place. In the past couple of months there has been much discussion within government about the extent to which exemptions should be put in place. More particularly prior to that there was significant discussion in the public arena during the deliberations of the Task Force on Passive Smoking and also in the deliberations of the cabinet subcommittee on passive smoking. In the end, it is a judgment that the Government has had to make and ultimately that Parliament must make about how far we go with the exemptions. We have sought to achieve a balance between ensuring that there is an appropriate response to concerns about the presence of environmental tobacco smoke on the one hand and, on the other hand, to recognise that some people will continue to exercise their personal choice to smoke and that in some circumstances they should be able to do so, particularly in licensed establishments such as bars of hotels and, to a certain extent, nightclubs.

We can debate the degree to which we put in place those restrictions, and I accept that there will be further debate about that when the legislation goes to the other place, but in the end it is a matter of judgment. It has not been an easy issue to decide in some respects, but I make it clear that no substantial changes have been made by the Government within the past few weeks. Certainly, there were changes to take account of concerns which were expressed, and some sectors of industry would have preferred us to go much further, but following extensive consideration within government we made our decision, and I do not believe that the legislation has been substantially watered down.

The member for Fremantle referred also to the Tobacco Control Act, in particular the review of that Act which was completed in 1995. He observed that nothing had been done following the recommendations of the review which was undertaken three years ago and that there should be greater controls on point-of-sale advertising. That issue must be addressed. I assure the member for Fremantle that it will be addressed in the not-too-distant future.

It is accepted now that most of the recommendations of the review have been superseded by other changes in the approach to tobacco sales by organisations involved in the industry. I am advised also that there has been much discussion with other States as to what would be the most appropriate control mechanisms from now on. Western Australia is participating actively in those discussions and it would be premature to put changes in place before those discussions are concluded. It is important also to recognise that the Bill and the associated regulations which will control exposure to environmental tobacco smoke form a major step forward. There is a good argument that the Bill is more significant than any amendments that might be made to the Tobacco Control Act. Therefore, the preparation of the legislation has been a priority for the Health Department and the Government. Obviously, if we take up a range of issues at one time, none will be dealt with adequately or properly, so we have made it a priority to deal with and finalise the legislation. When it is completed, we will consider any possible changes to the Tobacco Control Act.

The member for Fremantle referred also to the funding of tobacco consumption educational campaigns. About four weeks ago, I was pleased to participate in the announcement of a substantial grant by the Health Promotion Foundation. From memory, a grant of $1m was made to enable great activity to continue with health promotion campaigns over the next three years or so, particularly to encourage teenagers to be aware of the dangers of smoking and not to take up smoking. A significant contribution will be made to target teenage schoolchildren. In addition to that project it is generally accepted these days that in order to change smoking behaviour in particular or other public health activities in general, there must be a multifaceted approach, including broad-based educational programs, so that awareness in the community generally is

raised. There must also be community development activities, the creation of environments to support change, and assistance for individuals where appropriate so that they can have access to practical assistance to enable them to make the necessary changes in their behaviour.

In the early 1980s most activity and funding was put into broad-based educational campaigns, in particular the Quit program in Western Australia. In the 1990s there is a more comprehensive approach, including broad-based campaigns such as the Quit program which is continuing very strongly. In addition, community development activities are funded by Healthway, in particular involving small grants to a wide variety of community groups for antismoking activities. More supportive environments are being established through sponsorship funds being provided by Healthway to major sporting and cultural organisations to replace tobacco sponsorship, on the condition that those organisations establish a smoke-free environment. There is also support for individuals, particularly through the Quit campaign and the Quit phone line, whereby resources can be made available to individuals to advise and assist them to stop smoking. Of course, in the end the decision can be made only by the individual, but from a government or community point of view we want to provide all possible assistance.

The current total funding which is made available is greater than that which was concentrated specifically on the Quit campaign in the 1980s, so we have a satisfactory situation in Western Australia in which a comprehensive approach is taken, albeit that some would argue that more could always be done in the health arena. In the past four months I have learnt that in just about every sphere we could always do more and could probably double the funding in a range of health sectors, but the amount of funds is increasing substantially every year in the Health budget and we are seeing some comprehensive programs as a result of the activities to which I have referred.

The member for Fremantle also raised a number of specific points. He advised that the Labor Party, together with other non-government parties in the Legislative Council, would seek to make some changes to the Government's legislation. He stated that smoking rooms should be established in places like the casino and nightclubs, so that smoking is not permitted in 50 per cent of places. That is certainly a suggestion which needs to be considered. As I said earlier, these are matters for judgment by government. A review will be established in three years to consider a range of issues. Judgments can then be made about whether further steps should be taken. A suggestion was made about a general power of discretion for the Minister for Health to provide exemptions on a merit basis if a convincing case were mounted. That has been resisted by the Government because it wants to send a clear message that the regulations will not be changed unless a strong argument is made. If someone suggested that a smoking ban in a building such as the Royal WA Institute for the Blind's bingo centre, in which a sophisticated partitioning structure has been placed between smoking and non-smoking areas, would have an adverse impact on that charitable organisation, the Government will consider it. However, we do not want a range of smaller organisations without physical partitioning seeking exemptions on a frequent basis. We want to send a clear message. I am sure that the Opposition is keen to support the delivery of that clear message that the regulations will not be changed easily or lightly. In other words, the Government will not water down what it puts in place without some strong argument.

Other points were raised by the member for Fremantle. No doubt further debate will ensue on those issues in the Legislative Council. I thank the member for Maylands particularly for her support for the exemptions for the bingo centre for the Institute for the Blind. This was a reasonable decision made by the Government following a visit by the Minister for Disability Services and me to the bingo centre. We saw the set-up and quickly gained an understanding of what the impact on that organisation would be if a complete prohibition on smoking were applied early next year. The Institute for the Blind has adopted a responsible attitude to the issue and has spent a great deal of money to ensure that those who want to play bingo and not be exposed to tobacco smoke can do so.

The member for Wagin referred to his shearing shed and presented a couple of scenarios. Firstly, he asked about the situation when the shearing shed was open to the public at a clearing sale or some other community type activity. It is correct that in such circumstance it would be regarded as an enclosed public place, and smoking would not be permitted inside the shed. However, when shearing is being carried out by subcontractors or employees in the normal operation, it would not generally be regarded as a public place. The public does not have access, unless it is welcomed in by the owner or operator of the property -

Mr Wiese: The wool buyer could come in - he is welcomed in!

Mr DAY: Especially if he is paying good prices. When smoking occurs in the normal course of events, the shearing shed would not be considered an enclosed public place; it is a workplace, and the regulations under the Health Act would not prohibit smoking. However, it will be necessary to take account of the Occupational Safety and Health Regulations which ultimately are to be amended to comply with the Health Act regulations. As I said earlier, section 19 of the Occupational Safety and Health Act needs to be borne in mind by employers.

The member for Wagin also raised questions about ventilation standards, and expressed concern that it may not be necessary for mechanical ventilation to be operating or windows to be open under those standards. My advice is that the draft regulations state that an area needs to provide adequate ventilation. This goes further than the building code itself. In other words, it states that the ventilation needs to be operating properly so it provides adequate ventilation, rather than being provided and not being turned on. It would mean in theory at least that windows would need to be open, although it does

not specify by how much. However, ultimately it is a question of commonsense. When forced, a judgment will be made on whether sufficient ventilation was provided. A matter may involve a cold winter's night in which the people of Highbury want to warm themselves near a warm fire in the tavern.

The question was also raised about the involvement of environmental health officers in enforcing this legislation and concerns expressed by the Western Australian Municipal Association. Like other members, I have received correspondence from WAMA. We will consider its points of concern. Generally, a heavyhanded approach will not be taken with the enforcement of this legislation. Substantial progress has been made in recent years. A range of places are smoke free as a result of public pressure and changes in attitudes by occupiers of buildings and operators of businesses. Ultimately, the role of environmental health officers will be in education.

It is essential that the legislation provide for enforcement in the event that it is needed. If a prosecution is required, it will need to be made by the executive director of public health of the Health Department. That will ensure a consistency in approach in prosecutions across the State. In addition, if prosecutions are required, the Health Department will take on that responsibility and fund such prosecutions. It is also important to recognise that the Health Department will put in place a significant education campaign, with both the general public and environmental health officers. Training will be provided throughout the State by the Health Department to assist in that process. We will have a workable situation. Obviously, some issues will need to be addressed following the practical operation of the legislation. With a certain degree of commonsense and goodwill on all sides, we will see workable legislation in place.

I welcome support from the Australian Institute of Environmental Health for this measure, and for the role that the environmental health officers will play in the education and enforcement processes, if needed. I was pleased to see a media statement released in the last couple of days from the Australian Institute of Environmental Health, which read in part -

> The institute is strongly supportive of the spirit of the legislation, which is an amendment to the Health Act. However, it is opposed to any watering-down of the proposed legislation which might reduce the health benefit to the people of Western Australia.

The president of the institute, Mr Owen Ashby, is quoted as follows -

> "This is a significant step forward for public health - and the right of the individual not to suffer the effects of passive smoking", . . .
>
> "Our members are key players at local level who can help the public and industry make this cultural move towards a healthier environment."

That is a progressive and positive statement from the Australian Institute of Environmental Health. It indicates that its members are keen to get behind the legislation to improve the health outcomes of the community of Western Australia, and to reduce the negative effects of tobacco smoking. With those comments I thank members once again for their support of the legislation and I look forward to its ultimate implementation.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.

APPROPRIATION (CONSOLIDATED FUND) BILL (No 3)

Second Reading

Resumed from 19 November.

MS WARNOCK (Perth) [10.30 pm]: I began this speech some days ago and seek to continue. I see that seven minutes remain to me. I spoke on that occasion about homelessness in the inner city, and about the East Perth Redevelopment Authority and some problems that existed there with constituents. I spoke about prostitution in the Northbridge area, an issue about which I have been concerned for some time and which continues to trouble my constituents. I began to speak about the need for a 40 kilometre an hour speed limit zone in the Northbridge area. That matter not only had been brought to my attention by restaurateurs and others in the area but also was highlighted by the fact that there had been a serious collision involving a CAT bus and a car in relatively recent days. This emphasised for the people in the area how important it was to reduce the speed of vehicles travelling through that area. Last weekend I saw Mal Bennett from Mamma Maria's Restaurant and he said that they were still waiting for the 40 kmh zone to be implemented in Northbridge. He understood that although it had been approved, they were still waiting for either Main Roads or the city council to complete that work. I reiterate the matter that I drew to the attention of the House at that time, because not only Mal Bennett from Mamma Maria's but also people from the Dome coffee shop at the corner of Lake and James street - the hub of Northbridge - have been nervously watching for some time the increasing speed of vehicles passing by which they believe endangers the people sitting in cafes in that area. They are concerned also about the sheer number of pedestrians who use the area on weekends and they continue to urge the placing of 40 kmh signs there to reduce the speed of traffic through that area. When I saw some people on the weekend, I agreed that I would again draw the attention of the House to that matter.

The only remaining matter I want to address is not so much about my electorate but rather about an area of my shadow portfolio; namely, the women's prison at Bandyup. I attended a meeting last week in Perth where a number of different women's groups in the area - Aboriginal, prisoner advocate and others - met to discuss the problem of the evident overcrowding at Bandyup and the fact that minimum and maximum security and remand prisoners were housed together in the one women's prison in this State. There was a further meeting that night at Pyrton, the suggested new site for a minimum security prison. Although I did not attend that meeting, I understand there was vigorous discussion about the Government's evident decision to establish a minimum security prison on that site. This matter has concerned me for some time because people have been drawing it to my attention. They have drawn to my attention that for some time the muster at Bandyup has been about double the number for which the prison was built in the 1970s; that women there have been sleeping four to a room; mattresses have been placed in public rooms; the conditions are appalling; and something needs to be done quickly about that matter. I know that this has been a matter of concern to the Government for some time; however, there seems to have been an enormous amount of opposition locally to the choice of the Pyrton site. At the meeting that I attended last week objection was expressed both from Aboriginal people, because of the significance of the site, and also from residents who live around the area who made it clear that they did not support that institution being used even as a minimum security jail for women. They drew to my attention a number of points at the meeting; that the Bandyup prison should be used as a maximum security prison only; and something dramatic should be done about reducing the numbers in that prison because of the inhumane conditions which exist there. They asked that low security prisoners be found alternative accommodation immediately and that those on less serious charges, such as unpaid fines and debts, be released on home detention. Several people mentioned that it was a great regret to them that numbers of women - on charges such as social security fraud and unpaid traffic fines which they had not been able to pay - had been placed next door to and in close contact with violent criminals and murderers, because of the sheer numbers of people there. They asked that emergency funds be allocated immediately and action be taken to educate and train more prison and parole officers. They asked that courts review sentencing procedures and be encouraged to give less harsh sentences to women and children and stop sending to jail women who commit non-violent crimes and first offenders of minor crimes. A number of speakers at the meeting made that point.

Mr Minson: Do you think that should extend to male prisoners as well?

Ms WARNOCK: What, home detention?

Mr Minson: No, those who commit non-violent offences should not be sent to prison.

Ms WARNOCK: I think there must be alternatives to prison for unpaid traffic fine offences.

Mr Minson: You are talking about women prisoners. I just wondered whether you felt the same about male prisoners.

Ms WARNOCK: I do, frankly. There are far too many people in prison for non-violent crimes.

Mr Minson: I am not sure what else to do about them.

Ms WARNOCK: I wish I had longer to speak about it. Perhaps we could talk about it during the sentencing legislation this week as it is a very interesting subject. To the member across the Chamber who is interested in discussing the sentencing matter, I agree that the sheer number of offenders in this State is a serious problem. I am utterly supportive of violent offenders being locked up. Indeed, I perhaps have a tougher attitude on that than some others on this side of the House. However, we must find some other way of dealing with people who have been convicted on charges of unpaid traffic fines and end up in jail like one of the speakers at the meeting the other night. It seemed unreasonable to me that that woman, who could not pay a traffic fine for various reasons related to the loss of her job, should be side by side with murderers and armed robbers. That is not at all appropriate. I know this is a problem throughout Australia as we put more and more people in prisons. We must seriously seek other ways of dealing with people who are non-violent offenders. As I say, perhaps we will have an opportunity to talk about that when we discuss the sentencing legislation in the House this week.

People might say, "Okay, you don't like the Pyrton site. What are you suggesting?" Other people at this meeting suggested using the Noalimba migrant centre. I am not sure what that is used for currently. However, the suggestion is that this should be a place to house low security prisoners until such time as an alternative place is built. Others suggested that building something beside the Bandyup prison of a low security type also would be the way to go. Someone else suggested Woodman Point quarantine station.

Mr Thomas interjected.

Ms WARNOCK: That is in the electorate of the member for Cockburn.

Other speakers at the meeting suggested that there were other, no-longer-used correction facilities in the community that could perhaps be updated and improved to be used for low-security prisoners. I am not suggesting that we put violent offenders anywhere near residential areas in Perth. I am merely suggesting that we might look for better alternatives for low-security prisoners.

Mr Thomas: What about the old Sunset Hospital?

Ms WARNOCK: That was another suggestion made at the meeting. A number of people suggested the Sunset Hospital as a possible alternative site. Some members in this House probably do not share that view. Critics of the over-crowding and the conditions at Bandyup Women's Prison referred to matters that are probably familiar to members of this House. They said that the prison was so crowded that prisoners now have two sittings for meals and no recreational area whatsoever. I emphasise that we dealing with not only people who are being punished for violent and serious crimes such as murder, but also remand prisoners who have not been found guilty of anything. Some have young families which makes the type of incarceration available to them even more repressive. Even people who are not passionate advocates of prisoners' rights would be quite shocked if they had to experience a day in an overcrowded and unsuitable prison like Bandyup, which was built way back in the 1970s.

Having attended that meeting, I undertook to relate those matters to the House on behalf of the women at the meeting. Having done that, I will leave the matter and perhaps seek to discuss it again when we come to the sentencing legislation later in the week.

MR BROWN (Bassendean) [10.41 pm]: I wish to use the opportunity presented by this Bill to raise a travesty of justice on behalf of two of my constituents, Mr and Mrs Greg and Eugenia Mavromatidis. I want to provide the background to this matter and then go through the judgments of the court to indicate the travesty that has occurred. Earlier today I spoke about this matter to the Minister for Police who, as we are all aware, is the representative of the Attorney General. I am indebted to the fact that the minister is in the Chamber tonight to listen to what I shall say and no doubt to make comment on it, which I invite him to do by way of interjection at the appropriate time. Perhaps he will then raise the matter with the Attorney General.

I quote first from a letter that was sent by Eugenia Mavromatidis to the District Court; it is a fairly long quote, Mr Acting Speaker (Mr Baker), but it provides the setting for what ultimately transpired in court. It reads -

> My name is Eugenia Mavromatidis and I write to you now with feelings of resentment, anger, and frustration at what I once thought was a fair and just judicial system in this country, but six years and thousands of dollars later over a simple 'open and shut' case, we effectively have been made scapegoats of mistakes, errors and glaring anomalies that occurred right throughout this whole matter, at virtually every level of the Judicial system.
>
> We own two small shops in South Guildford. Before the tenants in question entered our premises, shop #1 was empty at the time, and shop #2 was leased to another tenant for a period of 5 years, from 1987-1992. The tenants took over the lease from the previous tenant in 1991 for the remaining period of the lease (18 months) and had a similar lease drawn up for shop #1 with the option of a 5 year extension on both shops. I have to add here that before they began to operate their business (which was a cafe), we allowed them a period of over six months completely free of any costs.
>
> During the lease period of eighteen months (January 1991 - July 1992) the tenants were very difficult and refused to pay any outgoings under the leases, and rent was behind most of the time. At the expiration of the leases in July 1992, the tenants were over $5000 in arrears of outstanding outgoings, and we refused them an option unless the arrears were paid. We gave them ample opportunities to sort themselves out but they refused them all, so the matter went to the Local Court in November 1992. Unfortunately for us, before proceedings went any further than the registrar, we took the advice of our lawyer and offered them another chance, and around May 1993 after a series of discussions, an agreement was reached, and the dispute was resolved with the provisions that:
>
> A new lease for both shops was to be drawn up
>
> Discontinue the action in the local court, with the payment to us of $1600 towards our legal costs
>
> No increase in the rent for the next year with the provisions that they pay the strata levies from then on.
>
> After a lot of stalling and constantly changing details of the lease, it became obvious that they were not going to sign the lease, and once again they continually defaulted in their payments. After everything we did e.g. free periods, constant negotiations all in vain, and after all the hard times they had given us over three years, we weren't prepared to let them stay on our properties without a lease and without paying, and frankly we don't know anyone that would, or could afford to let them stay without paying. We deserved better tenants that didn't give us so much trouble.
>
> Once again we went to the local court to resolve this problem and it was heard by Magistrate Ivan Brown. After we made our position clear that there was no room for negotiation, and that we wanted them out . . .

I can go on with the letter but let me go to the decision of magistrate Brown. This is a decision in the Local Court with the reasons published on 27 February 1995. It comprises three pages. On the first page, under the heading "Reasons for Decision", the magistrate says -

> This court has before it a summons issued on 24/1/95 seeking that the defendants show cause why they should not be ordered to give up possession of premises being Shops 1 and 2, at 152 Queens Road, South Guildford, and also to pay in excess of $12,000.

The magistrate then refers to the affidavits before the court and so on. He then records -

> The defendant seeks an order to transfer the matter to Commercial Tribunal (S.27/2) or an adjournment to allow time to file affidavits in reply.

The defendant therefore sought in these proceedings before the magistrate to have the matter referred to the Commercial Tribunal.

Mr Prince: Is that an application for summary judgment?

Mr BROWN: It was an application for termination of the lease and payment of outstanding funds.

Mr Prince: I was inferring from what was said that the defendant had not filed an affidavit in response. The application was for the possession of land, with affidavits in support.

Mr BROWN: The minister is quite right. At that stage no affidavit had been filed by the defendant. That is observed by the magistrate. The magistrate records -

> It is common ground that in a letter of 13/1/95 the Defendants' Solicitor said they may refer the matter to the Commercial Tribunal which was established in 1984/85.

I want to quote three paragraphs because they are important in terms of the magistrate's decision. They read -

> It is clear that plaintiff elected to proceed in Local Court later in January 95, wanting this matter to be resolved quickly. The desire for a prompt resolution is understandable where unlawful occupation is alleged.
>
> The plaintiffs' proposition is that this court should adopt a robust approach and proceed to hear this matter today. That is at first glance appealing. The Local Court traditionally does provide early hearing date, decision that day, or shortly after if the court elects to take time to consider the matter. However because the civil jurisdiction of this court is now $25,000 it is common to deal with quite complex matters of fact and law and accordingly this Court needs to take a more cautious approach and ensure actions are heard and determined in a judicial manner.
>
> It is my view that where an application under sections 103 or 99 is brought in regard to commercial premises, this court has to recognise that Parliament has specifically provided for disputes in commercial property and shops to be dealt with in a tribunal (not a Court). I accept it is not an exclusive jurisdiction.

Here the magistrate is starting to deal with whether he should deal with the application himself in the District Court or refer the matter to the Commercial Tribunal. The plaintiff's lawyer had raised questions about the powers of the Commercial Tribunal to deal with this matter. Indeed, in his submission to the local court he said that he was concerned about the matter being transferred to the Commercial Tribunal because of the lack of power of that tribunal to deal with the matter. In response to that the magistrate said -

> As to concern re powers of the Tribunal, I consider that S.26 of the Act is sufficient to suit the circumstances:
>
> It allows -
>
> (a) an order for money to be paid;
> (b) it may order a party to do anything.

Then in brackets, which are the magistrate's own words, are the words "(include vacate the premises)". He then says -

> Having considered all factors I am satisfied the matter should be transferred to the Tribunal.

He then orders -

> Order (1) Pursuant to S.27(2) these proceedings are transferred to the Registrar of the Commercial Tribunal for determination.

The magistrate in this case has referred the matter to the Commercial Tribunal, contrary to the view of the lawyers representing the landlord, who wanted the matter dealt with in the local court. They raised concerns about the powers of the Commercial Tribunal to deal with these matters. Notwithstanding that the magistrate referred the matter, in doing so he took some account of the defendant's position in asking that the matter be referred to the Commercial Tribunal. The matter went to the Commercial Tribunal and the parties agreed it would be heard by the chairperson alone, Mr Burton. He made two judgments. The first judgment of the chairman is dated 13 June, 1995. The second paragraph of his decision reads -

> Part of the matters before me commenced as a plaint and summons in the Midland Local Court by the landlord to recover possession of the rented premises and certain outstanding sums for rent, strata title levies and rates and taxes. That matter has been transferred to the Commercial Tribunal.

That shows the linkage and transfer from the local court to the Commercial Tribunal. At page 2 of the chairman's decision he outlines the nature of the dispute between the parties as follows -

> Generally the dispute is that the applicant seeks possession and payment of certain sums of money outstanding. The defence is that some or all of the sums outstanding are not payable as they infringe the Commercial Tenancy (Retail Shops) Agreements Act 1985.

We can see from that the argument related to whether certain sums were due. The chairman then made some findings in general. He found for the respondent in terms of being entitled to a refund of strata title levies and for the applicant in terms of payment being made for outstanding rent to date and for legal costs. He also made a determination for the applicant in terms of interest. They were not specific rulings. That was the judgment. Further submissions were made in terms of what the order should deal with. That was dealt with by the chairman on 11 July 1995.

In his further determination, the chairman ordered possession on 13 July 1995 to the applicant; that the respondent restore the premises to the original state, which should now be almost completed; that the respondents pay to the applicant $3 990 in outstanding rent, water rates of $1 330.60 plus interest, $187 land tax plus interest, $1 093 for outstanding shire rates plus interest, legal fees of $4 598.29 which includes interest, and pay the applicants' costs as taxed; and the respondents were to have a credit of $3 800 for strata title levies paid. Therefore an accounting matter needed to be determined in terms of the amount due.

The first travesty in this case was that the tribunal made a mistake in finding that the respondents - that is, the tenants - had a credit of $3 800 for payment of strata title levies, which they had paid, and which the Commercial Tribunal said they did not have to pay. In fact, the amount paid by the tenants was $1 400. However, the amount that was being claimed by the landlords was $2 400. Somehow, unbeknown to anyone, the Commercial Tribunal arrived at the conclusion that an amount of $3 800 which the tenants were deemed to have paid in strata title levies was due back to them. That amount was never paid. Indeed, all that was paid was $1 400. The other figure was an amount of a claim. On that finding alone they were $2 500 out of whack.

Mr Prince: That is an accounting error. I understand the summary was that the landlords were successful in obtaining vacancy of the property and money owed to them, but not on the strata title levies.

Mr BROWN: In every other respect they were successful. On the strata title levies they were not successful, and to add insult to injury the figure was wrong and they were lumbered with another $2 500 to pay. If the matter had ended there they could probably have worn $2 500. However, the matter did not end there. It then went to the District Court.

Mr Prince: By the tenant?

Mr BROWN: Yes, the tenant appealed. There were many grounds of appeal, but the key ground of appeal was that the Chairman of the Commercial Tribunal erred in law in concluding that the Commercial Tribunal had jurisdiction to order possession of premises once a lease had been terminated. The defendant goes to the Local Court and says to the Local Court, "Mr Local Court, please do not hear this matter. This should be heard by the Commercial Tribunal." The Local Court says, "Yes, it should be heard by the Commercial Tribunal." Mr and Mrs Mavromatidis who were ordinary citizens - they are not lawyers - say, "We have been told by the court to go to the Commercial Tribunal. We have real concerns about that", which they raise before the magistrate through their lawyer. Their lawyer addresses the magistrate about the powers of the court. The magistrate says, "No, you go to the Commercial Tribunal. The Commercial Tribunal will deal with this matter." They then go to the Commercial Tribunal and argue the facts of the case. By and large they win the case, apart from the mathematical error. They win it in fact and in terms of the detail except for that mathematical error. Then there is an appeal. The essence of the appeal is, "Bad luck, wrong jurisdiction." The matter is then argued. It goes on and the District Court's judgment was -

> The principal grounds of appeal are that the Chairman had no power to order forfeiture but if he did have such power it ought to have been exercised in a manner in which courts are required to approach such questions and consider whether relief against forfeiture for non-payment should be granted.

There were two issues: Firstly, he did not have power; and if he did have the power, he did not go about it in the right way. The District Court judge then found as follows -

> I find that the Act did not give the Tribunal jurisdiction to determine the tenancy or to make an order for re-entry and accordingly the order for re-entry is invalid and will be set aside. The appellants must succeed on this ground of appeal.

These are some ordinary people taking advice, going to the courts and saying, "We are prepared to argue this matter in merit,

and we think the merit is on our side." They go to the Local Court and are told, "No, this is the wrong jurisdiction, go somewhere else." They go to the other place, argue it and win. Then it goes back to the District Court that says, "Notwithstanding you won, you actually lose because you went to the wrong place." They say, "We were advised by your magistrate that that place was the right place." They are told, "That's bad luck." There are two problems with that: Firstly, all the orders of the Commercial Tribunal are set aside; and, secondly, they have lost so they pay the costs. On advice, they took the matter on appeal to the Supreme Court and the Supreme Court confirmed the decision of the District Court.

Mr Prince: Which you would expect it to.

Mr BROWN: Yes. These are ordinary people whose faith in the judicial system has been shattered by this experience.

Mr Bloffwitch: Would yours not be?

Mr BROWN: Absolutely, it is. I raise the matter here because I raised it briefly with the Minister for Police -

Mr Bloffwitch: I hope you know who was the magistrate.

Mr BROWN: Magistrate Brown - no relation of mine!

Mr Bloffwitch: Are you sure?

Mr BROWN: I am absolutely positive - no, I guess I cannot be positive because I have not done the family tree. It is a bit hard when one's name is Brown.

I consider this to be an absolute tragedy and a travesty of justice for these people. I know both Mr and Mrs Mavromatidis. They are genuine, ordinary people who took what they considered to be an ordinary dispute to the appropriate court and who have been failed by the system.

Mr Prince: Are the tenants still there?

Mr BROWN: No, they are not.

Mr Prince: We are dealing with a question of possession of property with the monetary fall-out from all this mess.

Mr BROWN: Yes. What has happened is absolutely dreadful. These people do not own the Galleria. These are pensioners who have a small income stream from the couple of shops that they own.

Mr Prince: I brought to your attention the Suitors' Fund Act, which may be applicable to the appeals to both the District Court and the Supreme Court from the point of view of obtaining an indemnity from the suitors' fund for the cost of those appeals being on issues of law. That is something that should be looked into. I am more than happy, particularly when the *Hansard* of your speech is available, to put that before the Attorney General and ask that he and his officers look into it to see whether something more can be done.

Mr BROWN: I thank the minister for that; I appreciate it. I feel very strongly about this issue because this is a travesty and it has happened to people who have taken advice on the matter. It is different if one has a lawyer who is seeking to make his name in running test cases and doing all sorts of things.

Mr Prince: It seems that in this instance their lawyer was prudent and said, "It really should stay here", but the magistrate said, "No, it should go somewhere else." That is the origin of a mistake in law at that time.

Mr BROWN: I thank the minister for that. As we all know, the yellow weekly *Hansard* will be available next week and I am happy to make copies of all of those judgments available to see what may be able to be done.

Mr Prince: I would be obliged if you would because it would help me. If you can let me have copies of the original magistrate's reasons for decision, those of Mr Burton in the Commercial Tribunal, and the appeal judges in the District Court and in the Supreme Court, together with the *Hansard* of your speech, I will ensure that the Attorney has that and I will ask him whether he or his officers can look further into the matter. In the meantime I suggest the member look into the possibility of the suitors' fund being able to be applied against full indemnity in relation at least to the cost of the exercise. I am not sure whether it applies, but it is something that came to my mind when the member mentioned it to me earlier.

Mr BROWN: I appreciate that.

I turn now to another matter that concerns my constituency and I would be remiss not to mention it. Since the last occasion when I had to get on my feet in this place, the Minister for Justice and the Attorney General have decided to place a prison in my electorate. There is nothing innately wrong with prisons - they must go somewhere - but the people of Bassendean, Success Hill, Eden Hill and Lockridge object very strongly to its being placed smack bang in the middle of a residential area. It is true that the area around Canning Vale Prison is all suburban. However, the difference is that when Canning Vale Prison was constructed, the closest house was 6 kilometres away.

Mr Prince: You cannot make that argument in relation to Fremantle prison. Fremantle prison was built smack in the middle of a residential area.

Mr BROWN: It was; it was built there 100 years ago.

Mr Prince: The Pyrton prison will be for minimum security females; we are not talking about maximum security.

Mr BROWN: When the Government looked at putting a minimum security prison at Canning Vale, major public meetings were held at Canning Vale. The Minister for Youth would know; he was there and I was there. At the end of the day, the Government did not put it there. The reason was that people at a number of those meetings said, "We are not worried about a maximum security prison in our area, because how many escapes have there been?" In the past 20 years since Canning Vale Prison was built, how many escapes have occurred? There was one escape at Canning Vale Prison when it was first constructed when a prisoner was smuggled out in a car. Other than that, there has been one escape. The people of that area are not concerned. They say they are not worried about that because there have been only two escapes, one of which occurred in the first month of operation, during which those sorts of mistakes can occur. That is not the case for minimum security institutions. This prison does not have big buffer zones around it. It is to be located at the edge of Success Hill and right in the middle of those three suburbs. The Shire of Swan and the Town of Bassendean, and the local councillors in both wards that abut it, are opposed to it; so is the local community. The Minister for Justice says that the surveys done by the Ministry of Justice indicate a different response from the community; however, a very extensive survey by the Town of Bassendean showed very strong opposition. I hope - maybe it is forlorn - that before the matter goes much further the Attorney General can revisit that decision. The people in Eden Hill, Bassendean and Lockridge intend to campaign very strongly against this proposal.

Mr Bloffwitch: Wasn't it a mental institution before that?

Mr BROWN: No. It was a Disability Services Commission facility.

Mr Bloffwitch: The people there were a little worse than disabled.

Mr BROWN: No.

Mr Board: The member for Bassendean will recall the decision the previous Labor Government made on Rangeview.

Mr BROWN: That is right. The buffer zones around the Rangeview Remand Centre, compared with those at Pyrton, show that Pyrton will be right next door and right at the back fences, and that is why people are objecting.

Mr Prince: You look forlorn to me, so I will make sure the Attorney General gets a copy of your remarks.

Debate adjourned, on motion by Mr Cunningham.

House adjourned at 11.12 pm

QUESTIONS ON NOTICE

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

DIESEL SPILL, MENZIES

793. Dr EDWARDS to the Minister for Energy:

(1) What are the results of Western Power's latest tests in relation to the underground diesel spill at Menzies?

(2) Has Western Power concluded its investigations into this underground diesel spill?

(3) If so, what action is proposed arising from the Western Power investigations?

(4) If no to (2), when are these investigations expected to be concluded?

(5) Has advice been received from the Department of Environmental Protection (DEP) in relation to this diesel spill?

(6) If so, will the Minister table a copy of that advice?

(7) If not, why not?

(8) Has advice been sought from the DEP in relation to the diesel spill at Menzies?

(9) If not, why not?

(10) Has it been determined who is responsible for this diesel spill?

(11) If so, what action is intended to be taken against the perpetrators of this spill?

(12) If no action is intended to be taken why is this the preferred course of action?

Mr BARNETT replied:

(1) The fuel leaked from an underground pipe over a period of time at the Menzies power station. Investigation to date has shown that the fuel has collected in a layer of fractured rock beneath the station. No town groundwater supplies are affected. Preliminary results suggest that some of the fuel may be recoverable. Further investigations are currently underway.

(2) No.

(3) Not applicable.

(4) Over the next two months.

(5) No.

(6)-(7) Not applicable.

(8) The Department of Environmental Protection (DEP) was notified of the leak as soon as it became known and has been kept advised of proceedings on the matter by Western Power.

(9) Western Power has been liaising with the Water & Rivers Commission on all actions taken in relation to the fuel leak. In an 18 November 1998 meeting between Western Power and the Water & Rivers Commission it was agreed that the groundwater beneath the Menzies power station is of very poor quality, being highly saline and unsuitable for irrigation or stock purposes. Further, the site is isolated from water supplies for the town and the fuel leak does not pose a risk to any water resource. On this basis it was agreed that the issue was more one of environmental management than of protection of a water resource and that the Water & Rivers Commission would pass their role of lead adviser in the management of the issue to the DEP. A meeting will be held with the DEP in December 1998 with regard to further management of the issue.

(10) The fuel was not "spilled" by a negligent action - it leaked from a failed pipe.

(11) As there was no "perpetrator", no action against any individual is planned to be taken by Western Power in relation to this event.

(12) See (10) and (11).

ROYAL ASSOCIATION OF JUSTICES OF WA, ELECTION

963. Mr RIEBELING to the Minister representing the Attorney General:

In relation to the Royal Association of Justices of Western Australia at its last election -

(a) has the Attorney Generals' office received any complaints about the conduct of the election;

(b) is the Attorney General aware of any candidates using Ministry of Justice departmental photocopying equipment;

(c) is the Attorney General aware of any candidates that utilised the Government mail system;

(d) is the attorney General aware of any candidates that used Government envelopes to mail out information;

(e) was any candidate given permission to utilise photocopying or the Government mail system in the election; and

(f) if so who and why?

Mr PRINCE replied:

The Attorney General has provided the following reply:

(a) I am aware of a complaint and have referred them to the Royal Association of Justices.

(b) Yes. It was discovered that one candidate had used a photocopy machine in the Central Law Courts to produce 100 copies for private use.

(c)-(e) No.

(f) Not applicable.

GOVERNMENT DEPARTMENTS AND AGENCIES

Use of Private Investigation Agency

1061. Mr RIEBELING to the Parliamentary Secretary to the Minister for Justice:

(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 van de KLASHORST replied:

The Minister for Justice has provided the following reply:

(1)-(4) I refer the member to my answer of 24 November 1998 to Question on Notice 1043.

GOVERNMENT DEPARTMENTS AND AGENCIES - CONTRACTS WITH EMPLOYER ORGANISATIONS

1112. Mr KOBELKE to the Deputy Premier; Minister for Commerce and Trade; Regional Development; Small Business:

(1) Have any departments or agencies within the Deputy Premier's portfolios, let or made contracts, grants, or secondments, since 1 July 1997 to the Western Australian Chamber of Commerce and Industry, or any other employer organisations or bodies controlled by an employer or industry organisation?

(2) If yes, what are the details of each case including -

(a) the department or agency involved;
(b) the recipient of the contract, grant or secondment;
(c) a description of the purpose for the contract, grant or secondment; and
(d) the value or cost of the contract, grant or secondment?

Mr COWAN replied:

(1) Yes.

(2) (a) Department of Commerce and Trade

(b)-(d) See below. The Department of Commerce and Trade has made the following grants to organisations that may fall within the member’s definition since 1 July 1997:

Recipient	Purpose	Amount
Port Hedland Chamber of Commerce	Project Mainstreet funding for first year	$20 000
Merredin Chamber of Commerce	Project Mainstreet funding for second year	$20 000
	Project Mainstreet funding for third year	$10 000
Esperance Chamber of Commerce and Industry	Running of community workshop	$1 000
Dongara Denison Chamber of Commerce	Running of community workshop	$982
Bridgetown Greenbushes Chamber of Commerce	Rural Show grant	$1 393
	Promotion of South West Expo	$5 000
WA Goat Meat Industry Council	Regional Initiatives Fund grant - production of a marketing plan	$15 000
Bunbury Tourism Board	South West Regional Visitor Centre	$4 550
Pastoralists & Graziers Association of WA	Airfare for delegate to attend 68th Annual Conference	$1 427
South West Chamber of Commerce	Sponsorship South West Focus ‘98	$5 000
	Regional Exhibition Proclamation	$2 500
Chamber of Commerce and Industry of Western Australia	Sponsorship and Industry promotion (SPIN) funding for the Western Australian Trade Enquiry Service	$15 000
Fremantle Fishermen’s Cooperative	Export Market Support Scheme (EMSS) funding	$975
Housing Industry Association	EMSS funding	$329
Kalgoorlie-Boulder Chamber of Commerce	SPIN funding - airfare for guest speaker to attend Mining Expo	$2 618
WA Korean Chamber of Commerce	EMSS funding	$649
WA Chinese Chamber of Commerce	SPIN funding - sponsorship of annual dinner dance	$4 000
	SPIN funding - sponsorship of Coffee Shop Forum	$5 000
WA Shipbuilding Association	SPIN funding - participation by the Association in the Careers Expo ‘98	$1 500
WA Music Industry Association	SPIN funding - contribution towards the production of a compact disc to showcase the WA music industry	$20 000
Wine Industry Association	EMSS funding	$535
	EMSS funding	$3 000
	EMSS funding	$50 000
Australian Computing Society	Sponsorship of the Western Australian Information Technology Awards	$3 500
Australian Institute of Export	Contribution towards the Sir Charles Court Award for export studies	$1 400

Australian Thailand Business Council (ATBC)	Sponsorship of the ATBC business conference	$4 500
Institute of Metals & Materials Australia	Sponsorship of seminar	$1 977
Materials Institute of Western Australia	Funding payment of 1994 Agreement	$150 000
Emu Marketing Cooperative	EMSS funding Contribution towards an AusIndustry Production Planning industry support program	$184 $3 750
The Food Centre of Western Australia	EMSS funding EMSS funding Final payment of 4 year Agreement Contribution towards the production of the Food Industries Directory	$335 $195 $375 000 $2 000
Institute of Management Consultants	EMSS funding	$594
WA Latin America Business Association	Funding grant towards first year of operations	$750

The Department of Commerce and Trade has entered into the following contract to organisations that may fall within the member's definition since 1 July 1997:

Recipient	Purpose	Amount
Denmark Chamber of Commerce	Office accommodation for Telecentre Regional Coordinator. This is an agreement only and can be terminated with notice of one to three months. Rental of $150 is payable monthly.	$750

The Department of Commerce and Trade has made no secondments to organisations that may fall within the member's definition since 1 July 1997.

(2) (a) Goldfields Esperance Development Commission
(b) The Industrial Supplies Office WA through the WA Chamber of Commerce and Industry.
(c) The compilation of an industry capability database for the Goldfields-Esperance region.
(d) $20 445.

(2) (a) Kimberley Development Commission
(b)-(d) See below.

Recipient	Purpose	Amount
Kimberley Tourism Association	Kimberley Tourism Awards Sponsorship	$2 000
Australian Fresh Mangoes	Grower training course - contribution	$2 000
Business and Professional Women's Association	Women and Small Business Seminar Sponsorship	$1 000

(2) (a) Pilbara Development Commission
(b) Newman Chamber of Commerce and Industry.
(c) Funding support towards Newman Chamber of Commerce and Industry Small Business Awards.
(d) $500.

(2) (a) South West Development Commission
(b)-(d) See below.

Receipt	Purpose	Amount
South West Chambers of Commerce	Sponsorship for South West Focus '98 Conference	$5 000
Bunbury Chamber of Commerce	Provision of an Industry Development Officer for the retail industry	$10 000
Manjimup Chamber of Commerce	Sponsorship of local community festival	$200
Manjimup Chamber of Commerce	Establishment of Trade and Industry Expo	$3 000
Bridgetown/Greenbushes Chamber of Commerce and Industry	Sponsorship of Trade and Industry Expo	$3 000
South West Chambers of Commerce	Assess the feasibility of regional Chambers of Commerce as a promotional strategy for regions	$5 000
Collie Chamber of Commerce	Evaluation and development of feasibility for Collie Motor Sports Complex	$7 500
Collie Chamber of Commerce	Assistance with office rent	$300
Bunbury Chamber of Commerce	Membership	$205
Chamber of Commerce and Industry	Subscription to Resource and Energy Report	$525

GOVERNMENT DEPARTMENTS AND AGENCIES - CONTRACTS WITH EMPLOYER ORGANISATIONS

1114. Mr KOBELKE to the Minister for Resources Development; Energy; Education:

(1) Have any departments or agencies within the Minister's portfolios, let or made contracts, grants, or secondments, since 1 July 1997 to the Western Australian Chamber of Commerce and Industry, or any other employer organisations or bodies controlled by an employer or industry organisation?

(2) If yes, what are the details of each case including -

(a) the department or agency involved;
(b) the recipient of the contract, grant or secondment;
(c) a description of the purpose for the contract, grant or secondment; and
(d) the value or cost of the contract, grant or secondment?

Mr BARNETT replied:

Department of Resources Development

(1) Yes.

(2) Case - 1
(a) Department of Resources Development.
(b) Chamber of Commerce and Industry of Western Australia.
(c) A grant was provided to finance the operations of the Industrial Supplies Office of Western Australia.
(d) $340 000.

Case - 2
(a) Department of Resources Development.
(b) Industrial Supplies Office of Western Australia.
(c) Work experience for a Department of Resources Development Officer.
(d) Nil.

Case - 3
(a) Department of Resources Development.
(b) Chamber of Commerce and Industry of Western Australia.

(c) A grant was provided to assist with two industry studies.
(d) $10 500.

Case - 4
(a) Department of Resources Development.
(b) Chamber of Commerce and Industry of Western Australia.
(c) Sponsorship of 1997 Directions for Industry Conference.
(d) $2 000.

Case - 5
(a) Department of Resources Development.
(b) Chamber of Commerce and Industry of Western Australia.
(c) Contribution to publication of "A Best Practice - Australian Industry Participation in Resource Development Projects".
(d) $5 000.

Office of Energy

(1) No.

(2) Not applicable.

Western Power

(1) Yes.

(2) (a) Western Power.

(b) The Western Australian Chamber of Commerce and Industry Group Training Company.

(c) The contract employment of trade apprentices by Western Power from the above Group Training Company.

(d) From 1 July 1997 until 31 December 1997: three 1st Year apprentices and one 2nd Year apprentice were employed at Westpower Services Branch. For a cost of $27 400. From 1 January 1998 to date (23 October 1998): three 1st Year apprentices and three 2nd Year apprentices were employed at Kwinana Power Station; two 1st Year apprentices were employed at Commercial Services Branch; and three 2nd Year apprentices and one 3rd Year apprentice were employed at Westpower Services Branch. For a cost of $138 200. Total cost: $165 600.

AlintaGas

(1) No.

(2) Not applicable.

Education Department of Western Australia

(1)-(2) The Education Department of WA has made a grant as detailed below:

Description: Chamber of Minerals and Energy.

Date Paid: The grant is part of a partnership agreement between the Education Department of the Chamber through which the Chamber provides a number of "Mining in Society" seminars for teachers each year.

Amount: $20 000 per annum.

Curriculum Council

(1) The Curriculum Council has not let or made contracts, grants or secondments since 1 July 1997 to the Western Australian Chamber of Commerce and Industry, or any other employer organisations or bodies controlled by an employer or industry organisation.

(2) Not applicable.

Department of Education Services

(1) The Department of Education Services has not let or made contracts, grants or secondments since 1 July 1997 to the Western Australian Chamber of Commerce and Industry, or any other employer organisations or bodies controlled by an employer or industry organisation.

(2) Not applicable.

GOVERNMENT DEPARTMENTS AND AGENCIES - ANNUAL REPORTS, COSTS

1186. Mr BROWN to the Minister representing the Attorney General:

(1) For each department or agency under the Attorney General's control, what was the cost of producing the 1997-98 annual report, including -

(a) artwork;
(b) publication;
(c) distribution; and
(d) writing?

(2) What were the equivalent costs for the 1996-97 annual report?

(3) Was the 1997-98 annual report produced wholly within the department or agency?

(4) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(5) Was the 1996-97 annual report produced wholly within the department or agency?

(6) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(7) Who printed the 1997-98 annual report?

(8) Who printed the 1996-97 annual report?

(9) How many copies of the 1997-98 annual report were printed?

(10) How many copies of the 1996-97 annual report were printed?

Mr PRINCE replied:

The Attorney General has provided the following reply:

Director of Public Prosecutions

(1) (a) Nil.
(b) $1,995
(c) Not ascertainable, but minor postage costs only.
(d) Nil direct costs. Report was written by in-house DPP staff.

(2) (a) Nil.
(b) $4,873
(c) Not ascertainable, but minor postage costs only.
(d) No direct costs. Report was written by in-house DPP staff.

(3) Yes.

(4) Not applicable.

(5) Yes.

(6) Not applicable.

(7) Print West Pty Ltd.

(8) Lamb Printers Pty Ltd.

(9) 400

(10) 550

Equal Opportunity Commission

(1) The costs of producing the 1997/98 annual report to the Commissioner for Equal Opportunity as follows:

(a) Formatting, and artwork cost $7,360.00
(b) Printing of 1,000 copies has been quoted to cost $4,865.00
(c) It is estimated that mail-out of the annual report will cost $75.00
(d) Commission Officers wrote the annual report in its entirety.

(2) The equivalent costs for the 1996/97 annual report are as follows:

(a) Formatting and artwork cost $1,850.00
(b) Publication of 2,000 copies cost $12,386.00
(c) Mail out of the annual report cost $64.73
(d) Commission Officers wrote the annual report in its entirety.

(3) The 1997/98 annual report was produced wholly within the Commission, except for the artwork and the printing.

(4) (a) Contractors provided printing and artwork.
(b) See (1).

(5) The 1996/97 annual report was produced wholly within the Commission, except for the artwork and the printing.

(6) (a) Contractors provided printing and artwork.
(b) See (2).

(7) Advance Press is printing the 1997/98 annual report.

(8) Scott Four Colour printed the 1996/97 annual report.

(9) 1,000 copies are being printed.

(10) 2,000 copies were printed.

Law Reform Commission of Western Australia

(1) (a) $50.00
(b) $1,120
(c) $250.00
(d) Writing done by staff.

(2) (a) $50.00
(b) $1,380.00
(c) $250.00
(d) Writing done by staff.

(3) Yes.

(4) Not applicable.

(5) Yes.

(6) Not applicable.

(7)-(8) Fineline Print & Copy Service.

(9)-(10) 300

Legal Aid

(1) Estimate only -

(a) $5,820.00
(b) $5,470.00
(c) Not known.
(d) $2,200

(2) $10,519.80

(3) No.

(4) See (1).

(5) Yes.

(6) Not applicable.

(7) Quality Print.

(8) Jam Design Studio.

(9) Not yet printed.

(10) 800.

Ministry of Justice

(1) (a)-(c) As the report to date (30 October 1998) has not been printed it is not possible to provide this information.
(d) $4,600

(2) (a) $5,058 (graphic designer ($4,000), photographer ($1,058)).
(b) $10,780 (printing ($7,580), reprographics ($3,200)).
(c) $300 (distribution costs).
(d) $3,000 (writer).

(3) No.

(4) (a) Writer. See (1)(a)-(c).
(b) $4,600

(5) No.

(6) (a) Writer ($3,000)
Graphic designer ($4,000)
Reprographics ($3,200)
Printing ($7,580)
Photography ($1,058)
Distribution costs ($300)
(b) Amounts are specified in the brackets after the provider in (a).

(7) See (1)(a)-(c).

(8) Scott Four Colour.

(9) See (1)(a)-(c).

(10) 1,000

Office of the Information Commissioner

(1) $8,600

(2) $10,925

(3) Prepared within the office - artwork and printing by contract.

(4) (a) Artwork and printing.
(b) $7,700

(5) See (3) above.

(6) (a) Artwork and printing.
(b) $10,025

(7) Frank Daniels Pty Ltd.

(8) Advance Press Pty Ltd.

(9)-(10) 900 copies.

GOVERNMENT DEPARTMENTS AND AGENCIES - ANNUAL REPORTS, COSTS

1187. Mr BROWN to the Minister for Resources Development; Energy; Education:

(1) For each department or agency under the Minister's control, what was the cost of producing the 1997-98 annual report, including -

(a) artwork;
(b) publication;
(c) distribution; and
(d) writing?

(2) What were the equivalent costs for the 1996-97 annual report?

(3) Was the 1997-98 annual report produced wholly within the department or agency?

(4) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(5) Was the 1996-97 annual report produced wholly within the department or agency?

(6) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(7) Who printed the 1997-98 annual report?

(8) Who printed the 1996-97 annual report?

(9) How many copies of the 1997-98 annual report were printed?

(10) How many copies of the 1996-97 annual report were printed?

Mr BARNETT replied:

Department of Resources Development

(1) (a) Nil - in-house.
(b) Approximately $17 000 (figure yet to be finalised).
(c) Distribution costs are not readily identifiable, and distribution is not yet complete.
(d) Not applicable.

(2) $14 640 (publication costs only).

(3) No.

(4) (a) Pre-press and printing work.
(b) See (1).

(5) No.

(6) (a) Pre-press and printing work.
(b) See (2).

(7)-(8) Scott Four Colour Print.

(9)-(10) 2 500

Office of Energy

(1) The costs for producing the 1997-98 annual report were $16 802.

(a)	artwork:	
(b)	publication:	combined cost: $15 986
(c)	distribution:	$150, plus postage $516
(d)	writing:	internal costs only

(2) The equivalent costs for the 1996-97 annual report were $27 250.

(a)	artwork:	$ 8 400
(b)	publication:	$18 090
(c)	distribution:	$ 760
(d)	writing:	internal costs only

(3) The 1997-98 annual report was not produced wholly within the Office of Energy.

(4) Services provided by contractors including costs:

(a)-(b)	artwork and publication:	$15 986
	distribution:	$ 666

(5) The 1996-97 annual report was not produced wholly within the Office of Energy.

(6) Services provided by contractors including costs:

(a)-(b)	design:	$ 8 400
	pre-press:	$ 8 080
	print:	$10 010
	distribution:	$ 760

(7) Street Design.

(8) Advance Press.

(9) 1 500

(10) 2 000

AlintaGas

(1)-(2) The annual report is included as part of AlintaGas' overall budgeting process. The cost of the report has been successfully reduced each year since AlintaGas' inception in 1995. Cost details of the annual report are considered commercially confidential by AlintaGas and its suppliers.

(3) No.

(4) (a) Contractors provided design, negative preparation, photography and printing services for the 1997-98 AlintaGas annual report.

(b) Not applicable.

(5) No.

(6) (a) Contractors provided design, negative preparation, photography and printing services for the 1996/97 AlintaGas annual report.

(b) Not applicable.

(7)-(8) Muhlings Pty Ltd.

(9) 2 000

(10) 2 500

Western Power

(1) $47 466

(2) $52 885

(3) No.

(4) $44 348

(5) No.

(6) $50 030

(7) Advance Press.

(8) Frank Daniels.

(9) 3 500

(10) 4 000

Curriculum Council

(1) The 1997-98 Curriculum Council annual report is still in draft at this stage.

(2) This is the first annual report for the Curriculum Council.

(3)-(10) Not applicable.

Education Department of Western Australia

(1) The 1997-98 Education Department of WA annual report is still in draft at this stage.

(2) $24 295.50

(3) No.

(4) Not applicable as the annual report is not yet produced.

(5) No.

(6) (a) Artwork, publication (negatives and printing) and distribution.
(b) $19 145.50

(7) Not applicable as the annual report is not yet produced.

(8) Advance Press.

(9) Approximately 1 200 will be printed.

(10) 1 200

Department of Education Services

(1) The 1997-98 Department of Education Services annual report is still in draft at this stage, however, a quotation from TM Typographics of $10 270 for design and printing of the Department of Education Services' 1997/98 annual report has been accepted.

(2) The cost of the artwork and printing of the 1996/97 Annual Report was $15 460.22.

(3) No.

(4) (a) Artwork and printing.
(b) See answer to (1) above.

(5) No.

(6) (a) Artwork and printing services were provided by contractor.
(b) $15 460.22

(7) Printing has been contracted to TM Typographics.

(8) Jam Design.

(9) It is proposed that 1 250 copies will be printed.

(10) 2 000 copies.

GOVERNMENT DEPARTMENTS AND AGENCIES - ANNUAL REPORTS, COSTS

1194. Mr BROWN to the Minister for Local Government; Disability Services:

(1) For each department or agency under the Minister's control, what was the cost of producing the 1997-98 annual report, including -

(a) artwork;
(b) publication;
(c) distribution; and
(d) writing?

(2) What were the equivalent costs for the 1996-97 annual report?

(3) Was the 1997-98 annual report produced wholly within the department or agency?

(4) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(5) Was the 1996-97 annual report produced wholly within the department or agency?

(6) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(7) Who printed the 1997-98 annual report?

(8) Who printed the 1996-97 annual report?

(9) How many copies of the 1997-98 annual report were printed?

(10) How many copies of the 1996-97 annual report were printed?

Mr OMODEI replied:

Department of Local Government:

(1) (a) $780
(b) $4,840

(c) Approximately $300
(d) Written in-house.

(2) (a)-(b) $4,218
(c) Approximately $300
(d) Written in-house with assistance from a contractor.

(3) Yes.

(4) Not applicable.

(5) No.

(6) (a) Assisting with the preparation of the document.
(b) $3,000

(7)-(8) Lamb Print.

(9)-(10) 500 copies

Disability Services Commission:

(1) Estimated costs are:

(a) $8,500;
(b) $6,500;
(c) $200; and
(d) $9,000.

(2) 1996/97 costs were:

(a) $11,300;
(b) $7,500;
(c) $200; and
(d) $8,200.

(3) No.

(4) (a) The services provided by contractor were design, artwork, typesetting and printing.
(b) Estimated costs are $15,000.

(5) No.

(6) (a) The services provided by contractors were design, artwork, typesetting and printing.
(b) Total costs were $18,800.

(7)-(8) Frank Daniels Pty Ltd.

(9)-(10) 1,200 copies.

Metropolitan Cemeteries Board:

(1) (a)-(d) $10,000.

(2) (a)-(d) $10,873.

(3) No.

(4) (a) Artwork, publication and writing.
(b) $10,000.

(5) No.

(6) (a) Artwork, publication and writing.
(b) $10,873.

(7) Haymarket.

(8) Subcontracted by Vernon Jones Design Graphics.

(9)-(10) 200.

Fremantle Cemetery Board:

(1) (a)-(d) Still waiting for audit. Not printed for distribution at this time.

(2) For 1996/97:

(a) $2,990
(b) $2,544
(c) Postage $110
(d) Written in-house.

(3) Not applicable - refer to Question 1(a)-(d).

(4) Not applicable.

(5) Yes.

(6) Not applicable.

(7) Not applicable - refer to Question 1(a)-(d).

(8) P J Printers.

(9) Not applicable - refer to Question 1(a)-(d).

(10) 150 copies.

Keep Australia Beautiful Council

(1) (a)-(d) The cost is not yet known. The Annual Report will be produced within 30 days from the receipt of the Auditor General's opinion which is expected in mid November.

(2) (a) artwork and printing - $3,000
(b) distribution - $500
(c) writing - in house.

(3)-(4) Not applicable.

(5) No.

(6) (a) artwork and printing
(b) $3,000

(7) Not applicable.

(8) Character Printing.

(9) Not applicable.

(10) 500

GOVERNMENT DEPARTMENTS AND AGENCIES - ANNUAL REPORTS, COSTS

1204. Mr BROWN to the Parliamentary Secretary to the Minister for Justice:

(1) For each department or agency under the Minister's control, what was the cost of producing the 1997-98 annual report, including -

(a) artwork;
(b) publication;
(c) distribution; and
(d) writing?

(2) What were the equivalent costs for the 1996-97 annual report?

(3) Was the 1997-98 annual report produced wholly within the department or agency?

(4) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(5) Was the 1996-97 annual report produced wholly within the department or agency?

(6) If not -

(a) what services were provided by contractors; and
(b) at what cost?

(7) Who printed the 1997-98 annual report?

(8) Who printed the 1996-97 annual report?

(9) How many copies of the 1997-98 annual report were printed?

(10) How many copies of the 1996-97 annual report were printed?

Mrs van de KLASHORST replied:

The Minister for Justice has provided the following reply:

(1)-(10)
I refer the member to my answer to Question on Notice 1186.

PINJAR ELECTRICITY GENERATING PLANT - SECURITY GUARDS

1295. Mr KOBELKE to the Minister for Energy:

(1) Does Western Power require that there be at least one security guard on duty at the Pinjar Electricity Generating Plant at all times?

(2) What training, qualifications or experience are required by these security guards at the Pinjar Electricity Generating Plant?

(3) Is it a requirement of these guards that they be trained to detect and deal with emergencies that may arise in relation to the operation of the plant at this Pinjar site?

(4) Has there on any occasion since 1 July 1998 been a period when there was not a security guard on duty at the Pinjar site?

(5) If so, when did this occur and for what period was there no security guard on duty?

(6) Has there on any occasion since 1 July 1998 been a time when there was not a security guard with the required training or who had completed the necessary induction course to work on this site?

(7) If so, when did this occur and for what period of time?

Mr BARNETT replied:

(1) Yes.

(2) (a) Security Officers shall have the following requirements:

(i) Western Australian Police Department security licence and preferably be employed solely within the security industry.
(ii) Western Australian driver's licence, Class A.

(b) Training is required in the following areas:

(i) Security Officer duties.
(ii) Plant familiarisation of Pinjar Gas Turbine Station.
(iii) First Aid.
(iv) General fire fighting techniques.
(v) Working in confined spaces.

(3) Yes, however, investigation of emergencies and undertaking of corrective actions are only carried out as directed by a Western Power Representative or his nominee.

(4) No.

(5) Not applicable.

(6) Yes.

(7) This occurred following the contract change over on 1 July 1998. The requirement for all security officers to have Occupational First Aid training was not satisfied until 16 October 1998. This has now been rectified.

HOUSING - DISABLED TENANTS, KALGOORLIE-BOULDER

1344. Ms ANWYL to the Minister for Housing:

(1) What properties are currently available for disabled tenants in Kalgoorlie/Boulder?

(2) What properties are planned for construction for disabled tenants in Kalgoorlie/Boulder?

(3) What planning process exists for disabled tenants in Kalgoorlie/Boulder?

Dr HAMES replied:

(1) Disabled applicants for Homeswest accommodation can be assisted either through the mainstream rental program or community housing options. All Homeswest mainstream properties are available to applicants with a disability. Homeswest has 641 mainstream properties in Kalgoorlie/Boulder. Where a disabled client occupies a mainstream property, there is scope for Homeswest to make modifications to meet the needs of the client. In the last 18 months seven properties have been modified at a cost of $8,570.73. During 1998/99 Homeswest has allocated $10,000 to address the costs associated with such modifications. In addition to this, Homeswest has four properties which have been purpose built to meet the needs of severely handicapped clients. A further two units have been provided for people with psychiatric disabilities, one unit through Community Housing Program and one through Community Disability Housing Program. Homeswest also operates the Access Home Loan Scheme which is designed specifically to enable people with disabilities to purchase a purpose-built home of their own or to modify an existing home to cater for their needs.

(2) In the 1998/99 building program Homeswest will be constructing the following mainstream accommodation in Kalgoorlie/Boulder:

6 x 1 bedroom
2 x 2 bedroom
14 x 3 bedroom
3 x 4 bedroom

While none of these is specifically designed for disabled applicants, in all Homeswest construction projects consideration is given to allow for ease of conversion to suit disabled clients. Additionally, disabled applicants will also be considered when these new properties are available for allocation.

(3) At the time of application, prospective applicants with a disability that would impact on their housing needs are required to complete the "Homeswest Application for Individual Housing Requirements" and "Medical Information" forms. Homeswest also obtains an Occupational Therapist's report where an applicant, or household member, is a wheelchair user. With respect to the planning process, Homeswest seeks annual priorities from the Disability Services Commission and the Health Department of Western Australia. These agencies identify current user demands and priorities and Homeswest works closely with them to ensure these needs are met. Where individual applicants/tenants/organisations approach Homeswest, Homeswest seeks the advice of the Disability Services Commission, the Health Department of Western Australia, community agencies and Occupational Therapists in order to assess the clients' requirements.

POLICE - PROBATIONER OFFICERS

1484. Ms McHALE to the Minister for Police:

(1) What is the definition of a 'probationer' police officer?

(2) How many probationer police officers are currently in the police service?

(3) How many probationer police officers are posted in -

(a) metropolitan police stations; and
(b) regional police stations?

(4) For each of the following years, how many -

(a) probationer police officers were posted to rural/regional police stations; and

(b) operational police officers (excluding probationer police officers) were posted to rural/regional police stations in -

(i) 1997-98;
(ii) 1996-97;
(iii) 1995-96;
(iv) 1994-95;
(v) 1993-94; and
(vi) 1992-93?

Mr PRINCE replied:

(1) A probationary police officer is a sworn officer with less than two years service who is undergoing on-the-job training in the workplace.

(2) There are currently 337 probationary police officers in the Western Australia Police Service.

(3) (a) A total of 321 probationary officers are currently posted in the Metropolitan Region.
(b) Presently there are 16 probationary officers posted in country regions.

(4) (a) Probationary officers posted to rural/regional police stations:

Year June 30	Officers
1997-98	14
1996-97	31
1995-96	37
1994-95	32
1993-94	10
1992-93	See note below

(b) Non probationary officers posted to rural/regional police stations:

Year June 30	Officers
1997-98	1282
1996-97	1266
1995-96	1154
1994-95	See Note below
1993-94	
1992-93	

Note: Regionalisation during 1996 created the Southern, Central and Northern Regions as they now exist. Accurate staffing numbers for country regions and districts prior to 1995 are not readily available.

DEPARTMENT OF LAND MANAGEMENT - MR ALAN DRABBLE

1517. Mr CARPENTER to the Minister for Lands:

(1) Will the Minister advise why Mr Alan Drabble was not appointed to the position of Cartographic Officer Level 3 at the Department of Land Management in May 1997?

(2) What was the essential selection criteria for this position?

(3) What was the recommendation of the selection panel?

(4) Was this recommendation accepted by the Chief Executive Officer of the Department of Land Management?

(5) If the answer to (4) above is no, why not?

(6) How was the successful applicant for the position selected?

(7) Was the fact that Mr Alan Drabble has previously been a union representative at the Department of Land Management a factor in the Chief Executive Officer's decision not to accept the selection panel's recommendation?

(8) Was the fact that Mr Alan Drabble had previously been a union representative the reason that the Chief Executive Officer deemed him an undesirable employee?

(9) Is there any documented record of poor performance by Mr Drabble in his earlier employment with the Department of Land Management?

(10) Is there any documentation that Mr Drabble was offered a redundancy from the Department of Land management as a result of poor performance?

(11) Will the Chief Executive Officer of the Department of Land Management be implementing the suggestions made by the Commissioner of Public Sector Standards in regard to the options available to a Chief Executive Officer who is dissatisfied with a selection panel's recommendation?

(12) If the answer to (11) above is no, why not?

Mr SHAVE replied:

(1)-(12)
I refer the member to his question 563 of 13 August 1998 where he asked the same question concerning the Department of Land Administration. Presumably this question also refers to the Department of Land Administration and not the Department of Land Management. I refer him to my answers to his question of that date.

SUBIACO REDEVELOPMENT - HOUSING FOR PEOPLE WITH DISABILITIES

1520. Mr CARPENTER to the Minister for Disability Services:

(1) Is the Minister aware that within the Subiaco Redevelopment Authority no land has been made available for the provision of community housing for people with disabilities?

(2) If so, does the Minister intend to raise this matter with the Subiaco Redevelopment Authority?

(3) If not, why not?

Mr OMODEI replied:

(1) Yes.

(2) No.

(3) Homeswest is the government agency responsible for providing community housing for people with disabilities and other groups with specialised needs. The Disability Services Commission (DSC) provides the daily living support services required by people with disabilities and works with Homeswest to ensure that people with disabilities are able to access housing which meets their needs. The DSC's responsibility in relation to the Subiaco Redevelopment Authority (SRA) is to advise on the development and implementation of its Disability Services Plan (which is a requirement under the Disability Services Act 1993). The SRA's Disability Service Plan addresses the need to ensure that its services, facilities and public usage areas are accessible to people with disabilities.

COLLEGE INFORMATION MANAGEMENT SYSTEM 2000 - COST

1531. Mr KOBELKE to the Minister for Employment and Training:

(1) When was the project that became titled "College Information Management System 2000" initiated?

(2) When was the decision taken to commit major resources to the development of the "College Information Management System 2000"?

(3) Did Cabinet approve the development of the "College Information Management System 2000" and, if so, when did Cabinet make this decision?

(4) If not the State Cabinet, then who was responsible for the commitment of resources to the development of the "College Information Management System 2000"?

(5) What has been the total cost, including staff wages as well as contract employees of all work undertaken as part of the development of the "College Information Management System 2000"?

(6) When was the decision taken to stop committing resources to developing in Western Australia the "College Information Management System 2000"?

(7) Did Cabinet approve the decision to cease development in Western Australia of the "College Information Management System 2000" and, if so, when did Cabinet make this decision?

Mr KIERATH replied:

(1) The College Management Information System (CMIS) is the principal system that autonomous VET colleges and institutions use to manage their operations, which involves processing over 700,000 module enrolments annually. What is referred to as CMIS 2000 broadly encapsulates changes to the underlying technology necessary to address the changing business needs of VET and incorporating a common user interface and Year 2000 compliance. The CMIS 2000 concept was initiated in April 1997.

(2) The decision to resource the CMIS redevelopment was made in July 1997.

(3) Cabinet approval was not required.

(4) The Western Australian Department of Training through its normal internal budgeting processes.

(5) The budget allocated, incorporating what has been referred to as CMIS 2000 was $2.535m in 1997/98 and $2.559m in 1998/99. CMIS expenditure continues to be within budget. It is not feasible to apportion departmental and college staff costs to discrete projects. CMIS 2000 activity formed part of general staff duties.

(6) October 1998.

(7) Cabinet approval was not required.

COLLEGE INFORMATION MANAGEMENT SYSTEM 2000 - COST

1532. Mr KOBELKE to the Minister for Employment and Training:

(1) What was the estimated project cost at the commencement of development of the "College Information Management System 2000"?

(2) Was there a call for tenders or expressions of interest for either the management or participation on a contract basis in the development of the "College Information Management System 2000"?

(3) If so, then when did this occur and can a copy of the tender documents be provided?

(4) Were State Supply Commission policies fully complied with in the contracting out of the work to develop the "College Information Management System 2000"?

(5) If not, then why not?

(6) Who was responsible for the management of the total project?

Mr KIERATH replied:

(1) Within the 1997/98 CMIS budget of $2.535m, was an initial estimate of $546,000 for the Year 2000 compliance and common user interface components.

(2) Yes. Contracts for the development work were sought through Written Quotations as per the requirements of the Panel Contract established under CAMS in June 1997 in accordance with State Supply Commission procedures.

(3) Eighteen Written Quotations seeking IT services to meet the project requirements were competitively sought from suppliers on the Panel Contract at various times between July 1997 and October 1998. Copies of tender documents can be provided.

(4) Yes.

(5) Not applicable.

(6) The CIMS Peak Business Management Group, chaired by a College Managing Director, provided direction to the Director, Delivery Support Systems Branch, Western Australian Department of Training who was responsible for the management of CMIS.

COLLEGE INFORMATION MANAGEMENT SYSTEM 2000 - STAFF

1533. Mr KOBELKE to the Minister for Employment and Training:

(1) What are the names of all companies or contract staff engaged to work on the development of the "College Information Management System 2000"?

(2) How much has been paid to each of these for their work on the development of the "College Information Management System 2000"?

(3) Are there any accounts for this contract work on the development of the "College Information Management System 2000" that are either not yet presented or remaining to be paid?

(4) If so, then what is the anticipated amount remaining to be paid for work relating to the development of the "College Information Management System 2000"?

(5) What was the total cost of all resources used from the Department of Training and the independent Colleges on the development of the "College Information Management System 2000"?

Mr KIERATH replied:

(1) Platinum Technology
Apex Recruitment
Computer Power
Execom Resources
Interactive Holdings
Icon Consulting
Gryphon Consulting

(2)

Platinum Technology	$134,001
Apex Recruitment	$47,946
Computer Power	$72,360
Execom Resources	$353,222
Interactive Holdings	$46,085
Icon Consulting	$206,794
Gryphon Consulting	$114,129

(3) The Department of Training is not aware of any outstanding accounts.

(4) Not applicable.

(5) The budget allocated, incorporating what has been referred to as CMIS 2000 was $2.535m in 1997/98 and $2.559m in 1998/99. CMIS expenditure continues to be within budget. It is not feasible to apportion departmental and college staff costs to discrete projects. CMIS 2000 activity formed part of general staff duties.

COLLEGE INFORMATION MANAGEMENT SYSTEM - VICTORIAN SOFTWARE

1534. Mr KOBELKE to the Minister for Employment and Training:

(1) Is the Department of Training intending to use the software developed in Victoria to meet Western Australia's requirement for a college information management system?

(2) When was the decision taken to use the Victorian developed software as the basis for Western Australia's college information management system?

(3) Did Cabinet approve the adoption or purchase of the Victorian college information management system software and if so, when did Cabinet make this decision?

(4) If not the State Cabinet, then who was responsible for this decision?

Mr KIERATH replied:

(1) No decision has been made.

(2)-(4) Not applicable.

ALINTAGAS - PHASETWO NOMINEES PTY LTD, LEGAL ACTION

1536. Mr THOMAS to the Minister for Energy:

(1) Is the gas corporation which trades as AlintaGas suing Phasetwo Nominees Pty Ltd trading as Alinta Construction over the use of the name "Alinta" in their business name?

(2) Is it appropriate for Government utilities to legally harass small businesses?

(3) How much has the gas corporation spent on legal action?

Mr BARNETT replied:

(1) AlintaGas has issued proceedings in the Federal Court of Australia against Phasetwo Nominees Pty Ltd in connection with the use of the name "Alinta Construction".

(2) AlintaGas has invested a great deal of effort in establishing its name and reputation. It is well accepted that there is now considerable value attaching to its name. It is entirely appropriate that AlintaGas seek to protect the value. As the proceedings referred to in (1) are still before the Court it is therefore inappropriate to make any further comment in relation to them.

(3) This is commercially sensitive information which it would be inappropriate to disclose.

WESTERN POWER - MARSAMCO PTY LTD, POWER SUPPLY UPGRADE

1537. Mr THOMAS to the Minister for Energy:

(1) Have Marsamco Pty Ltd of Wells Street, Bellevue sought quotes from Western Power to upgrade their power supply from 100 amps to 400 amps?

(2) Have they been told they must pay $20,000 up front to cover the capital cost of supplying their extra power?

(3) Are all businesses that require this amount of power required to pay $20,000 to obtain the service?

Mr BARNETT replied:

I am advised:

(1) No. Marsamco Pty Ltd sought a quote to upgrade their supply from 100 amps to 260 amps.

(2) Due to the time constraints placed on Western Power by Marsamco to provide a quote and incorrect information supplied to the Corporation, Marsamco Pty Ltd were provided with a budget cost estimate of $19 000 for their contribution towards the requested upgrade works. Western Power's actual cost for these works would be considerably more than this. Marsamco Pty Ltd were invited to request a formal quote and provide the correct information to the Corporation, but to date have not done so.

(3) Depending on the power supply available in the area, and the cost of upgrading the existing Western Power infrastructure to supply the requested load, some businesses could pay more than this amount and some could pay less.

COLLIE POWER STATION

1545. Mr GRILL to the Minister for Resources Development:

(1) When will the new Collie Coal Fields power station be complete and ready for operation?

(2) What is the total and complete estimated cost of the power station?

(3) Is it correct that the New South Wales Government owned Pacific Power will operate the new power station?

(4) What are the terms and conditions of the contract whereby the power station shall be operated?

Mr BARNETT replied:

(1) The Collie Power Station will be operational from early December 1998 with contract completion in May 1999.

(2) The agreed value for the Collie Power Station contract at base date of October 1993 was $575 million in equivalent Australian dollars. Based upon provisions for contract variations, currency exchange and contract price adjustment, the anticipated total and complete cost for the Collie Power Station contract is estimated as $645 million in equivalent Australian dollars.

(3) The operator of the new Collie Power Station is Pacific Western Pty Ltd, a wholly owned subsidiary of Pacific Power.

(4) The terms and conditions of the contract are commercially confidential.

PRISONERS, DANGEROUS CLASSIFICATION

1549. Mrs ROBERTS to the Parliamentary Secretary to the Minister for Justice:

(1) Will the Minister advise who sets the category or classification for prisoners when they escape custody with regard to dangerous or non violet warnings to the public?

(2) With regard to prisoners taking driving instructions at taxpayers expense, have any prisoners with a dangerous classification been given the benefit of driving instructions and tests?

(3) Should a prisoner while receiving driving instructions use the circumstances to escape, and while doing so injure a member of the public or the driving instructor, what is the Government's liability and duty of care in these circumstances?

Mrs van de KLASHORST replied:

The Minister for Justice has provided the following reply:

(1) The final decision is made by the W A Police Service. The prison from which the prisoner has escaped provides

the police with an assessment as to whether the escapee is considered to be a serious threat to the general public. In general, a prisoner who has been assessed as suitable for minimum security placement would not be considered to be a threat to the community unless there are particular and serious concerns arising out of the prisoner's recent behaviour, the method of escape, suspected reasons for the escape and any known or suspected victim issues. This information together with the Police Service's analysis of the escapee forms the basis for the final decision.

(2) There is no prisoner classification of "dangerous". Prisoners undertaking driving instruction must have been assessed as suitable for minimum security placement.

(3) Any injury an employee may receive during an escape would be covered by Workers' Compensation legislation. The remainder of the question seeks a legal opinion on a hypothetical situation and it is submitted that it is out of order. (Erskine May, Parliamentary Practice, 21st Edition, pp 291 & 293.)

HOMESWEST, ABORIGINAL HOUSING DIRECTORATE

1585. Mr GRAHAM to the Minister for Housing:

(1) Does Homeswest contain an Aboriginal housing directorate?

(2) If the answer to (1) above is yes -

(a) what is the full title of the directorate;

(b) what is the purpose of the directorate; and

(c) what is the budget of the directorate for the following years;

(i) 1994-95;
(ii) 1995-96;
(iii) 1996-97; and
(iv) 1997-98;

(d) what is the source of the budget funds in each year referred to in (c) above;

(e) how many staff are employed full time in the directorate;

(f) how many staff are employed part time in the directorate;

(g) how many of the staff referred to in the answer to (e) above are located in Perth;

(h) how many of the staff referred to in the answer to (e) above are located in other offices of Homeswest;

(i) how many of the staff referred to in the answer to (f) above are located in Perth;

(j) how many of the staff referred to in the answer to (f) above are located in other offices of Homeswest;

(k) in which offices are the staff referred to in the answer to (h) above located;

(l) in which offices are the staff referred to in the answer to (j) above located;

(m) who is the director of the organisation referred to in the answer to (a) above;

(n) what are the names of the divisions/units within the directorate; and

(o) what is the purpose of each division/unit within the directorate?

Dr HAMES replied:

(1) Yes.

(2) (a) Aboriginal Housing Directorate.

(b) To provide:

new construction in urban, rural and remote areas for Aboriginal people;
housing maintenance and management support to Aboriginal communities;
Aboriginal tenancy support;
policy and program advice to Homeswest on Aboriginal housing issues; and
administrative support to the Aboriginal Housing Board.

(c) Budget actuals are:

(i) $18.9m.
(ii) $14.8m.

(iii) $22.1m.
(iv) $25.8m.

(d) (i)-(iii) Commonwealth and State Funding sources;

(e) 18.

(f) Nil.

(g) 18.

(h) Nil.

(i)-(l) Not applicable.

(m) Ms Jody Broun.

(n) Urban Section and Remote Section.

(o) Urban Section - new construction in urban areas, tenancy support to Homeswest Aboriginal tenants and policy and program advice. Remote Section - new construction in Aboriginal communities, maintenance and management support to Aboriginal communities and policy and program advice.

POLICE, INCREASE IN REPORTED OFFENCES

1653. Mrs ROBERTS to the Minister for Police:

(1) Are you concerned that the total number of reported offences increased by 5 per cent in 1997-98?

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

(3) If the answer to (1) above is yes, what action do you intend to take to improve the situation?

Mr PRINCE replied:

(1) The total number of reported offences for the 1997/98 financial year have in fact increased by 4.9%, not 5% as stated by the member and yes, any increase in the number of reported offences is of concern.

(2) Not applicable.

(3) Actions to reduce the rate of crime are already being implemented by the Western Australia Police Service. The Delta reform program has devolved the responsibility of crime management to local Police Districts. This allows for more effective policing strategies that target the unique crime circumstances within each local Police District. The Investigative Practices Review is currently being implemented to complement the Delta reform program and will increase the standard of service delivery for investigative practices throughout the Western Australia Police Service. This will be achieved by improving the organisational structure for criminal investigation, information technology systems, management practices, criminal targeting, crime tasking, training, resourcing and accountability. These improvements characterise a shift from traditional reactive policing methods to a pro-active and planned approach based on effective intelligence gathering. The Investigative Practices Review supports the Delta reforms by focussing on crime investigation being under the control of local Police Districts. Specialist investigative assistance will be provided by the Crime Support Portfolio to local detectives where it is determined that a particular matter requires a higher level of technical or human resource expertise.

ARMED ROBBERIES

1654. Mrs ROBERTS to the Minister for Police:

(1) Given that armed robbery increased by 28 per cent in 1997-98 what constructive initiatives has the Minister taken in the area of armed robbery?

(2) What sense does distributing members of the armed robbery squad to the suburbs make?

(3) Is not armed robbery a serious and violent crime that requires a serious specialised squad to deal with it?

(4) What evidence do you have that breaking up the armed robbery squad will either reduce the number of armed robberies or improve the clearance rate for armed robberies?

(5) How do you rate the performance of the armed robbery squad over the past 12 months?

(6) How does our Police Service's clearance rate for armed robberies compare with other States?

(7) Did the clearance rate for armed robberies in New South Wales drop after the armed robbery squad in that State was distributed to the suburbs?

Mr PRINCE replied:

(1) The Western Australia Police Service Armed Robbery Squad works to national best practice and operational initiatives are under constant review.

(2) As the result of certain recommendations of the recent Western Australia Police Service Investigative Practices Review, a number of structural changes are currently being considered for the Crime Support Portfolio. The traditional role and structure of Crime Support will be altered to better support the Districts in becoming the "building blocks" for local service delivery. As the recommendations are still under consideration, I am unable to advise with certainty which squads will be affected by the restructure. I can advise, however, that should the Armed Robbery Squad be dissolved as the result of the restructure, a number of highly skilled armed robbery investigators will be devolved to the District and Regions providing them with the experience and expertise to investigate armed robbery offences. A core group of Armed Robbery investigators will be retained by the Crime Support Portfolio and be absorbed into the new structure. This will ensure a continuance of investigative expertise in Crime Support to enable the targeting and investigating of organised or serial armed robbery offences. This approach will not compromise the current ability of the Police Service to effectively respond to robbery offences. It will, however, provide the flexibility to proactively target criminals and conduct operations to target organised and serial robbery offences.

(3) Armed robbery is a serious crime that requires serious attention, and while the potential for violence is recognised, violent acts do not always occur during the commission of an armed robbery offence. As stated previously, the proposed restructure of the Crime Support Portfolio will not compromise the current ability of the Police Service to effectively respond to robbery offences.

(4) The value of intelligence led proactive policing methods has been internationally recognised. By adopting this approach to the investigation of crime, the Western Australia Police Service is employing recognised international best practice. By devolving the investigation of opportunist armed robbery offences, the Crime Support Portfolio can use its resources to more effectively target serial and/or organised armed robbery offences throughout the State.

(5) The member has not advised what performance indicators are to be used to "rate" the Armed Robbery Squad's performance or against what or whom their performance is to be rated. In general, it is the opinion of the Police Service that the Armed Robbery Squad has been successful in performing their function to date.

(6) I am advised by the Crime Information Unit that no common recording methodology exists between Australian States and Territories which would allow an accurate comparison of crime statistics as requested by the member.

POLICE OPERATIONS CENTRE, MIDLAND

1655. Mrs ROBERTS to the Minister for Police:

(1) What progress has been made to date on the establishment of the Police Operations Centre at Midland?

(2) When is it anticipated that site works will commence?

(3) How much money will the Police Service require in 1998-99 from the State Budget to advance this project?

Mr PRINCE replied:

(1) A multi-agency Project Steering Committee has been established with representatives from the Police Service, Department of Contract and Management Services, Treasury and Government Property Office. Funding of $0.4 million was provided in 1998/99 to progress the planning phase of the new Operations Support Facility at Midland. Coney Stevens Project Management was commissioned in July 1998 as the Project Manager. Peter Hunt Architect was commissioned in July 1998 for development of the project brief and compliance monitoring. Briefing of Police Service accommodation requirements for the Operations Support Facility is currently in progress with completion anticipated in February 1999. The Police Service and Government Property Office are currently working together to determine the most appropriate location for the police facility on the Midland Railways Workshop site and to progress development of that site.

(2) Early 2000.

(3) The Police Service sought and received $400,000 in the 1998-99 State Budget to progress planning of this project.

MOTOR VEHICLES, THEFT

1656. Mrs ROBERTS to the Minister for Police:

(1) How many vehicles fitted with fuel immobilisers have been stolen in Western Australia over the past 12 months?

(2) On how many occasions over the last 12 months have car keys been stolen in order to steal cars?

Mr PRINCE replied:

(1) The Western Australia Police Service (the Police Service) Offence Information System (OIS) does not record statistics of this nature.

(2) The Police Service OIS does record items stolen as the result of theft or burglary. Accordingly, it is possible to search the OIS to determine how many offences involve the theft of keys. The OIS cannot however, determine what type of keys were stolen (ie, house keys, car keys, other) nor can it determine whether the keys were stolen for the express purpose of stealing the victim's motor vehicle.

POLICE, MOBILE FACILITIES AND SPEED CAMERAS

1657. Mrs ROBERTS to the Minister for Police:

(1) How many mobile policing facilities does the Police Service have?

(2) How many mobile breath testing stations does the Police Service have?

(3) How many speed cameras does the Police Service have?

Mr PRINCE replied:

(1) 12.

(2) 2.

(3) 17.

POLICE, HORSEBACK AND BICYCLE PATROLS

1658. Mrs ROBERTS to the Minister for Police:

(1) How many horseback patrols are undertaken on an average week in metropolitan Perth?

(2) How many bicycle patrols are undertaken on an average week in metropolitan Perth?

Mr PRINCE replied:

(1) Within an average, the Police Mounted Section conducts patrols within the Perth metropolitan area on a daily basis, Monday to Friday. On average, two patrol groups are deployed per day, with each group consisting of two officers. Further, two groups are deployed on Thursday night and, where possible, three groups are deployed on Friday and Saturday nights. Thursday night patrols are usually in a suburban shopping precinct and the main concentration on Friday and Saturday night is in Perth City and Northbridge. These patrol groups also consist of two officers. In addition, public relations and ceremonial commitments are often attended to during the week.

(2) On average, the Mobile Police Facilities, located throughout the Police Districts, deploy patrols to the equivalent of 20 hours per week. The Bicycle Section deploys patrols to the equivalent of between 10 hours and 40 hours per week, depending on the time of the year. Patrols are deployed more frequently in summer than in winter.

MOTOR VEHICLES, THEFT

1659. Mrs ROBERTS to the Minister for Police:

(1) What was the actual number of vehicles stolen in 1997-98?

(2) What was the actual number of vehicles stolen in 1996-97?

Mr PRINCE replied:

(1) 17,145 vehicles were reported stolen during the 1997/98 financial year.

(2) 14,953 vehicles were reported stolen during the 1996/97 financial year.

POLICE VEHICLES, SAFETY STANDARDS

1660. Mrs ROBERTS to the Minister for Police:

(1) Given the Commissioner of Police's safety concerns about the use of mobile phones by vehicle drivers, what safety measures has he put in place for Police Officers?

(2) Does he intend taking any further action?

(3) What initiatives are intended or in place with regard to police on motor cycles who are required to operate police radios or volume controls?

(4) If no initiatives are intended or in place is it considered safe practice for police on motor cycles to operate police radios or volume controls whilst driving?

(5) Are any restrictions intended or in place for solitary police officers who are required to drive and operate hand held radios?

(6) What is the estimated cost to upgrade all police vehicles to comply with the satisfactory safety standards that the Commissioner of Police has proposed for the general public?

Mr PRINCE replied:

(1)-(2) Operational police are not required to use mobile telephones. Administration staff who use mobile telephones in vehicles have hands-free kits fitted to those vehicles.

(3)-(4) Police on motor cycles use head sets which are located in their motorcycle helmet.

(5) It is not the usual practice for police officers to be operating alone. However, if such a situation does occur, providing the officer is not responding to a complaint with any degree of urgency, he/she would stop the police vehicle when it is safe to do so and communicate with the caller.

(6) Nil. Refer to (1).

POLICE, BURGLARIES IN MIDLAND

1661. Mrs ROBERTS to the Minister for Police:

(1) Have instructions been given to operational police officers in Midland to change the way that burglaries are reported?

(2) If so, what are those instructions?

(3) Have police officers in the Midland area been instructed to record all burglaries as one offence rather than record two offences, ie. one offence of burglary (entering a dwelling) and another offence of stealing (stealing property from a dwelling)?

(4) If not, what is the case?

(5) Are the police service attempting to reduce crime statistics by changing crime report procedures and thereby masking the real crime figures?

(6) Is this practice occurring in any police service region?

(7) If so, which ones?

(8) Are there any changes at all to the way that crimes and therefore crime statistics are being reported?

(9) If so, what are those changes?

Mr PRINCE replied:

(1) No.

(2) Not applicable.

(3) Yes. A number of incidents occur during a burglary which are part of the offence of burglary and not separate criminal acts, for example a burglary occurs where property is stolen. Some officers have been incorrectly recording them as separate offences and instructions have been issued to ensure correct reporting and ensure uniformity across the agency.

(4) Not applicable.

(5) No. The service is ensuring a more uniform and accurate method of recording offences.

(6) Other Districts are correctly recording offences.

(7) Not applicable.

(8) No.

(9) Not applicable.

POLICE, VEHICLE CRIME UNIT

1662. Mrs ROBERTS to the Minister for Police:

(1) Are there any plans to break up the vehicle crime unit and send officers to suburban stations?

(2) If so, what are those plans?

(3) If not, will you guarantee that the vehicle crime unit will remain as a unit staffed at its current strength or more until at least June 1999?

Mr PRINCE replied:

(1) As the result of certain recommendations of the recent Western Australia Police Service, Investigative Practices Review, a number of structural changes are currently being considered for the Crime Support Portfolio. The proposed changes are still under consideration and it is unlikely the final portfolio structure of Crime Support will be known for a further three weeks. Once the final portfolio structure has been determined, supplementary information can be provided.

(2)-(3) Not applicable.

POLICE, MOTOR SQUAD

1663. Mrs ROBERTS to the Minister for Police:

(1) Are there any plans to break up the motor squad and send officers to suburban stations?

(2) If so, what are those plans?

(3) If not, will you guarantee that the motor squad will remain as a squad staffed at its current strength or more until at least 1999?

Mr PRINCE replied:

(1) As the result of certain recommendations of the recent Western Australia Police Service, Investigative Practices Review, a number of structural changes are currently being considered for the Crime Support Portfolio. The proposed changes are still under consideration and it is unlikely the final portfolio structure of Crime Support will be known for a further three weeks. Once the final portfolio structure has been determined, supplementary information can be provided.

(2)-(3) Not applicable.

CRIME OPERATION PORTFOLIO

1664. Mrs ROBERTS to the Minister for Police:

What structural changes, if any, are taking place in the Crime Operation Portfolio?

Mr DAY replied:

As the result of certain recommendations of the recent Investigative Practices Review, a number of structural changes are currently being considered for the Crime Support Portfolio (formerly the Crime Operations Portfolio). As the proposed changes are still under consideration, it is unlikely the final portfolio structure of Crime Support will be known for a further three weeks, at which time supplementary details can be provided.

POLICE, COURT APPEARANCES

1665. Mrs ROBERTS to the Minister for Police:

(1) With regard to police officers who observe a serious traffic offender, commence proceedings against the suspect and are then transferred to a country area, is it standard police procedure to call that principal police witness to court?

(2) Does the police service take into account the cost of bringing the police officer back to Perth to appear in court?

(3) Who makes the final decision in the circumstances outlined, whether to send the police witness to the trial?

(4) Which police region is responsible for any travel cost incurred by police officers in the circumstances outlined?

Mr PRINCE replied:

(1) Yes, where the evidence of that officer is necessary to establish a prima facie case.

(2) Yes, but it is not an overriding factor.

(3) The relevant District Officer in conjunction with the Prosecuting Officer.

(4) The District where the officer was stationed at the time the charge was preferred.

WITTENOOM, ASBESTOS FIBRE READINGS

1667. Mr GRILL to the Minister for Commerce and Trade:

(1) When was the last air monitoring test done for asbestos fibre in Wittenoom?

(2) How many readings were taken and over what period of time?

(3) How many readings were above the detection limit of the instruments used?

(4) For those readings above the detection limit, what were the readings?

(5) Which of these readings could be attributed to unusual events like demolitions or similar activities within or near the town site?

Mr COWAN replied:

(1) 22 March, 1996.

(2) 144, between 8 November, 1995 and 22 March, 1996.

(3) 18.

(4)

0.003 fibre/mL	0.003 fibre/mL	0.003 fibre/mL
0.003 fibre/mL	0.003 fibre/mL	0.003 fibre/mL
0.002 fibre/mL	0.003 fibre/mL	0.005 fibre/mL
0.003 fibre/mL	0.003 fibre/mL	0.002 fibre/mL
0.007 fibre/mL	0.002 fibre/mL	0.002 fibre/mL
0.003 fibre/mL	0.004 fibre/mL	0.005 fibre/mL

(5) All were attributed to dismantling and removal project underway at that time.

WOODMAN POINT WASTE WATER TREATMENT PLANT

1671. Mr THOMAS to the Minister for Water Resources:

(1) Is the Water Corporation planning or undertaking capital works at the Woodman point Wastewater Treatment plant that will reduce the odour nuisance emanating from that plant?

(2) Will this permit the buffer zone that is limiting subdivision of property in the district to be reduced?

(3) If the answer to (1) above is yes, when will this work be completed?

Dr HAMES replied:

(1) Yes.

(2) Only if the results of commissioning and testing the effectiveness of the new processes in the year 2003 show the buffer can be reduced sufficiently.

(3) Not applicable.

RAFFLES HOTEL, HERITAGE LISTING

1675. Dr EDWARDS to the Minister for Heritage:

(1) What was the Heritage Council's recent decision regarding the Raffles Hotel?

(2) When will the Minister make a decision regarding the Raffles Hotel and heritage listing?

Mr KIERATH replied:

(1) I am not prepared to comment on recommendations to me until I am in a position to consider those recommendations.

(2) After I have given this matter proper consideration.

WESTERN AGRICULTURAL INDUSTRIES, MEMORANDUM OF UNDERSTANDING

1677. Dr EDWARDS to the Minister for Water Resources:

What work has been undertaken by the Water Corporation, with respect to the memorandum of understanding between the State and Western Agricultural Industries?

Dr HAMES replied:

The Water Corporation has not undertaken any work in respect to the memorandum of understanding between the State and Western Agricultural Industries.

WESTERN AGRICULTURAL INDUSTRIES, MEMORANDUM OF UNDERSTANDING

1678. Dr EDWARDS to the Minister for Water Resources:

What work has been undertaken by the Water and Rivers Commission, with respect to the memorandum of understanding between the State and Western Agricultural Industries?

Dr HAMES replied:

The Water and Rivers Commission has recently commenced work on water allocation planning for the Kimberley Region. This will be used to review the groundwater feasibility and surface water prefeasibility investigations for the Western Agricultural Industries (WAI) West Kimberley irrigation proposal.

BURGLARIES, STATISTICS

1701. Mr PENDAL to the Minister for Police:

I refer to the advice contained in the 1998 Annual Police Report tabled in Parliament that Joondalup's burglary clearance rate averaged 21 per cent for the last three months of the year under review and my earlier questions on notice Nos 51 of 1995 and 1762 of 1997 relating to reported break-ins in the South Perth district, and ask -

(a) what number of break-ins have been reported in each month from July, 1997 to the present;

(b) how many arrests and/or convictions have resulted;

(c) what number or percentage of such break-ins remains unsolved; and

(d) will the Minister provide comparable figures for the areas of Manning and Como?

Mr PRINCE replied:

Note: (a) The offence code 'AO7' refers to 'Burglary and Commit Offence'
(b) Processed persons are those that have been arrested, summonsed, cautioned or face Juvenile Justice Team.
(c) Uncleared offences refers to offences still awaiting an outcome.

(a) Number of 'AO7' Offences Per Month Per Locality

Locality	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97	Jan-98	Feb-98	Mar-98	Apr-98	May-98	Jun-98	Jul-98	Aug-98	Sep-98	Oct-98
COMO	60	58	62	59	38	54	42	45	41	37	44	26	36	35	27	32
MANNING	8	12	9	8	15	5	6	9	11	6	7	11	14	13	9	4
SOUTH PERTH	25	39	27	20	23	35	28	47	30	28	29	41	33	30	24	18

(b) Number of Persons Processed for 'AO7' Offences Per Locality

Locality	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97	Jan-98	Feb-98	Mar-98	Apr-98	May-98	Jun-98	Jul-98	Aug-98	Sep-98	Oct-98
COMO	2	1	-	1	-	-	-	5	1	4	9	-	2	3	4	2
MANNING	-	1	1	1	-	-	-	1	-	-	-	2	-	1	1	-
SOUTH PERTH	2	3	1	1	1	2	1	5	2	3	-	2	3	4	2	3

The member will note statistics provided relate to persons processed (ie, persons arrested, cautioned, summonsed or facing a Juvenile Justice Team). The Western Australia Police Service Offence Information System does not record persons convicted.

(c) Number of 'AO7' Offences Remaining Uncleared

Locality	Jul-97	Aug-97	Sep-97	Oct-97	Nov-97	Dec-97	Jan-98	Feb-98	Mar-98	Apr-98	May-98	Jun-98	Jul-98	Aug-98	Sep-98	Oct-98
COMO	57	57	61	54	34	51	40	38	39	32	34	26	34	29	16	29
MANNING	8	11	7	7	15	5	6	8	11	6	7	9	13	11	8	4
SOUTH PERTH	22	34	25	16	19	33	27	40	28	20	28	39	29	22	21	15

(d) Yes. Comparative figures have been provided for each of the above questions.

BEER VENDING MACHINES

1704. Ms WARNOCK to the Minister representing the Minister for Racing and Gaming:

(1) Is the Minister aware of the proposal to introduce beer vending machines into this State?

(2) Would the Minister support the machines being installed in Western Australian hotels?

(3) If not, will the Minister consider amending the Liquor Licensing Act (1988) so that the machines cannot be introduced?

Mr COWAN replied:

The Minister for Racing and Gaming has provided the following response:

(1) No, as there is no proposal to introduce beer vending machines into this State.

(2) No.

(3) Not applicable.

QUESTIONS WITHOUT NOTICE

MIRIUWUNG-GAJERRONG DECISION - GOVERNMENT'S LEGAL ADVICE

505. Dr GALLOP to the Premier

Will the Premier table the legal advice to the Government on the Miriuwung-Gajerrong decision; and if not, why not?

Mr COURT replied:

It is interesting that last week the Leader of the Opposition scoffed when we said that we would be considering an appeal. He gave the impression -

Dr Gallop: That was not the question I asked. Will you table the legal advice?

Mr COURT: - that there is something anti-Aboriginal about our lodging an appeal. I see the Opposition is now playing with the idea that perhaps an appeal is necessary. The cabinet subcommittee on native title was briefed on Monday about the legal issues. Advice was provided that we should appeal.

Dr Gallop: Will you table the legal advice, Premier?

Mr COURT: I ask the Leader of the Opposition to allow me to answer the question.

Dr Gallop: That is the question.

Mr COURT: The short answer to that is no, and the Leader of the Opposition knows that it is the practice in this House. Last week the Leader of the Opposition wanted briefings with the Crown Solicitor, and I think that has been arranged. Is that correct?

Dr Gallop: Yes.

Mr COURT: I cannot remember that sort of courtesy being given to us when we were in opposition. The Federal Court judgment in the Miriuwung-Gajerrong case has raised a number of questions and doubts about the nature of native title and the way in which it interacts with other forms of title. Basically, we believe three very significant matters must be clarified.

Ultimately, I am sure these matters will be decided in the High Court of Australia. The first issue is that of ownership and the use of resources. That is of major concern to us because Justice Lee's decision does not appear to be consistent with the concept of the crown ownership of minerals and petroleum. This longstanding principle has recently been confirmed in the commonwealth Native Title Act. Secondly, the nature of leasehold tenures and their extinguishment by native title is another area wherein the decision of Justice Lee is at variance with law as understood by the High Court in the Mabo, Wik and Fejo decisions. It is also at variance with the commonwealth Native Title Act and the pieces of validation and confirmation legislation already passed by most States and Territories. The third issue relates to whether a crown lease, when issued, impacts on native title at that time or whether the impact occurs only through courtesy of subsequent activities; for example, buildings on the title at a later date. Three issues were raised in this judgment, but they are three very significant issues and they will be taken into account when Cabinet is addressing these matters, both in relation to an appeal and how an appeal will be lodged. Interestingly, even the editorial of *The West Australian* - we have not been on the same side in these issues - says that the Lee ruling must go to the High Court. The strong advice we have received to date is that that is the case and, as I said, I believe it is important that those three issues be clarified.

MIRIUWUNG-GAJERRONG DECISION - GOVERNMENT'S LEGAL ADVICE

506. Dr GALLOP to the Premier

Will the Premier explain why he will not provide to this Parliament the legal advice given to this Government that he has been only too happy to provide to the mining industry in this State?

Mr COURT replied:

If the Government makes a decision to appeal this case, we will give a full public explanation of why that appeal is being lodged.

Dr Gallop: You gave that advice to everybody in this State, but not to this Parliament. Will the Premier explain himself? Explain how this Parliament can't get that advice, yet it is floating around Western Australia? Explain that. Answer that question.

Mr COURT: As I said, it has not been the practice to table advice, and it was not the practice of the previous Labor Government to have the Crown Solicitor brief the Opposition on these issues, but we have arranged that.

Dr GALLOP interjected.

The SPEAKER: Order! The Leader of the Opposition has made his point.

DISABLED TENANTS - PROPERTIES AVAILABLE IN MANDURAH

507. Mr NICHOLLS to the Minister for Housing:

(1) What properties are currently available for disabled applicants in Mandurah?

(2) What properties are planned for construction for disabled tenants in Mandurah?

(3) What planning process exists for disabled tenants in Mandurah?

Dr HAMES replied:

(1)-(3) Applicants with disabilities can access Homeswest accommodation, firstly, through the normal application process for mainstream rental housing and, secondly, through community housing options. Mandurah currently has 260 mainstream properties. Although disabled applicants have access to any of those properties, funds must often be spent to make them better suited for people with disabilities, particularly wheelchair-bound applicants. During 1997-98, over $6 500 was spent on improving houses to allow for disabled access. In 1998-99, over $9 000 will be spent doing similar work. In addition, Homeswest has 14 properties in Mandurah which have been specifically designed for people with severe disabilities. It also headleases 30 units for people with disabilities through community organisations, under the community housing, joint venture and community disability housing programs. Homeswest, through its access loan program, also provides an opportunity for people who have disabilities to buy their homes, often as a joint venture arrangement with Homeswest. Under the current financial year building program, 21 properties will be built in Mandurah. A number of those are specifically designed for people with disabilities.

COMMONWEALTH-STATE MEDICARE AGREEMENT - FEDERAL FUNDING CUTS

508. Mr McGINTY to the Minister for Health:

Will the Commonwealth-State Medicare Agreement result in cuts to federal funding of Australian public hospitals of around $80m for every 1 per cent increase in private health cover? How does the minister justify supporting a policy that will take money out of a public hospital system which is already underfunded?

Mr DAY replied:

I do not have a copy of the proposed Australian health care agreement, but it contains a general provision that if the proportion of people who are covered by private health insurance in this State goes above a certain level, there will be a decrease in the amount of assistance provided by the Commonwealth Government. That is an entirely understandable situation because in the past 15 years the proportion of people who are covered by private health insurance has declined from 55 per cent to 35 per cent. Members of the Opposition would do the people of Western Australia a great deal of good if they telephoned their federal Labor colleagues, particularly those in the Senate, and suggested that they pass the Commonwealth Government's legislation to fund that 30 per cent rebate. The rebate will provide some incentive and encouragement not only to people who are on high incomes, but also to those battlers who are doing their best to provide for their health care and to do the right thing by the community and pay for private health insurance. Approximately 70 000 people who are on low incomes in this State are covered by private health insurance. The members of the Opposition and their federal colleagues are blocking the assistance proposed to be received by these people.

SOLVENT ABUSE - SERVICES

509. Mr BAKER to the Minister for Family and Children's Services:

I refer to statements made by the member for Bassendean in the House last week regarding the services available to assist the community to overcome solvent abuse problems. During his remarks, the member asserted that neither the community drug service teams nor the local drug action groups could assist in his electorate. Can the minister explain the different types of services provided by community drug service teams and local drug action groups and outline whether the member for Bassendean's assertions were accurate?

Mrs PARKER replied:

I thank the member for some notice of this question. It is important that I clarify some of the matters raised in this House last week. Community drug service teams have been established around the State to work with local communities to tackle a range of drug problems. They focus on prevention and treatment. The teams also work closely with the local drug action groups, which are separate bodies. They are grassroots groups of volunteers from the community that work with the police and other professionals to take action locally. I am advised that the member for Bassendean telephoned the community drug service team in his area and spoke to the receptionist. However, he did not have the patience to wait for the coordinator to return his call. The member for Bassendean spoke only to the receptionist, whose attempt to organise a time for the coordinator to get back to the member for Bassendean was rebuffed. It seems that the point of the exercise was not to seek information and assistance but to enable him to attack those services.

Mr Brown: You are telling untruths. It's all right; I'll get the opportunity if you want to tell lies.

Withdrawal of Remark

The SPEAKER: Order! The member for Bassendean knows he cannot make those assertions. I ask him to withdraw.

Mr BROWN: I withdraw, Mr Speaker.

Questions Without Notice Resumed

Mrs PARKER: I am informed the community drug service team coordinator is attempting to arrange a meeting with the member to outline the services the team provides. The community drug service team in the member's area received some $272 000 in funding in the 1998-99 budget. I refer the member to the front page of the community newspaper for the week of 21 to 27 July, which contains an article about the team. The director of the community drug service team is quoted as stating -

> "The reception we've had has been wonderful."

She is talking about the community reaction to the establishment of the team. The quote continues -

> "The communication has been great and the community is really starting to work together.
>
> "We have been running forums for parents and parent-teacher mentor programs and information is filtering down.
>
> " . . . We are working closely with medical officers, mental health professionals and social workers."

If that is what the community is saying, I encourage the member for Bassendean to work with these people in the community and be part of the answer instead of the problem.

The local drug action groups are made up of volunteers. The Government has established 49 local drug action groups around the State. The Government provides $1 000 in seed funding to these groups on establishment and they have access to $4 000 in project grants each year. They do not and were never intended to provide a professional service. I encourage the member for Bassendean to join with members like the members for Joondalup, Hillarys, Carine and Churchlands.

The SPEAKER: Order! Perhaps the minister will begin to wind up her answer.

Mrs PARKER: Those members and the member for South Perth have been vitally involved in the establishment of local drug action groups in their areas and it might serve the member for Bassendean to do the same.

MARITIME MUSEUM, FORREST LANDING

510. Ms MacTIERNAN to the Premier:

(1) Why did the Government proceed with the planning of the maritime museum at Forrest Landing when it had received advice as early as July 1995 that using the site would cause major safety hazards?

(2) How will the installation of cameras and other electronic gadgetry deal with the hazards of engine blackout, rudder failure and crew error, given the already substandard turning entrance to the port, as identified by the risk assessors Det Norske Veritas nearly two years ago?

Mr COURT replied:

(1)-(2) The member cannot help herself when it comes to whipping up a media story. This project has been knocked by the member for Fremantle and it is now being knocked by the member for Armadale as the Opposition's spokesperson for Transport.

Mr Thomas interjected.

The SPEAKER: The member for Cockburn will come to order!

Mr COURT: The Government wants to develop a world-class maritime museum in the heritage precinct of Victoria Quay. The member might not know that a museum and coffee shop have already been built there - over the water, not on the land. The Fremantle passenger terminal is also there. Is there a risk? Yes, there is always a risk at ports and airports. The possibility of a ship running into the museum was raised three years ago.

Ms MacTiernan: It must be seen in context.

Mr COURT: I will provide the context. The issue was that a vessel could collide with the port and penetrate 30 metres.

Mr Thomas interjected.

The SPEAKER: Order! I have called the member for Cockburn to order once, although not formally. He knows I accept interjections in this place, but not those that have nothing much to do with the question at hand.

Mr COURT: The advice of three years ago was that a 40 000-tonne vessel travelling at 8 knots and impacting the wharf at an angle of 90 degrees would penetrate to a distance of 19 to 30 metres. Subsequent studies undertaken by Det Norske Veritas indicated that the likelihood of such an impact by a vessel is in the order of one in 555 -

Ms MacTiernan: That is not long odds.

Mr COURT: I have not finished. It is one in 555 years!

Several members interjected.

Mr COURT: This is important. The report stated that the likelihood of that impact being major - that is, likely to cause significant damage to the wharf or the ship - is one in 10 000 years. It is much more dangerous for the member to sit where she is waiting for a chandelier to fall than it will be to sit at our new museum and watch the ships go by.

Ms MacTiernan: Why does the Fremantle Port Authority think it is a risk ?

Mr COURT: Three safety issues were raised. The first related to reflections off a building, and the architects can design the facility to avoid that. The second issue was that a person at the top of the tower when a ship came through, for a matter of seconds would not be able to see parts of the ship. In this day and age cameras are used in that situation. A barge at Derby is moved to and from ships at sea for loading and unloading, but those in the tug manoeuvring it have no line of sight. That journey is monitored by cameras. I am sure that a camera could be used for a few seconds in this situation. The third issue related to a ship ramming the wharf. When I made my initial inquiries, it was explained that sometimes ships come in and lose power. In the history of the port, ships have lost power, drifted and been in danger of wiping out the railway jetty. That can happen; it is a risk in ports. It is like the pilot of a jumbo jet with his hand on the throttle taxiing to a terminal. He could push the throttle down and drive the jumbo jet through the terminal, but thousands of pilots avoid doing so every day.

I will refer to some correspondence from the port authority. It states that the project team has "achieved an exciting preliminary design", and that the port is "satisfied that the port requirements can be achieved in the detail within the broad concepts presented".

Yes, safety issues are involved, as are heritage issues, which I am sure the member for Fremantle will follow closely. When completed, this will be a project of international significance as WA will have the finest maritime museum complex to be found anywhere in the world. We can all be proud of that prospect. It is the Government's job to manage risk issues when they arise. It is like the situation in Midland: The member for Midland stated that as the Midland Workshops site is contaminated, we should not develop it. Yes, it has contamination; nevertheless, it is our job to work out to how to address the issue - which this Government has done. It is like the Omex site: Members opposite were in government for 10 years and did nothing about that site even though it is in the electorate of an opposition member. Next year, this Government will have spent $7m cleaning up that site. When an issue appears in front of a Government, it addresses it. That is what Governments are there for.

GOVERNMENT'S MANDATE

511. Mr OSBORNE to the Premier:

(1) Is the Premier aware of comments made by the Leader of the Opposition on election night that the Court Government had been given a mandate to govern?

(2) Has this commitment been reflected in the implementation of government policy?

Mr COURT replied:

(1)-(2) I will keep my answer short. The Leader of the Opposition said that the Government had been re-elected with a clear mandate to govern. However, two years down the track we find an interesting situation. The Leader of the Opposition not only has gone into a negative mode, but also wants to make major amendments to legislation introduced.

Dr Gallop: This is the born-to-rule Liberal speaking. Hypocrites, the lot of you!

Mr COURT: No.

Dr Gallop: We had to put up with an upper House controlled by you for 100 years. You cannot cop it when it is done for two weeks! You are born-to-rule hypocrites!

Mr COURT: No. It is called blowing in the wind. When the Government's law and order package was introduced, the Opposition, through the Leader of the Opposition and the opposition spokesperson, said that it would be given bipartisan support. When the Sentence Administration Bill was introduced, initially it was supported. However, when the Chief Justice made comment last week, all of a sudden the Opposition wanted to send half of the sentencing legislation to a committee. The Weapons Bill was sent to a committee, and delays have occurred with the Surveillance Devices Bill. Also, major changes are being made to the School Education Bill.

Several members interjected.

The SPEAKER: Order!

Mr COURT: Did the Deputy Leader of the Opposition say the Opposition supported the School Education Bill?

Mr Ripper: I said a lot of amendments were made to that Bill with the support of coalition backbenchers on the upper House committee.

Mr COURT: No, my friend. The Opposition made major changes to that legislation. Members opposite want major changes made to the native title legislation, including the Titles Validation Amendment Bill and the Native Title (State Provisions) Bill, when they know that the existing system is not working.

Dr Gallop: Do you want to talk about what happened with the Burke and Lawrence Governments? You're an absolute hypocrite!

The SPEAKER: Order! Perhaps we can continue.

Mr COURT: Ultimately, members opposite must be accountable for the decisions they make, just as the Government is accountable. I give the Leader of the Opposition one example of how the coalition performed in the Legislative Council when in opposition: It voted against the Petrochemical Industries Co Ltd legislation.

NATIONAL CRIME AUTHORITY - TOUGHER PENALTIES FOR UNCOOPERATIVE WITNESSES

512. Mrs ROBERTS to the Minister for Police:

I refer to the recent meeting of the inter-governmental committee attended by the minister.

(1) What was the result of his plea for support from other jurisdictions for the adoption of the Labor Party's call for tougher penalties for witnesses who refuse to cooperate with National Crime Authority hearings?

(2) When did the minister formally request the National Crime Authority to hold hearings into the activities of outlaw motorcycle gangs in Western Australia?

(3) When will the NCA be holding hearings into outlaw motorcycle gangs in Western Australia?

Mr PRINCE replied:

(1)-(3) At the recent meeting of the Australasian Police Ministers' Council which took place in Auckland - it was the turn of the New Zealand minister to chair the meeting - I was able to have a number of quite in-depth and lengthy discussions with the Chairman of the National Crime Authority who attends ex officio. These discussions were informative, and the chairman was keen to be further involved. The Operation Panzer reference which the NCA has had for some time is dormant in the sense that it is only a watching brief at the moment. However, the NCA was able to circulate the appropriate papers to begin the resurrection of that into an active exercise. Those papers were signed by some ministers while we were in Auckland, and I know others have signed since then. I should again give credit to the National Crime Authority office in Perth, which has been very keen to see this progressed.

One of the problems that has arisen, though, is that under its legislation the National Crime Authority does not have the power to investigate the murders or the killings or the shootings here, because those are seen to be matters that are relevant to only the Western Australian police. However, the NCA is enabled to investigate the organised crime part of the activities of outlaw motorcycle gangs. My point was that much more evidence now exists of an interstate connection between gangs, particularly of one gang, the Rebels, moving interstate and forming for the first time a national gang. This is something on which the NCA could, therefore, hang its hat from the point of view of resurrecting the Panzer reference. The chairman made it plain to me that a member of the National Crime Authority would not be available until about now anyway, even if we could commence hearings. The NCA is working through the paperwork and the bureaucracy to get the hearings up and going. I cannot tell the member exactly when they will start. As soon as I can, I will let her know. I do not have a firm date at present.

I discussed the matter of penalties with Senator Vanstone, who is the Commonwealth Minister for Justice, and I discussed that in the open forum of all ministers. I made the point that from my knowledge of what has happened in this State, as well as from my knowledge of what has happened with some inquiries in other States on different matters, a number of comments have been made to the effect that the penalties for refusing to answer a question are pathetic. I have said that, the member has said that, and it has been consistently said in other jurisdictions as well. I have urged Senator Vanstone to amend the commonwealth legislation. She understood the situation and said that it was a matter for the legislative program of the Federal Parliament. I cannot say what that means in terms of timing.

Mrs Roberts: Does that mean it is not getting priority?

Mr PRINCE: I would like to think that it is a relatively small amendment that would have bipartisan support in the Commonwealth Parliament. If it does, perhaps it will pass fairly quickly. If the member for Midland can give me that sort of assurance from her federal colleagues, that would give me more ammunition to talk to Senator Vanstone about getting the amendment up and through.

SAFETY FOR SENIORS - NIGHT GUARDIANS INITIATIVE

513. Mrs HODSON-THOMAS to the Minister for Police:

Would the minister please advise what initiative has been introduced by the Warwick police designed specifically to improve safety for seniors?

Mr PRINCE replied:

I am delighted that the question has been asked by the member for Carine. The initiative concerned is called the Night Guardians initiative. It originated in the Albany police district. I give full credit to the officers there who thought it up and got it going down in Albany. It is now being replicated in a number of areas, including the Joondalup police district and particularly the Warwick Police Station. It is a concept that involves commitment by police in partnership with people, particularly in this instance with seniors. A number of strategies are involved in this idea. Owners and managers of retirement villages are being encouraged, in concert with police officers, to conduct a security appraisal of their respective units, their areas, and their whole grounds. To improve the communication between the residents, the residents are encouraged to have a meeting to discuss and perhaps come up with an appointment of one or more persons, who are perhaps the more able-bodied individuals who can take on the job of night guardian. That is the expression used for that person. They are the liaison point between police and residents, especially for regular patrols by police in and around many of these residential complexes. Also, in the case of Warwick Police Station, the City of Joondalup security staff patrol especially during hours of darkness. The security patrol, in turn, has very good liaison with the police so that in any matter of importance -

Mr Ripper: How many more chapters of this book?

Mr PRINCE: A couple. In any matter of importance, the patrol can call in the police where it is appropriate. The duties of the guardian consist basically of a patrol around dusk to ensure that people have locked their doors and no keys have been left in cars or doors - in other words, basic security which elderly people sometimes forget about - and to be there as a constant reminder and a contact and liaison with the police. It is an excellent idea for helping people to help themselves in partnership with the police. I congratulate the Warwick Police Station for having picked up the concept. However, I particularly congratulate the Albany police for having thought of it in the first place.

RAIL LINK, PERTH-KENWICK-MANDURAH

514. Ms MacTIERNAN to the Premier:

Can the Premier confirm that the Government is considering developing the Perth-Kenwick-Mandurah rail link as a privately owned and/or managed operation?

Mr COURT replied:

As we stated at the last election, the Government is keen to progress a rail link to Mandurah. I am not aware of the proposal for a privately built, owned and operated line. However, the Government will consider all options; it will not rule out any options. I am not aware of any detailed discussions or proposals; however, I will make inquiries.

Ms MacTiernan: Have you discussed the concept of a privately-owned or managed operation?

Mr COURT: The Government has discussed the concept of getting a rail down to Mandurah. I can assure the member that we have had many long nights trying to work out how to fund it; that is difficult.

Ms MacTiernan: Have you spoken to the French company Vivendi?

Mr COURT: Me personally?

Ms MacTiernan: Your Government.

Mr COURT: I have not myself. I can inquire in government. It is my intention, if possible next year, to look at a number of options. However, we want to look at different types of rail concepts, not so much at who owns and funds it, to see whether there are alternatives to what we are currently using in the metropolitan area.

"REACHING OUT TOGETHER" GATHERING

515. Mrs van de KLASHORST to the Minister for Police:

Will the minister please advise the outcomes of the "Reaching Out Together" police and indigenous gathering against family violence which was held at the Noalimba centre last week?

Mr PRINCE replied:

I thank the member for some notice of this question. I note that the member was one of the speakers at the gathering early on the second day. She and I both have an interest in the result. I give due credit to the chair of the Police Ministers Council on Aboriginal Police and Community Relations, Mrs Pamela Walsh, for having initiated this project in conjunction with not only the small group of police officers with whom she works but also other police around the State. More than 300 Aboriginal people attended, mostly from the metropolitan area and the south west; however, a significant number in a representative sense came from across the northern parts of the State, some from the Northern Territory and some from Queensland. It was an extraordinary, divergent, representative group of people. A number of role-play workshops and seminars were held which explored a number of issues, most particularly in relation to the Police Service - such as the way in which police respond to accusations of domestic violence within Aboriginal families - and the way in which better preventive work could be done to prevent domestic violence occurring. It is a fact that although women between the ages of 18 and 24 years are those against whom most acts of domestic violence are perpetrated, Aboriginal women are 45 times more likely to be the victims of domestic violence than non-Aboriginal women; and the degree of violence, injury and often permanent disablement is far higher than in any other identifiable group in our society.

A number of recommendations were made at that gathering. The recommendations in respect of the Police Service were, first, that there should be more Aboriginal police officers and more involvement of Aboriginal police liaison officers in helping the community to deal with family and domestic violence incidents, and in that sense working to prevent a recurrence - in other words, trying to break the cycle of domestic violence, about which the member is so well informed as a result of her chairing the Domestic Violence Task Force a few years ago. The second recommendation was that there should be better and continuing cultural awareness training for police officers with regard to Aboriginal issues, particularly in remote areas, because the issues vary from place to place. That is often not appreciated by people who do not have close contact with Aboriginal people.

The gathering was very supportive of what the police are doing. It was also very supportive of the Government's view that domestic violence is a crime and should be treated as such, but that many things could be done to break the cycle of violence and stop its recurrence. The conference was important and extremely valuable. I was delighted to hear the sentiments of Mr Colin Dillon, an Aboriginal police officer from Queensland, and presently seconded as deputy commissioner of the Aboriginal and Torres Strait Islander Commission, as reported in last Saturday's *The West Australian*, that the Western Australia Police Service leads Australia in addressing the domestic violence issue in the indigenous communities of Australia. That is a feather in the cap of not only the officers concerned but also the Delta change program, under which the process of addressing this issue has been accelerated.

MIRIUWUNG-GAJERRONG DECISION - GOVERNMENT'S LEGAL ADVICE

516. Dr GALLOP to the Premier:

I refer the Premier to the legally privileged advice that has been given to the Government on the Miriuwung-Gajerrong case, advice which this Premier will not table in the Parliament of Western Australia. Will the Premier be investigating the leaking of that advice to private interests in Western Australia, such that it is now circulating throughout the State?

Mr COURT replied:

That advice should not have been circulated, if that has happened. We have not yet received the detailed advice on the appeals, because, as I said, we will address that issue next week when we have received that detailed advice. If there has been a leak -

Dr Gallop: Will you be investigating the leak?

Mr COURT: If there has been a leak, I will certainly investigate it.

The SPEAKER: Order! Notwithstanding the detailed issues that were raised in question time, only 12 questions were asked, including supplementaries, because of long answers.
